



THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



52  
Sheehan

Victoria F. Sheehan  
Commissioner

William Cass, P.E.  
Assistant Commissioner

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, NH 03301

Bureau of Rail & Transit  
February 9, 2016

**REQUESTED ACTION**

Pursuant to RSA 228:57-a authorize the Department of Transportation to enter into a **retroactive** lease agreement with Michael and Elizabeth Hurley PO Box 6074 Laconia NH 03247, in the amount of \$8,762.50 for the use of State-owned railroad property in Laconia, NH along Paugus Bay, Laconia, NH commencing July 1, 2015 through June 30, 2020 effective upon Governor and Council approval.

Lease income will be credited as follows:

|                                  |                |
|----------------------------------|----------------|
| Source of Funds Revenue:         | <u>FY 2016</u> |
| 04-96-96-960010-2991             |                |
| Special Railroad Fund            |                |
| 009-407323 Railroad License Fees | \$8,762.50     |

**EXPLANATION**

This request is for a **retroactive** Dock Lease Agreement, because of several unexpected intermediate steps and approvals that were necessary due to the age of the original lease documents. These intermediate steps were unforeseen and resulted in delays in finalizing all of the Department's 2015 Dock Lease renewals. All 2015 Dock Lease renewals will be submitted separately for Governor and Council approval, but all experienced the same unforeseen delays. Intermediate steps and approvals included site visits to collect additional data, preparation and submission of documents for approval by the Council of Resources and Development, and communication with tenants explaining the lease fee increase as defined in RSA 228:57-a.

The Department of Transportation received a request from Michael and Elizabeth Hurley to lease 50 linear feet of frontage along Paugus Bay, Laconia, NH on the State-owned Concord to Lincoln Line in Laconia. Michael and Elizabeth Hurley are the owners of an adjacent property and had a lease for a portion of the railroad property from July 1, 2010 to June 30, 2015. This agreement has been prepared consistent with RSA 228:57-a as enacted in 2010.

RSA 228:57-a allows the Department to lease portions of a railroad corridor to the owners of adjacent properties separated from the shore of public waters (as defined by RSA 271:20) by only the railroad

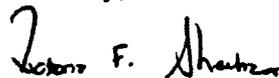
corridor for private, non-commercial use. This lease gives the lessee the right to cross the railroad corridor to access the lake and thereby request a permit for a dock or mooring field. The cost of a lease is calculated to be \$33.05 per linear foot per year as specified in RSA 228:57-a. The amount for the dock rights is \$1,652.50 and \$100.00 is assessed annually for the pedestrian and utility crossings. The total annual lease fee for the subject parcel will be \$1,752.50 per year for a five year total of \$8,762.50.

This Agreement has been reviewed and approved by the Office of the Attorney General for form and execution. Copies of the fully executed lease agreement have been provided to the Secretary of State's Office and the Department of Administrative Services. Subsequent to the Governor and Council approval, a copy of the Agreement will be on file with the Department of Transportation.

The Council on Resources and Development recommended for approval of the lease on May 14, 2015.

The Long Range Planning and Utilization Committee approved the lease on May 27, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria F. Sheehan". The signature is written in a cursive style with a large initial "V".

Victoria F. Sheehan  
Commissioner

## 2015 DOCK LEASE

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THIS LEASE, made and entered into this, between the State of New Hampshire, Department of Transportation, hereinafter called the "LANDLORD", and Michael and Elizabeth Hurley PO Box 6074 Laconia NH 03247 hereinafter (collectively) called the "TENANT".

WHEREAS, the LANDLORD is the owner of the hereinafter described property, which is not immediately required by the LANDLORD and has been requested by the TENANT to lease the property to the TENANT on an "as is" basis. This Lease also includes the right to construct and use an at-grade pedestrian crossing of the active railroad tracks, hereinafter called the "FACILITY".

WHEREAS, the State is the owner of a Railroad Corridor in the City of Laconia County of Belknap, State of New Hampshire. The State-owned Railroad Corridor is used by the Plymouth & Lincoln (Railroad Operator) under an Operating Agreement with the State of New Hampshire.

WHEREAS, the LANDLORD is willing to comply with said request, provided that the TENANT, as a condition to the occupancy of said premises, joins in the execution of this LEASE for the purpose of accepting each and every condition herein set forth during the occupancy of said premises by the TENANT.

NOW, THEREFORE, THIS LEASE WITNESSETH THAT:

### 1. DEMISE OF THE PREMISES

- 1.01 For and in consideration of the rent and the mutual covenants hereinafter stated, and the acceptance by the TENANT of each and every term and condition herein set forth, the LANDLORD hereby lease and demises to the TENANT the premises located in the City of Laconia on the State-owned Concord-Lincoln railroad line and nearly opposite Engineering Station 1573+45, as shown on the attached Railroad Valuation Section 21 Map 66 (EXHIBIT A).
- 1.02 The Landlord grants to the Tenant permission to cross a portion of the State-owned Concord-Lincoln railroad corridor to: construct, use, maintain, and reconstruct a private pedestrian crossing within the right-of-way near approximate Valuation Station 1573+45 Section 21 Map 66 (EXHIBIT A).
- 1.03 The Landlord grants to the Tenant permission to cross a portion of the State-owned Concord to Lincoln railroad corridor to: construct, use, maintain, and reconstruct an underground utility crossing within the right-of-way near Engineering Station 1573+45, as shown on the attached Railroad Valuation Map V21/66 (EXHIBIT A).

### 2. TERM

- 2.01 The term of this lease shall begin on the First of July 2015, or on approval by the Governor and Executive Council, whichever is later, and shall end on the June 30, 2020, unless terminated sooner in accordance with Condition 17.01 or 17.02.
- 2.02 The TENANT shall notify the LANDLORD no less than ninety (90) or no more than one hundred eighty (180) days of the ending date that the TENANT wishes to enter negotiations for a new LEASE for an additional five (5) year period. If the TENANT and the LANDLORD cannot agree upon a new LEASE, the TENANT shall surrender to the LANDLORD the premise in accordance with Condition 18.01.

Initial 

## 2015 DOCK LEASE

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### 3. SECURITY DEPOSIT AND RENT

- 3.01 The TENANT agrees to pay to the LANDLORD as a Security Deposit for demised premises the sum of n/a (\$0.00) dollars to secure the performance of the TENANT's obligations hereunder. The LANDLORD may at its option set off all or portions of the deposit to pay for damages caused by any breach of the TENANT's obligations hereunder. The TENANT shall not have the right to apply the security deposit in payment of any past due rent.
- 3.02 All real or personal property taxes assessed by the City of Laconia as a result of this LEASE are not included in the rent and will be paid by the TENANT. In accordance with RSA 72:23, I(b), "failure of the lessee to pay any duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by the lessor."
- 3.03 Rent shall be \$1,652.50 per year, plus \$100 per year for the private pedestrian at-grade and electric utility crossings for a total of \$1,752.50, payable in advance, due on July 1 each year to the LANDLORD at the following address:

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
BUREAU OF FINANCE & CONTRACTS  
J. O. MORTON BUILDING  
PO BOX 483  
CONCORD NH 03302-0483

If the total rental amount is not paid within ten (10) days after the due date, the TENANT agrees to pay a late charge of seventy-five (\$75.00) dollars.

### 4. QUIET ENJOYMENT

- 4.01 The LANDLORD covenants and agrees that so long as the TENANT is not in default of any of the covenants and agreements of this LEASE, the TENANT's quiet and peaceful enjoyment of the premises shall not be disturbed or interfered with by the LANDLORD or any person claiming by or through the LANDLORD.

### 5. USE OF PREMISES

- 5.01 The premises shall be used and occupied by the TENANT exclusively as a personal dock facility, and neither the premises nor any part thereof shall be used at any time during the term of this LEASE by the TENANT for the purpose of carrying on any other business, profession or trade of any kind. The TENANT shall comply with all laws, ordinances, rules and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises during the term of this LEASE. The TENANT shall not use the premises in any manner that will disturb a neighbor's peaceful enjoyment of other property.
- 5.02 Procurement and delivery of a current Dock Permit issued by the New Hampshire Department of Environmental Services, Wetlands Bureau (NHDES) or a current Mooring Field Permit from Department of Safety – Safety Services-Moorings Program (NHDOS) to the State is a condition precedent to the effectiveness of this Agreement. The TENANT agrees to furnish a copy of a current Dock Permit issued by the NHDES that has been recorded at the Registry of Deeds or a copy of a current Mooring Field

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## 2015 DOCK LEASE

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Permit from NHDOS to the Bureau of Rail & Transit. Failure to furnish documentation to the Bureau of Rail & Transit will result in termination of the lease subject to the provisions of Section 16.

- 5.03 No TENANT or visitor or invitee of the TENANT may park any motorized vehicle on any area, which is not designated specifically for parking. No unregistered motorized vehicles shall be stored upon the premises.

### 6. MAINTENANCE OF PREMISES

- 6.01 The TENANT agrees that all work on construction, maintenance, repair, and reconstruction of said at-grade pedestrian crossing FACILITY shall be performed at a time and under conditions acceptable to the State, and shall at no time interfere with the operation of the railroad by the State, its lessees or assigns. The TENANT shall construct the FACILITY as shown on the Typical Crossing Plan (Exhibit B) attached to this LEASE.
- 6.02 The TENANT agrees that it is liable for the cost of all work and materials required to construct, use, maintain, repair, relocate and reconstruct said FACILITY on NHDOT Railroad Property as indicated in the Standard Prosecution of Work for a Pedestrian Crossing Constructed on NHDOT Railroad Property. Such responsibility shall include but not be limited to the cost of all on-site inspectors or other representatives of the State to inspect the materials and to monitor construction and a railroad flagman, if such individuals are necessary in the sole judgment of the State. Any deficiencies in materials, methods of construction or workmanship shall be promptly corrected to the mutual satisfaction of the TENANT and the State. The TENANT is solely responsible for the presence of its equipment along the State-owned railroad corridor.
- 6.03 The TENANT will assume the cost of temporary removal, restoration and adjustment of the FACILITY in the event track repairs or additional track installations require such modifications.
- 6.04 The TENANT shall retain the Railroad Operator responsible for maintenance of the track adjacent to the FACILITY, or, if not available, a contractor approved by the State, to perform all railroad related track work (such as replacing and/or installing ballast, defective ties, tie plates, spikes and crossing structures) during the construction or whenever the track structure is disturbed, distorted or altered due to the existence of said FACILITY. The Operator's current fee and wage structure will be used for all services rendered by the Operator.
- 6.05 Any damage to the State-owned railroad corridor contained herein which, as determined by the State, is caused by, results from or arises out of the installation, maintenance or presence of the TENANT's FACILITY shall be repaired by the State. The TENANT shall fully compensate the State for all costs associated with the repair of any such damage.
- 6.06 The TENANT shall coordinate any and all work within the State-owned railroad corridor with the Plymouth & Lincoln Railroad, and State by contacting railroad personnel at (603) 745-2135 and State personnel at (603) 271-2468 respectively and giving them a minimum of 48 hours advance notice of the work to be performed in the area so that the Railroad Operator and inspectors can schedule railroad related work around the construction. The TENANT cannot enter onto the State owned Railroad Corridor at any time without first obtaining authorization from the State and the Railroad Operator.
- 6.07 The TENANT shall, at the State's request and the TENANT's expense, provide whatever protection is deemed necessary by the State, in the event the State performs any work on or within the State-owned railroad property limits, including but not limited to inspection, maintenance, cleaning, snow removal, construction, rehabilitation, and repair of such State-owned railroad property.

## 2015 DOCK LEASE

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- 6.08 The TENANT shall submit its written maintenance policies and procedures to be used for the inspectic repair and maintenance of said FACILITY to the State for review and approval. Such policies and procedures shall be approved by the State prior to initial operation of the constructed FACILITY.
- 6.09 The TENANT acknowledges that the premises are in good order and repair at the beginning of the LEASE term, unless otherwise indicated by attached written statement. The TENANT shall at their own expense maintain the premises in a clean and sanitary manner. The TENANT shall not allow brush, leaves, grass or other plant matter, ice, snow, dirt or any other material to be placed on the premises.
- 6.10 The TENANT shall be responsible for any damage caused during this tenancy. The TENANT shall return the premises to the LANDLORD in as good order and condition as when received, ordinary wear and tear accepted. The TENANT agrees to be responsible for all single job repair costs. The LANDLORD reserves the right to select the persons or company to perform any such repairs.

### 7. DAMAGE TO PREMISES

- 7.01 If the premises are damaged so as to render them untenable, then either party shall have the right to terminate this LEASE as of the date on which the damage occurs, through written notice to the other party, to be delivered within ten (10) days after the occurrence of such damage. However, should the damage or destruction occur as a result of any act or omission on the part of the TENANT or its invitees, then only the LANDLORD shall have the right to terminate this LEASE. Should the right to terminate be exercised, the rent for the current year shall be prorated between the parties as of the date the damage occurred.

### 8. ALTERATIONS AND IMPROVEMENTS

- 8.01 The TENANT shall make no alterations to the premises or construct any building or make other improvements on the premises without the prior written consent of the LANDLORD. All alterations, changes, and improvements built, constructed, or placed on the premises by the TENANT, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between the LANDLORD and the TENANT, be the property of the LANDLORD and remain on the demised premises at the expiration or sooner termination of this LEASE.

### 9. ENTRY AND INSPECTION

- 9.01 The LANDLORD retains the right to enter the premises in the case of an emergency, or to make necessary repairs, alterations, improvements, or to supply necessary or agreed services, or to exhibit the premises to prospective purchasers or tenants, workmen, contractors, or others, or when the TENANT has abandoned or surrendered the premises, or whenever necessary to determine the condition of the premises. Whenever practical the LANDLORD shall provide the TENANT with 24 hours notice prior to entry. Any indication of LEASE violations shall be grounds for immediate eviction action.

### 10. ASSIGNMENT AND SUBLETTING

- 10.01 Without the prior written consent of the LANDLORD, the TENANT shall not assign this LEASE, or sublet or grant any concession or license to use the premises or any part thereof. A consent by the LANDLORD to one assignment, subletting, concession, or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession or license. An assignment, subletting, concession, or license without th

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## 2015 DOCK LEASE

prior written consent of the LANDLORD or an assignment or subletting or operation of law, shall be void and shall, at the LANDLORD's option, terminate this LEASE.

### 11. UTILITIES

11.01 The TENANT shall be responsible for arranging for and paying for all utility services required on the premises.

### 12. DANGEROUS MATERIALS

12.01 The TENANT shall not keep or have on the premises any article or thing of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the premises or that might be considered hazardous or extra hazardous.

### 13. INDEMNIFICATION AND INSURANCE

13.01 The TENANT acknowledges that the facility is being requested for the TENANT's advantage and does not involve the Railroad Operator or LANDLORD's performance of their duties to the public. The TENANT further acknowledges that the installation and use of the facility by the TENANT will expose the LANDLORD and the Railroad Operator to additional liability to which they would not otherwise be exposed. Accordingly, the TENANT agrees that neither the LANDLORD nor the Railroad Operator shall be liable for injury or death of the TENANT or agent of TENANT, regardless of status as guest, invitee or trespasser, or for loss or destruction of or damage to any property of the TENANT or any agent of the TENANT while upon, or about, or in the use of the facility. The TENANT and its employees, contractors and agents agree to defend, indemnify, and hold harmless the LANDLORD, its officers, agents and employees, from and against any and all losses suffered by the LANDLORD, its successors and assigns, officers, agents, employees and operating Railroad Operator, from any and all claims, liabilities or penalties asserted against the LANDLORD, its successors and assigns, officers, agents and employees, by or on behalf of any person on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the TENANT or from the use, maintenance, installation, removal or existence of this facility, respective of any negligence on the party of the LANDLORD, the Railroad Operator or their agents or employees. Without limiting the foregoing, it is agreed that this covenant of indemnification shall apply to all cases of loss, damage, injury, death, cost or expense for which any party to this agreement may or shall be liable. For the purpose of this agreement, all persons using the facility shall be deemed agents of the TENANT. This covenant shall survive the termination of this Agreement. In addition the TENANT shall pay the premiums on a policy or policies of insurance covering the following at said facility, designating the State of New Hampshire and the Plymouth & Lincoln Railroad as additional named insureds.

13.01.1 Commercial General Liability:  
\$1,000,000.00 each occurrence/\$2,000,000.00 in the aggregate

13.02 The TENANT further agrees to obtain and keep in force a policy or policies of insurance providing Comprehensive General Liability or Comprehensive Personal Liability with a minimum \$1,000,000.00 per occurrence limit covering bodily injury and property damage and \$2,000,000.00 in the aggregate designating the State of New Hampshire and Plymouth & Lincoln Railroad as additional named insureds.

13.03 Procurement and delivery of a certificate indicating such insurance acceptable to the State is a condition precedent to the effectiveness of this Agreement. The TENANT shall provide to the State a certificate of insurance demonstrating that the required coverage has been obtained and containing the following

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## 2015 DOCK LEASE

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wording. "The State of New Hampshire and Plymouth & Lincoln Railroad are named as additional insured with respect to liability arising from the use and/or occupation of State-owned premises under this Agreement between the State and the Named Insured." Nothing contained herein shall be construed as a waiver of sovereign immunity.

13.04 In the event the TENANT elects to retain an independent contractor to install the crossing the TENANT agrees and to obtain and maintain a policy or policies of insurance effective during the construction of the facility, and designating the State of New Hampshire and the Railroad Operator as additional insureds.

13.04.1 Comprehensive Automobile Liability: \$500,000.00 combined limit

13.04.2 Railroad Protective Public And Property Damage Liability: \$1,000,000.00 each occurrence/\$2,000,000.00 in the aggregate

13.04.3 Worker's Compensation Insurance: In the amount as required by current State Statute

13.05 No provision of this Agreement is intended to waive any aspect of the State's sovereign immunity, and any possible counterclaims or defenses it may assert relative to any claim brought related to this Agreement or the facility.

### 14. HOLDOVER BY TENANT

14.01 No holdover by the TENANT will be permitted. The LANDLORD and TENANT must execute a new LEASE upon expiration of an existing LEASE in order for a TENANT to remain in possession of the premises.

### 15. DEFAULT

15.01 The LANDLORD shall be the sole judge of what shall constitute a violation of the provisions of the LEASE, or the failure of the TENANT to otherwise abide by any of the covenants herein contained, and may order a discontinuance of the practices, or the performance of any of the work related to such default by giving the TENANT ten (10) days notice in writing. Failure of the TENANT to comply with the notice shall automatically give the LANDLORD the right to terminate this LEASE evict the TENANT and take full and complete possession of the premises.

### 16. TERMINATION OF LEASE FOR CAUSE

16.01 In the event that the TENANT shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for ten (10) days after written notice, thereof, or if the TENANT shall default in the observance or performance of any other of the TENANT's covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days of written notice by the LANDLORD to the TENANT specifying such default and requiring it to be remedied then, and in such an event, the LANDLORD may serve a written notice of termination of this LEASE upon the TENANT and this LEASE and the term hereunder shall terminate and upon such termination the LANDLORD may immediately or at any time thereafter, without demand or notice enter into or upon the premises and repossess the same.

16.02 If it becomes necessary for the LANDLORD to institute suit for eviction or damages on account of rental arrears or violation of the terms of this LEASE, the LANDLORD shall be entitled to include in such suit fc

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## 2015 DOCK LEASE

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eviction or damages, a claim for attorney's fees and court costs incident thereto, which fees the TENANT hereby covenants and agrees to pay.

### 17. TERMINATION FOR CONVENIENCE

17.01 The LANDLORD may terminate the LEASE at any time by giving thirty (30) days notice thereof in writing, and may take full and complete possession of the premises hereby leased, at the end of said thirty (30) day period with no further liability of any nature whatsoever to the TENANT for so doing. Should the LANDLORD terminate this LEASE by giving the thirty (30) days notice during any period for which a full year's rent has already been paid, the LANDLORD will reimburse the TENANT for the pro-rata proportion of the remaining number of days for which rent has been paid in advance but during which the TENANT no longer occupy the premises.

17.02 The TENANT may terminate this LEASE Agreement at any time by giving at least thirty (30) days notice in writing, specifying in said notice the day (and the time of day) on which possession of the premises will be surrendered. The TENANT shall not vacate or leave the premises unattended on the day of surrender until the LANDLORD's representative shall have sufficient time to check the premises prior to taking formal possession thereof. In the event that the TENANT shall terminate this LEASE in accordance with the above provisions, payment of rent shall cease at the end of the said thirty (30) day period, or at the end of the day on which possession shall be surrendered, whichever shall last occur.

### 18. SURRENDER OF THE PREMISES

18.01 In the event that the term or any extension thereof shall have expired or terminated, the TENANT shall peacefully quit and surrender to the LANDLORD the premises together with all improvements, alterations, or additions made by the TENANT, which cannot be removed without damaging the premises. The TENANT shall remove all personal property and shall repair any damage caused by such removal. The TENANT's obligations to observe or perform the covenants contained herein shall survive the expiration or termination of this LEASE.

### 19. INDEMNIFICATION AND RELEASE FROM LIABILITY

19.01 The TENANT further releases the LANDLORD, its agents and employees, from any and all claims or demands for damages or injuries of any nature whatsoever attributable to the taking, use and occupancy of any portion of the premises caused by the construction and maintenance by the State of New Hampshire of any transportation project or proposed project which abuts (or will abut) or may effect in any way the property herein leased.

### 20. DISCRIMINATION PROHIBITED

20.01 The TENANT hereby covenants and agrees that no person on the ground of race, color, national origin or sex, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the premises, and that in the construction of any improvements on, over or under such premises and the furnishing of services thereon, no person on the ground of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and that the TENANT shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

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## 2015 DOCK LEASE

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### 21. MISCELLANEOUS

- 21.01 LANDLORD's Agents. All rights and obligations of the LANDLORD under this LEASE may be performed or exercised by such agents as the LANDLORD may select.
- 21.02 Notice. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by registered or certified mail, postage prepaid, in a United States Post Office.
- 21.03 Extent of Instrument, Choice of Laws, Amendment, etc. This LEASE, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is to be construed according to the Laws of the State of New Hampshire, is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto and their respective successors and assigns, and may be canceled, modified, or amended only by a written instrument executed and approved by the LANDLORD and the TENANT.
- 21.04 No Waiver of Breach. No assent, by either party, whether express or implied, to a breach of covenant, condition or obligation by the other party, shall act as a waiver of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition or obligation.
- 21.05 Unenforceable Terms. If any terms of this LEASE or any application thereof shall be invalid or unenforceable, the remainder of this LEASE and any application of such term shall not be affected thereby.
- 21.06 Entire LEASE. This LEASE embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.
- 21.07 No Waiver of Sovereign Immunity. No provision in this LEASE is intended to be nor shall it be interpreted by either party to be a waiver of the State's sovereign immunity.

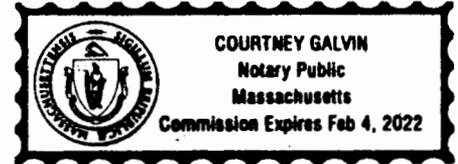
2015 DOCK LEASE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, the day and year first-written above.

PERMITTEE

By: Michael Hurley Owner  
Print Name and Title

Date: 1-27-16



STATE OF MA  
COUNTY OF Middlesex

On, 1-27-16, before the undersigned officer personally appeared Michael Hurley known to me (or satisfactorily proven) to be the owner of the corporation identified in the foregoing document, and acknowledged that he executed the foregoing document.

In witness whereof I hereunto set my hand and official seal.

01-27-2016  
Date

Courtney Galvin  
Notary Public

STATE

By: [Signature]  
Commissioner  
New Hampshire Department of Transportation

Date: 2/12/16

The foregoing Agreement, having been reviewed by this office, is approved as to form and execution on 2/10, 2016.

OFFICE OF THE ATTORNEY GENERAL

By: [Signature]  
Attorney

Approved by Governor and Council on \_\_\_\_\_, 20\_\_\_\_, Item # \_\_\_\_\_.

ATTEST: \_\_\_\_\_  
Secretary of State

Approved by New Hampshire Council on Resources and Development on May 14, 2015.

Approved by Long Range Capital Planning and Utilization Committee on May 27, 2015.

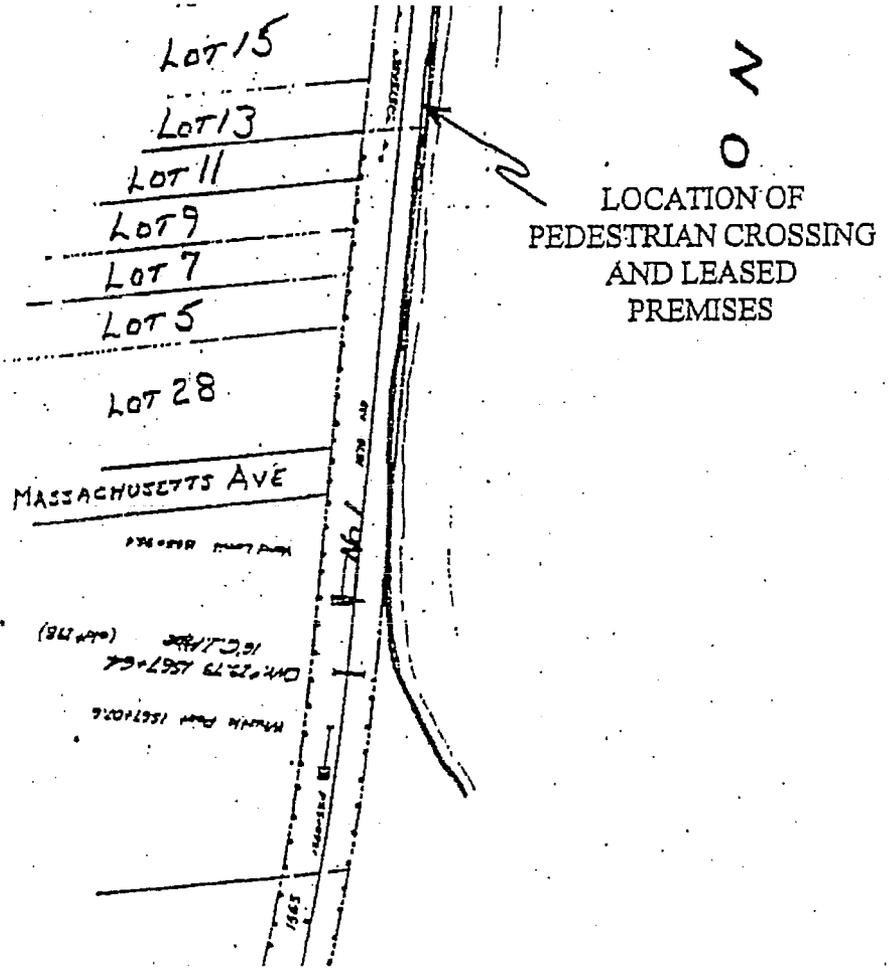
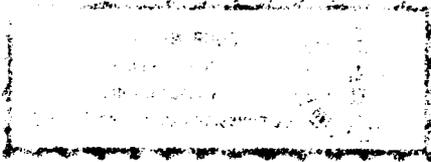
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2015 DOCK LEASE

LEASED AREA

EXHIBIT A

NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF RAIL & TRANSIT  
FILE NO. 1010  
LEASED TO Michael & Elizabeth Hurley  
V21/66, Station 1573+45+/-  
50 +/- Linear FT.

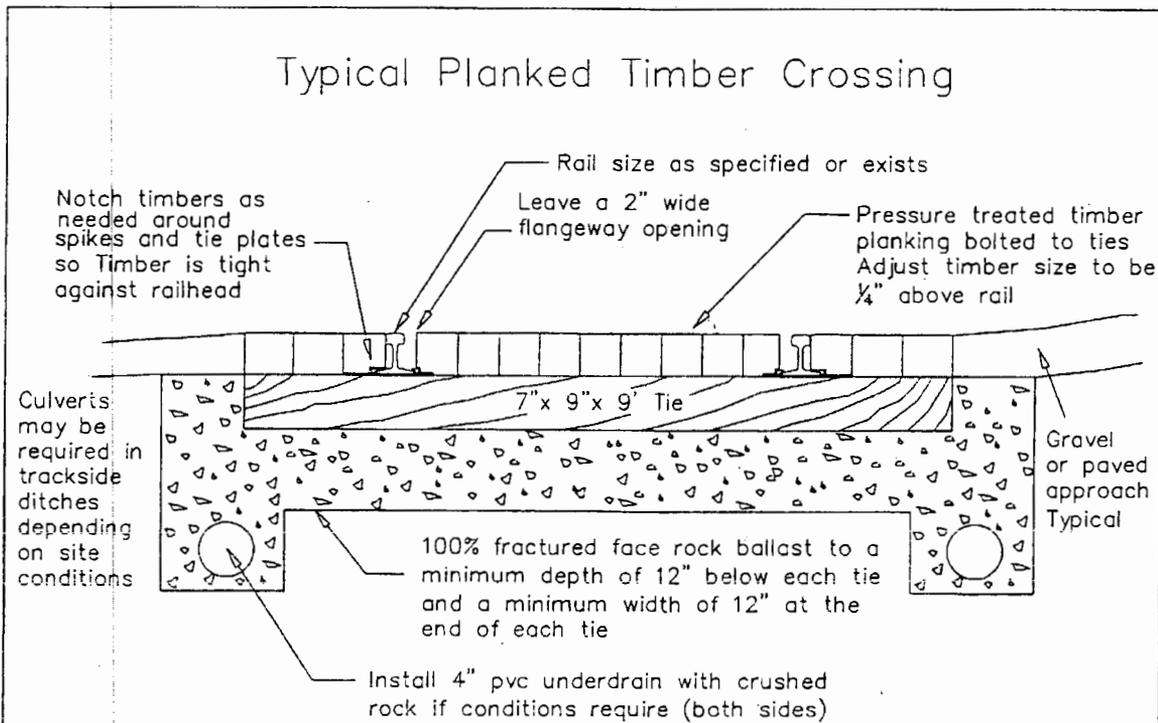


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# 2015 DOCK LEASE

## EXHIBIT B

### TYPICAL PLANKED CROSSING DETAIL



1. The length of the timbers will vary depending on whether the crossing is to be used for a pedestrian crossing, a farm crossing or driveway.
2. Timbers must be installed 2' wider on both sides than the road approaches. A pedestrian crossing should be a minimum of 5' wide, The farm and driveway crossings should be a minimum of 12' wide.
3. Full depth rock ballast under the ties only needs to be installed if it is necessary to rebuild the entire crossing.
4. Timber planks should be lagged at the last tie on both ends and then staggered hitting approximately every fourth tie.
5. This is a conceptual plan and the actual site will need to be reviewed with the Bureau's Railroad Engineer before actual work can be determined.
6. New crossties and track work may need to be preformed before the crossing can be built. The cost of that work which must be done by the Operating Railroad will be borne by the Permittee

Not to scale

Brian Lombard PE  
revised February 21, 2008



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF RAIL & TRANSIT**

P.O. BOX 483  
CONCORD, NEW HAMPSHIRE 03302-0483  
(603) 271-2468 FAX(603) 271-6767

**PLANKED TIMBER CROSSING  
TYPICAL CONSTRUCTION DETAILS**

| REVISIONS |             | SHEET: |
|-----------|-------------|--------|
| DATE      | DESCRIPTION |        |
| 2 - 2008  | UPDATES     | CT-1   |
|           |             |        |

SHEET:  
CT-1

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# EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
01/15/2016

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

|                                                                                                    |                                     |                               |                                                                           |
|----------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------|---------------------------------------------------------------------------|
| AGENCY<br><b>State Farm</b><br>State Farm Insurance<br>101 Court Street<br>Laconia, NH 03246       | PHONE (A/C, No, Ext): 603-524-7733  | COMPANY                       | NAIC #                                                                    |
| FAX (A/C, No): 603-524-9476                                                                        | E-MAIL ADDRESS: mike@mike-testa.com |                               |                                                                           |
| CODE: 29-2059                                                                                      | SUB CODE:                           |                               |                                                                           |
| AGENCY CUSTOMER ID #:<br>INSURED<br>HURLEY, MICHAEL & ELIZABETH<br>PO BOX 6074<br>LACONIA NH 03247 | LOAN NUMBER                         | POLICY NUMBER<br>29-BR-8698-8 |                                                                           |
|                                                                                                    | EFFECTIVE DATE<br>01/07/2016        | EXPIRATION DATE<br>01/07/2017 | <input checked="" type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED |
| THIS REPLACES PRIOR EVIDENCE DATED:                                                                |                                     |                               |                                                                           |

### PROPERTY INFORMATION

LOCATION/DESCRIPTION  
9 PARADISE DR  
LACONIA NH 03246

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

### COVERAGE INFORMATION

| COVERAGE / PERILS / FORMS | AMOUNT OF INSURANCE | DEDUCTIBLE |
|---------------------------|---------------------|------------|
| A-DWELLING                | 473700              | 5,000      |
| DWELL EXT                 | 47370               |            |
| B-PER PROP                | 355275              |            |
| C- LOSS OF USE            | act loss            |            |
| L-PERS LIAB               | 1000000             |            |
| DAMAGE TO PROP OF OTHERS  | 500                 |            |
| M-MED/PERS                | 5,000               |            |

### REMARKS (Including Special Conditions)

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

### ADDITIONAL INTEREST

|                                                                                                                                           |            |                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------------------------------------------------|
| NAME AND ADDRESS<br><br>STATE OF NH TRANSPORT BUREAU OF RAIL AND TRANSIT<br>PLYMOUTH & LINCOLN RAILROAD<br>PO BOX 483<br>CONCORD NH 03302 | MORTGAGEE  | <input checked="" type="checkbox"/> ADDITIONAL INSURED |
|                                                                                                                                           | LOSS PAYEE | <input type="checkbox"/>                               |
|                                                                                                                                           | LOAN #     |                                                        |
| AUTHORIZED REPRESENTATIVE<br><i>Heather Leaven</i>                                                                                        |            |                                                        |

ACORD 27 (2009/12)

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1004363 142988.1 01-28-2013



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2147 FAX (603) 271-6588



516089

PERMIT CONDITIONS

=====

WETLANDS AND NON-SITE SPECIFIC PERMIT 2004-02384

Permittee: Michael & Elizabeth Hurley, 9 Paradise Dr, Laconia, NH 03246  
Project Location: 10 Paradise Dr, Laconia  
Laconia Tax Map/Lot No. 323 / 13  
Waterbody: Lake Winnepesaukee Page 1 of 2

APPROVAL DATE: 08/23/2005

EXPIRATION DATE: 08/19/2010

=====

Based upon review of the above referenced application, in accordance with RSA 482-A and RSA 485-A:17, a Wetlands Permit and Non-Site Specific Permit was issued. This permit shall not be considered valid unless signed as specified below.

**NAME CHANGE**

**PERMIT DESCRIPTION:** Install a 4 ft x 40 ft seasonal pier and a seasonal watercraft lift accessed by 4 ft wide access steps constructed over the bank on 50 ft of frontage along Paugus Bay, in Laconia, leased from the NH Department of Transportation.

**THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:**

1. All work shall be in accordance with plans by Watermark Marine Construction revised November 9, 2004, as received by the Department on November 12, 2004.
2. This permit shall not be effective until it has been recorded with the county Registry of Deeds office by the Permittee. A copy of the registered permit shall be submitted to the DES Wetlands Bureau prior to construction.
3. The applicant shall file a completed Certificate of Completion pursuant to Wt 502.04.
4. This permit shall not preclude the Department of Environmental Services (DES) from taking any enforcement action or revocation action if the DES later determines that these structures were not constructed in accordance with plans or lease stipulations.
5. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
6. These shall be the only structures on this water frontage and all portions of the structures shall be at least 20 ft from the abutting property lines or the imaginary extension of those lines into the water.
7. This permit does not allow for maintenance dredging.
8. Work authorized shall be carried out such that discharges in spawning or nursery areas during spawning seasons shall be avoided, and impacts to such areas shall be avoided or minimized to the maximum extent practicable during all times of the year.
9. No portion of the docking structure shall extend more than 40 ft lakeward at full lake elevation of 504.32 ft.
10. There shall be no alterations of the shoreline or bank for the construction of the docking facility or access stairway.
11. Seasonal structures shall be removed for the non-boating season.
12. All activity shall be in accordance with the Comprehensive Shoreland Protection Act, RSA 483-B (see attached fact sheet).

BK2214PG0357

Page 2 of 2  
Name Change  
Permit # 2004-2384

RECEIVED

2005 AUG 31 AM 11:02  
*Rachel M. Hornum*  
REGISTRY OF DEEDS  
BELKNAP COUNTY  
*Registrar*

**GENERAL CONDITIONS WHICH APPLY TO ALL DES WETLANDS PERMITS:**

1. A copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel;
2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others;
3. The Wetlands Bureau shall be notified upon completion of work;
4. This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required (see attached form for status of federal wetlands permit);
5. Transfer of this permit to a new owner shall require notification to and approval by the Department;
6. This permit shall not be extended beyond the current expiration date.
7. This project has been screened for potential impacts to **known** occurrences of rare species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or have received only cursory inventories, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species.

APPROVED: *James E. Hillson*

DES Wetlands Bureau

=====

BY SIGNING BELOW I HEREBY CERTIFY THAT I HAVE FULLY READ THIS PERMIT AND AGREE TO ABIDE BY ALL PERMIT CONDITIONS.

*Michael Hurley*  
OWNER'S SIGNATURE (required)

*Elizabeth Hurley*  
Michael Hurley  
Elizabeth Hurley

*[Signature]*  
CONTRACTOR'S SIGNATURE (required)

WATERMARK Marine Construction  
29 Gilford East Drive  
Gilford, NH 03249  
(603) 293-4000

BK2214PG0358



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2147 FAX (603) 271-6588



**NOTICE TO RECIPIENTS OF MINIMUM IMPACT N.H. WETLANDS PERMITS**

Your permit was approved by the New Hampshire Wetlands Bureau as a minimum impact project, and your project is automatically approved under the Army Corp's New Hampshire Programmatic General Permit.

For the purpose of the NH PGP, Minimum Impact Projects do not include new construction of:

- Dams,
- Dikes,

water withdrawal or diversion projects which require fill in wetlands or surface waters,  
 wetlands restoration projects, or any projects which involve work in other than low flow conditions (July 1-September 30),  
 any projects involving more than 3,000 square feet of a water body or wetland fill and secondary impacts.

Also, not included under Minimum Impact Projects are those projects that include the reconstruction or replacement of currently unserviceable structures/fills. The projects must be reviewed through the screening procedures for minor impact projects. The activities in section 10 waters not regulated by the Wetlands Bureau, formerly authorized under the Nationwide Permit Program and listed in Appendix A of this document are designated non-reporting activities.

These approvals do not relieve you from obtaining any necessary local permits that may be required by your town.

If you have any questions, feel free to give us a call at 603-271-2147

\*\*\*\*\*

This notice was sent with minimum impact permit # 2004-2384 on 8-23-05 by NLP



LRCP 15-023

JEFFRY A. PATTISON  
Legislative Budget Assistant  
(603) 271-3161

State of New Hampshire

OFFICE OF LEGISLATIVE BUDGET ASSISTANT  
State House, Room 102  
Concord, New Hampshire 03301

MICHAEL W. KANE, MPA  
Deputy Legislative Budget Assistant  
(603) 271-3161

STEPHEN C. SMITH, CPA  
Director, Audit Division  
(603) 271-2785

May 28, 2015

JUN 1 2015

JUN 1 2015

JUN 1 2015

Shelley Winters, Administrator  
Department of Transportation  
Bureau of Rail and Transit  
John O. Morton Building  
Concord, New Hampshire 03301

Dear Ms. Winters,

The Long Range Capital Planning and Utilization Committee, pursuant to the provisions of RSA 228:57-a, II, on May 27, 2015, approved the request of the Department of Transportation, Bureau of Rail and Transit, to retroactively renew a lease for an additional five (5) year period, effective May 1, 2015, for 50 feet of railroad frontage along Paugus Bay for a private, non-commercial dock with pedestrian at-grade and electrical utility crossings on the State-owned Concord to Lincoln railroad corridor in Laconia to Michael and Elizabeth Hurley at \$33.05 per linear foot per year, for the lease fee of \$1,652.50 per year, plus \$100.00 per year for the private pedestrian at-grade and electric utility crossings, for a total of \$1,752.50 per year for five years, with no Administrative Fee, subject to the conditions as specified in the request dated May 14, 2015.

Previous lease approval was granted by the Long Range Capital Planning and Utilization Committee (LRCP 10-019) on April 13, 2010.

Sincerely,

Jeffry A. Pattison  
Legislative Budget Assistant

JAP/pe  
Attachment

# New Hampshire Council on Resources and Development

NH Office of Energy and Planning  
107 Pleasant Street, Johnson Hall  
Concord, NH 03301  
Phone: 603-271-2155  
Fax: 603-271-2615



TDD Access: Relay NH  
1-800-735-2964

## MEMORANDUM

**TO:** Acting Commissioner William Cass  
Department of Transportation

**FROM:** Susan Slack, Principal Planner *Susan Slack*  
NH Office of Energy and Planning

**DATE:** May 14, 2015

**SUBJECT:** Surplus Land Review, SLR 15-005 (A-H) - Laconia

On May 14, 2015, the Council on Resources and Development (CORD) took action on the following Surplus Land Review application from the Department of Transportation:

Request to renew leases for water frontage for eight individual parcels abutting railroad land at the end of Massachusetts Avenue in Laconia to permit use and maintenance of pedestrian crossings, docks and waterfront access on Lake Winnepesaukee, pursuant to RSA 228:57-a.

CORD members voted to RECOMMEND APPROVAL OF SLR 15-005 as submitted.

cc: Louis Barker, Railroad Planner, NH Department of Transportation  
Meredith Hatfield, Director, NH Office of Energy and Planning  
Rep. Gene Chandler, Chair, Long Range Capital Planning and Utilization Committee

LEASED AREA

EXHIBIT A

NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF RAIL & TRANSIT

Proposed Lease to Michael & Elizabeth Hurley  
V21/66, Station 1573+45  
50 LF

