

22 *WCM*



*Victoria F. Sheehan
Commissioner*

**THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**



*William Cass, P.E.
Assistant Commissioner*

Bureau of Rail and Transit
July 29, 2019

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to 228:56, authorize the Department of Transportation to purchase a 9.6 mile section of railroad property in Hampton, North Hampton, Rye, Greenland and Portsmouth for a purchase price of \$5,000,000.00 from the Boston & Maine Corporation, vendor # 177556, effective upon Governor and Council approval. 100% Federal Funds.

Funds to support this request are anticipated to be available in the following account in FY 2020 upon the availability and continued appropriation of funds in the future operating budget.

04-096-096-963515-3054	<u>FY 2020</u>
Consolidated Federal Aid	
401-500877	
Land and Interest in Land	\$5,000,000.00

EXPLANATION

The Department of Transportation has negotiated the purchase of a portion of the abandoned Hampton Branch Railroad Corridor (also known as Eastern Railroad Corridor) owned by the Boston and Maine Corporation, which comprises approximately 9.6 miles of corridor through the towns of Hampton, North Hampton, Rye, Greenland and the City of Portsmouth. The Department already owns 4.69 miles of the corridor in Hampton, Hampton Falls and Seabrook immediately south of the proposed purchase and this purchase would create a contiguous, state-owned corridor, approximately 14.29 miles long, beginning at the Massachusetts State line.

Using Federal Highway Administration Congestion Mitigation and Air Quality Improvement (CMAQ) Program funding the Department is purchasing the Hampton Branch to preserve it for transportation needs in the region including future railroad use as well as interim alternative transportation uses. After the proposed acquisition, and as a condition of the CMAQ Program, the Department shall construct a multi-use trail (bicycles, pedestrians & equestrian) on the subject 9.6 miles.

The purchase price was negotiated based on several commercial appraisals, which were reviewed by a Department of Transportation appraiser, and the terms and conditions were negotiated with the assistance of the Office of the Attorney General.

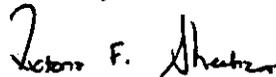
RSA 228:56 allows the Department to purchase such portion or portions of railroad property found to be necessary for the operation of a railroad or other transportation purposes, including recreational trails.

Funding is 80% Congestion Mitigation and Air Quality (CMAQ) using 20% Turnpike Toll Credits, effectively using 100% Federal Funds.

This agreement has been approved by the Attorney General as to form and execution. The Department has verified that the necessary funds are available. Copies of the fully-executed agreements are on file at the Secretary of State's Office and the Department of Administrative Service's Office, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in black ink that reads "Victoria F. Sheehan". The signature is written in a cursive style with a large initial "V".

Victoria F. Sheehan
Commissioner

Attachments

RECEIVED

OCT - 3 2013



CAP 13-039

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

State of New Hampshire

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

RICHARD J. MAHONEY, CPA
Director, Audit Division
(603) 271-2785

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

October 2, 2013

Christopher D. Clement, Sr., Commissioner
Department of Transportation
John O. Morton Building
7 Hazen Drive
Concord, New Hampshire 03302-0483

Dear Commissioner Clement,

The Capital Budget Overview Committee, pursuant to the provisions of RSA 228:12-a, on September 24, 2013, conditionally approved the request of the Department of Transportation, to use up to \$1,000,000 of Turnpike Toll Credit, based on estimated costs not to exceed \$5,000,000 in federal funds, for the Hampton Branch Acquisition and Trail Development of the 9.7 mile rail corridor beginning at a point north of Drakeside Road in Hampton northerly through the towns/city of Hampton, North Hampton, Rye, and Portsmouth to a point just south of the NH Route 1 Bypass in Portsmouth, subject to the conditions as specified in the request dated September 24, 2013.

Committee approval is conditional upon their receipt of a letter, in as timely a manner as possible, from the Department of Transportation stating that the Department has no intention of prohibiting horseback riding on this trail.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey A. Pattison".

Jeffrey A. Pattison
Legislative Budget Assistant.

JAP/pe
Attachment

Cc: Michael Pillsbury, Deputy Commissioner

Patrick Herlihy, Director of Aeronautics, Rail & Transit ✓
Department of Transportation



PAN AM SYSTEMS

1700 IRON HORSE PARK
NO. BILLERICA, MA 01862-1681
(978) 663-6949

VIA UPS

July 26, 2019

Patrick C. Herlihy
Director of Aeronautics, Rail and Transit
New Hampshire Department of Transportation
7 Hazen Drive
Concord, New Hampshire, 03302-0483

RECEIVED
COMMISSIONERS OFFICE
JUL 29 2019
THE STATE OF NEW HAMPSHIRE
DEPT. OF TRANSPORTATION

Dear Patrick:

I enclose herewith a Purchase and Sale Agreement with regard to the proposed purchase of the railroad's so-called Hampton Branch. The Purchase and Sale Agreement should be executed (in triplicate), returning one fully executed original to this office within 10 days of your receipt of this letter.

Should you have any questions or need additional information, please don't hesitate to ask.

Very truly yours,
PAN AM SYSTEMS, INC.

By: 
Philip D. Kingman, Sr. Vice President

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT made as of this day of , 2019 by and between the **BOSTON AND MAINE CORPORATION**, a Delaware corporation with a place of business at Iron Horse Park, North Billerica, Massachusetts (the "Seller") and the party hereinafter identified in Paragraph 1(c) (the "Buyer").

WITNESSETH:

1. The following terms shall have the meanings specified whenever used in this Agreement:

(a) **AGREEMENT:** This Purchase and Sale Agreement between the Seller and Buyer regarding the subject Premises is hereinafter referred to as the "Agreement."

(b) **SELLER:**

Boston and Maine Corporation
c/o Pan Am Systems, Inc.
Iron Horse Park
North Billerica, Massachusetts 01862
Attention: Philip D. Kingman, Sr. Vice President
Real Estate & Development

Send a copy of any notice to:

Boston and Maine Corporation
c/o Pan Am Systems, Inc.
Iron Horse Park
North Billerica, Massachusetts 01862
Attention: Michael Twidle, Assistant to the Vice President

(c) **BUYER:**

State of New Hampshire Department of Transportation
John Morton Building
1 Hazen Drive - P.O. Box 483
Concord, New Hampshire 03302-0483
Attention: Victoria Sheehan

(d) **PREMISES:** Approximately 95.09 acres of land located in Hampton, North Hampton, Rye, Greenland and Portsmouth, County of Rockingham, State of New Hampshire as more particularly shown between engineering stations 2436+50 and 2943+40 of railroad

valuation section 3, maps 44 through 54 attached to this agreement and marked "Exhibit A",

- (e) **PURCHASE PRICE:** Five Million and 00/100 Dollars (\$5,000,000.00)
- (f) **DEPOSIT:** Waived
- (g) **CLOSING DATE:** A mutually convenient date selected by the Buyer and Seller to occur no later than twenty-one (21) days after the Effective Date of this Agreement.
- (h) **EXHIBITS:** The following exhibits are hereby incorporated by this reference into this Agreement:
 - (i) Exhibit "A": Plans of the Premises.
 - (ii) Exhibit "B": Deed.
- (i) **EFFECTIVE DATE:** The date the Governor and Executive Council of the State of New Hampshire approve this Agreement.

2. **CONDITIONAL NATURE.** Notwithstanding any provision of this Agreement to the contrary, pursuant to RSA 228:56, this Agreement is subject to the approval of the Governor and Executive Council of the State of New Hampshire. This Agreement shall become effective on the date the Governor and Executive Council approve this Agreement. All obligations of the Buyer hereunder are contingent upon the availability and appropriation of funds, and in no event shall the Buyer be liable for any payment hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the Buyer shall have the right to terminate this Agreement immediately upon giving the Seller notice of such termination. The Buyer shall not be required to transfer funds from any other account in the event that the funds appropriated for this Agreement are reduced or unavailable. Buyer represents and warrants that as of the Effective Date, Buyer will have sufficient funds appropriated to pay the Purchase Price in full.

3. **PURCHASE AND SALE.** In consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration received by each party, the Seller hereby agrees to sell and the Buyer agrees to purchase the Premises, upon the terms and conditions hereinafter set forth. The payment by the Buyer of the Purchase Price shall be the only and the complete payment to the Seller for the Premises. The Buyer shall have no liability to the Seller other than the Purchase Price and adjustments that are expressly provided in Paragraphs 5 and 6, if any. Subject to Section 5 hereof, in no event shall the Seller be required to accept less than the Purchase Price as consideration for the conveyance of the Premises.

4. **TITLE.** The Premises shall be conveyed by a release deed running to the Buyer in a form substantially identical to that annexed hereto and marked Exhibit "B" (the "Deed"). The Deed shall contain no warranties or covenants of title whatsoever and shall convey all of the Seller's right, title and interest in the Premises, subject to the following:

(a) Provisions of existing building, land use, subdivision control and zoning laws;

(b) Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;

(c) Any liens for municipal betterments assessed after the date of this Agreement;

(d) Such agreements, leases, licenses, easements, restrictions and encumbrances, if any, as may appear of record, or otherwise; and

(e) The provisions, conditions and covenants set forth in the Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Deed by executing the Deed at closing.

5. **ADJUSTMENTS TO PURCHASE PRICE.** Water rates, rents, real estate and other property taxes and sewer charges (collectively, the "Taxes") for the current year shall be prorated as of the Closing Date and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by the Buyer. Taxes due and payable on the Closing Date shall be paid by the Seller. If the amount of Taxes is not known at the Closing Date, they shall be apportioned on the basis of the Taxes for the applicable preceding period and reapportioned as soon as verified current information can be obtained. The latter provision shall survive the delivery of the Deed.

6. **FEES, COSTS, AND TRANSFER TAXES.** The Buyer agrees to pay all recording fees. The requirements of RSA 78-B, including taxes, deed stamps and a Declaration of Consideration, do not apply to this transaction.

7. **CLOSING.** The Deed shall be delivered and the Purchase Price shall be delivered or wired on the Closing Date, unless the parties otherwise agree beforehand in writing. Seller's wire instructions are as follows:

CITIBANK ABA No. 221172610
Account Name: Boston & Maine Corp.
Account Number: 1255249769

8. **POSSESSION.** The Seller shall deliver possession of the Premises to the Buyer on the Closing Date, subject only to the provisions of Paragraph 4 hereof, the Premises then being in the same condition as they now are, reasonable wear and tear excepted.

9. **EXISTING AGREEMENTS.** Prior to the Closing Date, the Seller shall provide the Buyer with a copy of any existing leases, crossing agreements, encroachments, covenants, easements, or any other encumbrance affecting the Premises ("Existing Agreements") to be assumed by the Buyer. If the Seller is aware of any Existing Agreements affecting the Premises, but does not have copies of said Existing Agreements, the Seller shall provide the Buyer with a written description of each Existing Agreement prior to the Closing Date. The written description shall include the terms and affected location of the Existing Agreement, and, if known, the contact information of individuals or entities having an interest in the Existing Agreement. Buyer shall accept the Premises "as is where is" subject to all encumbrances known by Buyer as of the Effective Date.

10. **ACCEPTANCE OF DEED.** The Buyer's acceptance of the Deed shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller herein contained, except for such as are, by the terms hereof, to be performed after the delivery of the Deed.

11. **BROKER.** The parties represent and warrant to each other that neither has dealt with any broker in respect to this transaction or the Premises.

12. **DEPOSIT.** Waived.

13. **WARRANTIES.** The Buyer acknowledges that the Buyer has not been induced to enter into this Agreement, and the transaction contemplated herein, in reliance upon any warranties or representations of any party not set forth herein. This paragraph shall survive the delivery of the Deed.

14. **BUYER'S DEFAULT.** Any one or more of the following acts or omissions by the Buyer shall constitute an event of default hereunder: (a) Failure to deliver the Purchase Price to the Seller on the Closing Date; and/or (b) Failure to perform any covenant, term or condition of this Agreement. Upon the occurrence of any event of default, the Seller may take any one, or more, or all of the following actions: (a) terminate this Agreement; and/or (b) treat the Agreement as breached and pursue any of its remedies at law or in equity, or both. No failure by the Seller to enforce any provision hereof after any event of default shall be deemed a waiver of its rights with regard to that event of default, or any subsequent event of default. No express failure to enforce any event of default shall be deemed a waiver of the right of the Seller to enforce each and all of the provisions hereof upon any further or other event of default on the part of the Buyer.

15. **SELLER'S DEFAULT.** Any one or more of the following acts or omissions by the Seller shall constitute an event of default hereunder: (a) Failure to deliver the executed Deed or to convey title to the Premises after the payment of the Purchase Price; and/or (b) Failure to perform any covenant, term or condition of this Agreement. Upon the occurrence of any event of default, the Buyer may take any one, or more, or all of the following actions: (a) refuse to submit this Agreement to the Governor and Executive Council for approval, (b) suspend all payments to be made under this Agreement; (c) terminate this Agreement; and/or (d) treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

No failure by the Buyer to enforce any provision hereof after any event of default shall be deemed a waiver of its rights with regard to that event of default, or any subsequent event of default. No express failure to enforce any event of default shall be deemed a waiver of the right of the Buyer to enforce each and all of the provisions hereof upon any further or other event of default on the part of the Seller.

16. **APPROVALS, RELEASES.** The Seller's obligations under this Agreement are conditioned upon the Seller obtaining any necessary releases, approvals or permits relating to the sale of the Premises by the Seller from any state or federal government or governmental authority having jurisdiction over the Premises, including but not limited to Revised Statutes Annotated, 228:60-b. The Seller agrees to proceed with reasonable diligence to obtain any such approvals. In no event, however, shall the Seller be required to obtain subdivision approval from any governmental authority.

17. **HAZARDOUS MATERIALS.**

A. Definitions

For purposes of this Agreement, the following terms shall be defined as set forth below:

"Regulated Substances" means any hazardous substance, hazardous material, hazardous waste or oil, petroleum fraction, petroleum product or petroleum byproduct as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 6901 et seq. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., or under New Hampshire law, including but not limited to Hazardous Waste Clean up Fund, RSA 147-B, Hazardous Waste Management, RSA 147-A, and Oil Spillage in Public Waters Statute, RSA 146-A, and any regulations adopted pursuant to those laws.

"Environmental Laws" shall mean any federal, state or local laws, statutes, regulations, rules, codes, injunctions, ordinances, judicial or administrative decrees or decisions and rules of common law, whether now existing or hereinafter enacted, promulgated or issued, with respect to (a) pollution or protection of the environment or natural resources, (b) any Release or threatened Release of, or any exposure of any person or property to, any Hazardous Materials and (c) the generation, manufacture, processing, distribution, use, treatment, storage, transport or handling of any Hazardous Materials. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time and all regulations

promulgated thereunder: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) (“CERCLA”); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) (“RCRA”); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.) (“HMT”); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.) (“TSCA”); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.) (“CWA”); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 3001 et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.); (xv) EPA Federal Regulations promulgated under any of the forgoing federal statutes, including but not necessarily limited to those codified in 40 C.F.R. Parts 260-265 and Parts 122-124; (xvi) New Hampshire RSA Chapters 146-A, 146-C, 147, 147-A and 147-B; and (xvii) any federal, state, or local regulations, rules or orders listed or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency or other administrative regulatory or judicial body.

“Hazardous Materials” means each and every element, compound, chemical mixture, product, solid, liquid, byproduct, contaminant, pollutant, material, waste or other substance which is hazardous, toxic, corrosive, carcinogenic, or otherwise dangerous to human, plant or animal life or to the environment or which is defined or identified as such under any Environmental Laws, including, but not limited to materials defined as (a) “hazardous waste” under RCRA, (b) “hazardous substances” under CERCLA, (c) “pollutants” under the CWA, (d) “toxic substances” or “chemical substance or mixture” under the TSCA, (e) “hazardous materials” under the HMT, and (e) any other substance or material regulated by Environmental Laws. For purposes of this Agreement, the term “Hazardous Material” also includes any building materials composed of asbestos, urea-formaldehyde or lead which are incorporated into such materials, and any oil or petroleum products and creosote treated railroad ties.

“Release” means any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping or disposing (including

the abandonment or discarding of barrels, containers and other receptacles) of any Regulated Substance or Hazardous Materials.

- B. The Buyer acknowledges the presence of an estimated thirty-three thousand (33,000) creosote treated railroad ties and the suspected presence of Hazardous Materials and Regulated Substances on the Premises as identified in the Appraisal Report and that the Buyer is entering into this Agreement voluntarily upon Buyer's judgments and does not rely upon any representation or warranty, either express or implied of Seller. Except as expressly stated in this Agreement, Buyer warrants and covenants that the Buyer shall purchase the Premises in its "AS IS, WHERE IS" CONDITION ON THE DATE HEREOF, WITH ALL FAULTS, SUBJECT TO ORDINARY WEAR AND TEAR AND WITHOUT RECOURSE TO SELLER. SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, AS TO THE PREMISES OR ANY IMPROVEMENTS LOCATED THEREON, IF ANY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL REPRESENTATIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. Buyer agrees that it shall have no right to claim or assert any defense, counterclaim or offset to any obligation it owes Seller because of any real or purported problem or defect which exists or may arise with respect to the physical or environmental condition of the Premises and all improvements thereon except as otherwise set forth herein.
- C. As of the Closing Date, the parties are not aware of any Hazardous Materials or Regulated Substances on the Premises that require remediation under Environmental Laws. As of and after the Closing Date, the Buyer shall assume any obligations and costs and not seek contribution from the Seller for remediation or removal of Hazardous Materials or Regulated Substances on the Premises provided that the Hazardous Materials or Regulated Substances were identified in the Real Estate Appraisal Report of the Premises prepared by Fremeau Appraisal Inc. of Manchester, New Hampshire, with an effective date of November 5, 2013 ("Appraisal Report"). The Appraisal Report is incorporated into this Agreement by reference and identifies the following Hazardous Materials and Regulated Substances: petroleum products, asbestos containing materials (Transite utility pipes), solid waste (creosote covered railroad ties, construction/demolition debris, household appliances, and other debris), used oil and contaminated soils (including ash and cinders resulting from railroad operations). Prior to the Closing Date, the Buyer disclosed to the Seller a copy of correspondence from New Hampshire Department of Environmental Services ("DES") dated March 27, 1997, and an email from DES dated July 26, 2018, confirming that railroad ties on the Premises do not need to be removed from the Premises provided they are properly

managed. If any creosote treated railroad ties are removed from the Premises on or after the Closing Date, the Buyer shall arrange for the removal and legal disposal of the creosote treated railroad ties at no cost to the Seller and shall arrange sufficient funding prior to beginning any such removal or disposal work.

- D. Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall preclude the State of New Hampshire from enforcing any and all State laws, including, but not limited to environmental laws and regulations. Should the State of New Hampshire or any local, state or federal governmental agency with appropriate jurisdiction notify Seller of a potential violation of Environmental Laws relating to the Premises, then the Seller shall promptly notify the Buyer. As of the Closing Date, the Buyer shall be responsible for remediating or removing Hazardous Materials or Regulated Substances identified in the Appraisal Report consistent with Section 17 of this Agreement.
- E. The Seller warrants and covenants that it does not possess or have knowledge of the actual or suspected presence of any Hazardous Materials and/or Regulated Substances on the Premises other than the Hazardous Materials and/or Regulated Substances identified in the Appraisal Report, or of any past or present violations of Environmental Laws involving the Premises. The Seller shall indemnify, reimburse, defend and hold harmless the Buyer from any loss, liability, claim, damage, charge, cost or expense, including costs for removal and remediation of Hazardous Materials and/or Regulated Substances on the Premises, arising from any knowing, willful, deliberate, or reckless breach or violation of Environmental Laws in connection with the Premises by the Seller. Notwithstanding the foregoing Seller shall have no indemnification obligation for any breach or violation of Environmental Laws resulting from the Seller knowingly leaving existing railroad ties on the Premises as of the Closing Date or any release of Hazardous Materials and/or Regulated Substances identified in the Appraisal Report, as Buyer has assumed any such obligations.
- F. The Buyer and Seller intend Sections A, B, C, D, & E in Paragraph 17 to be covenants running with the land. The Buyer agrees to insert provisions similar to and having the same effect as those set forth in Sections A, B, C, D, & E in any deed, lease or other instrument conveying or creating any interest in all or part of the Premises.

The Buyer and Seller agree and acknowledge that all of the terms and conditions contained in Paragraph 17 shall survive the delivery of the deed.

18. **NOTICES.** Any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or other similar overnight mail carrier furnishing evidence of receipt to the sender, at the address set forth in Paragraph 1 of this Agreement. Either party may change the address at which notices are to be received by notice given as set forth above.

19. **RECORDING.** The parties agree that neither this Agreement nor any memorandum thereof shall be recorded at the registry of deeds and that any such recording by the Buyer shall constitute a default by Buyer.

20. **AUTHORITY OF SIGNATORY.** If the Buyer executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Seller that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Buyer and to thereby bind the Buyer to the same. This warranty shall survive the delivery of the Deed.

21. **ASSIGNMENT.** The Buyer may not assign this Agreement, or any interest herein, without the prior written consent of the Seller, which consent shall not be unreasonably withheld.

22. **SEVERABILITY.** If any term of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be deemed invalid or unenforceable, the remainder of this Agreement and the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected.

23. **NO WAIVER.** No delay or omission on the part of the Seller in exercising its rights under this Agreement shall constitute a waiver of such right or any other right under this Agreement. Also, no waiver of any such right on one occasion shall be construed as a waiver of it on any other occasion.

24. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Seller and Buyer relating to the subject matter hereof, supersedes all prior oral or written offers, negotiations, agreements, understandings and courses of dealing between the parties relating to the subject-matter hereof and is subject to no understandings, conditions, or representations other than those expressly stated herein. This Agreement may only be modified or amended by a writing which states that it modifies or amends this Agreement and which is signed by all parties and approved by the Governor and the Executive Council.

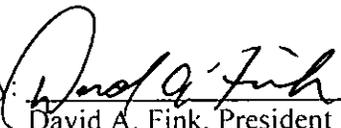
26. **SECTION HEADINGS.** The section headings contained in the Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

27. **MISCELLANEOUS.** This Agreement shall take effect as a sealed instrument and be binding upon and inure to the benefit of the parties and their respective successors, heirs, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in two counterparts, effective as of the day and year first above written.

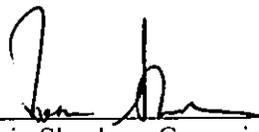
**SELLER:
BOSTON AND MAINE CORPORATION**


Witness

By: 
David A. Fink, President

**BUYER:
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**


Witness

By: 
Victoria Sheehan, Commissioner

The foregoing Agreement, having been reviewed by this office, is approved as to form and execution on July 30, 2019.

OFFICE OF THE ATTORNEY GENERAL

By: 
Assistant Attorney General

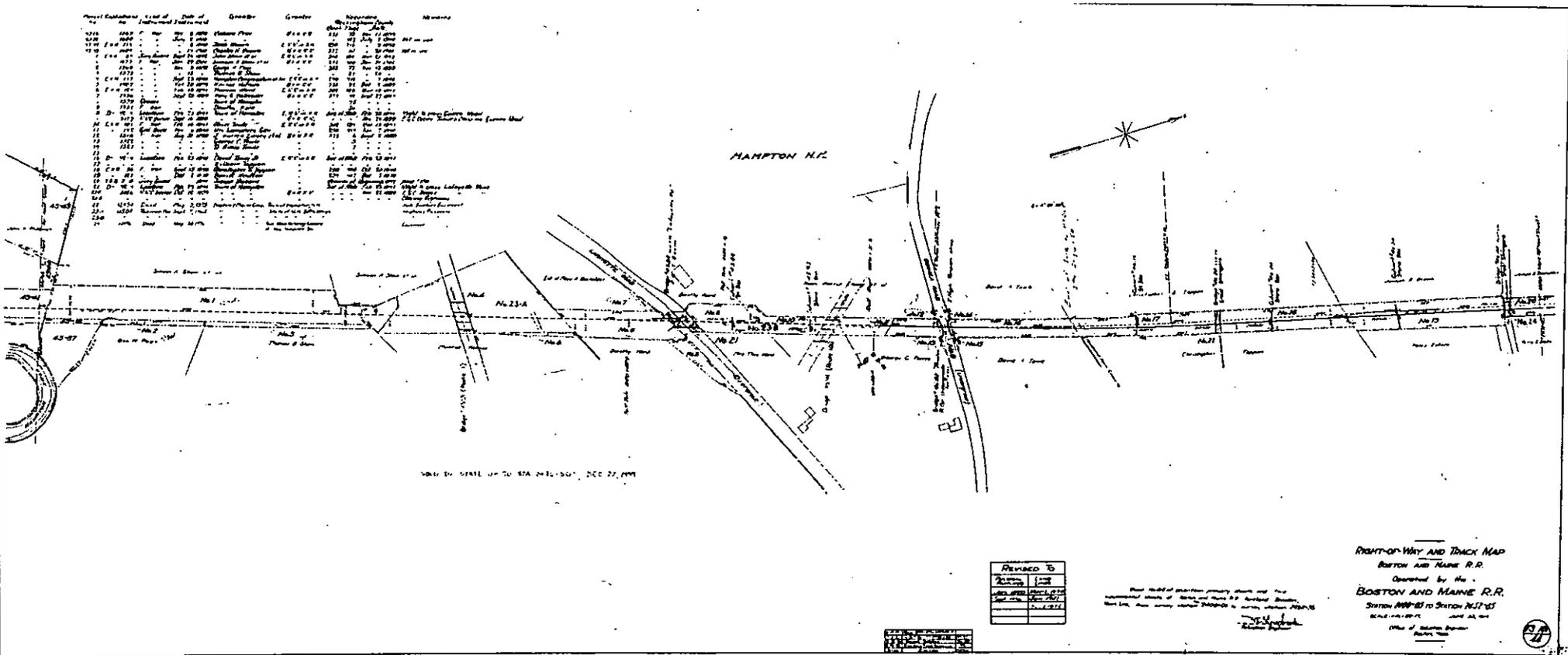
Approved by Governor and Council

By: _____

Date: _____

EXHIBIT "A"
PLANS OF THE PREMISES

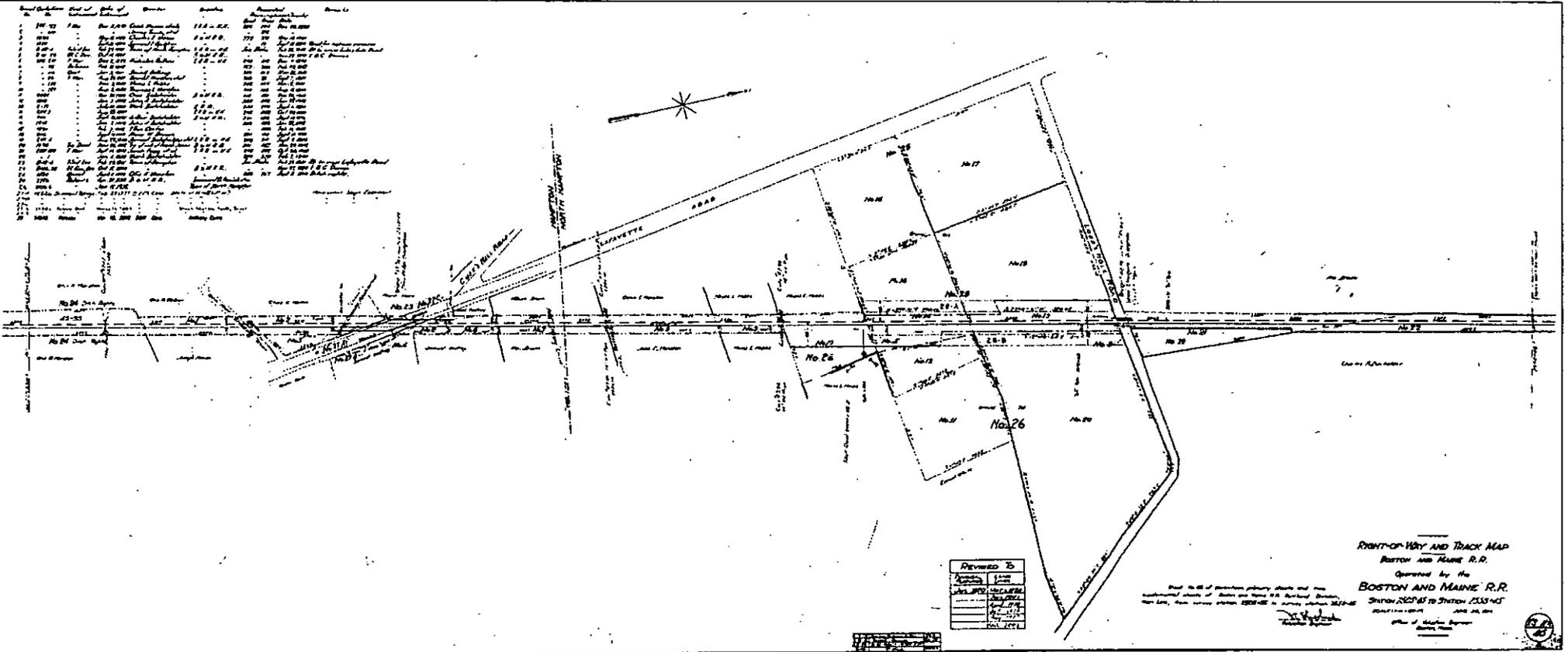
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Revised To	By	Date

RIGHT-OF-WAY AND TRACK MAP
 BOSTON AND MAINE R.R.
 Drawn by the
BOSTON AND MAINE R.R.
 SYSTEM ENGINEERS TO DESIGN DIVISION
 SCALE 1/4" = 100'
 OFFICE OF ENGINEERING
 BOSTON, MASS.





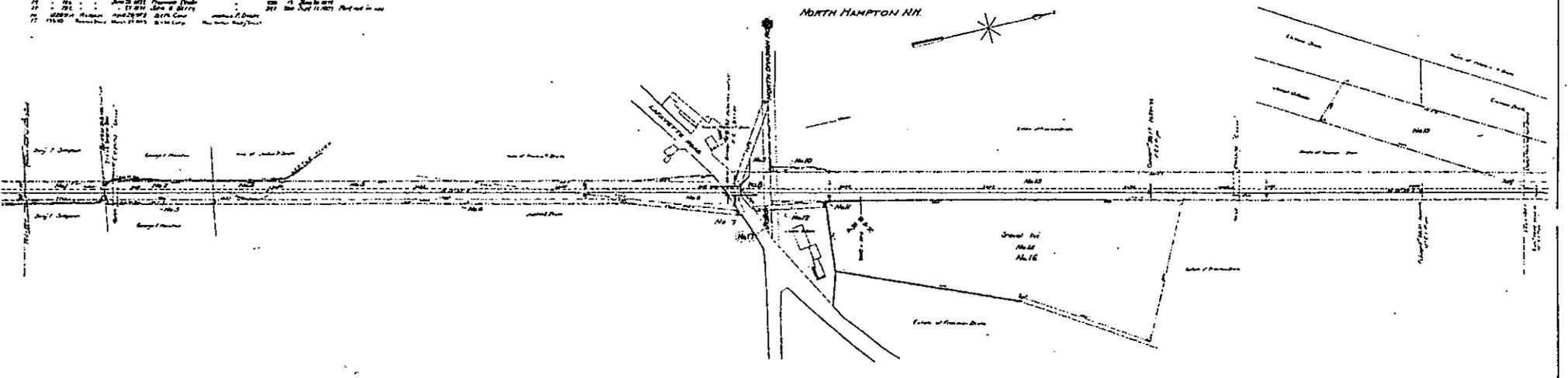
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RIGHT-OF-WAY AND TRACK MAP
 Boston and Maine R.R.
 Operated by the
BOSTON AND MAINE R.R.
 STATION 2645 TO STATION 2534+5
 JUNE 24, 1914
 Office of Station Engineer
 Boston, Mass.

Revised To
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Original Construction	Kind of	Date of	Owner	Grade	Structure	Notes
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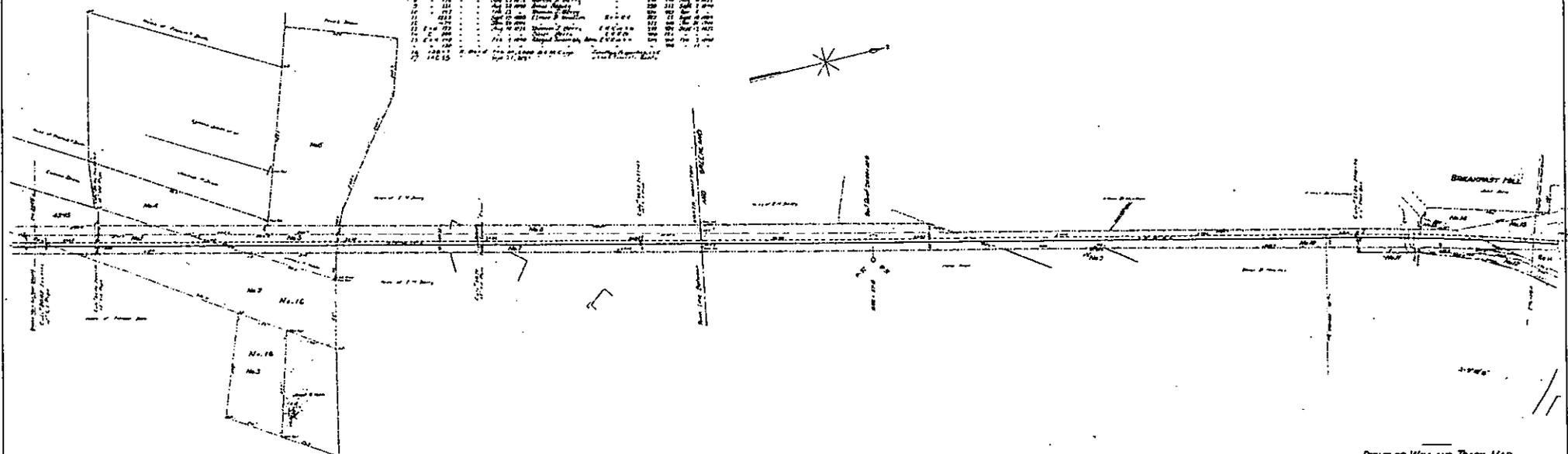
REVISED TO	
DATE	BY
10-1-1911	W. J. B. [Signature]
10-1-1911	W. J. B. [Signature]
10-1-1911	W. J. B. [Signature]

That the right of way hereby shown and the
 construction shown of Station and North R.R. Building, Station
 and Line, and other station 1911-12 is hereby approved.

RIGHT-OF-WAY AND TRACK MAP
 BOSTON AND MAINE R.R.
 Operated by the
BOSTON AND MAINE R.R.
 STATION 1911'S TO STATION 1911'S
 SCALE 1" = 100'
 JAMES ALLEN
 CIVIL ENGINEER
 210



Point	Distance	Area	Grade	Remarks	Station
1	0+00	100	1.00	...	100
2	0+10	100	1.00	...	110
3	0+20	100	1.00	...	120
4	0+30	100	1.00	...	130
5	0+40	100	1.00	...	140
6	0+50	100	1.00	...	150
7	0+60	100	1.00	...	160
8	0+70	100	1.00	...	170
9	0+80	100	1.00	...	180
10	0+90	100	1.00	...	190
11	1+00	100	1.00	...	200
12	1+10	100	1.00	...	210
13	1+20	100	1.00	...	220
14	1+30	100	1.00	...	230
15	1+40	100	1.00	...	240
16	1+50	100	1.00	...	250
17	1+60	100	1.00	...	260
18	1+70	100	1.00	...	270
19	1+80	100	1.00	...	280
20	1+90	100	1.00	...	290
21	2+00	100	1.00	...	300
22	2+10	100	1.00	...	310
23	2+20	100	1.00	...	320
24	2+30	100	1.00	...	330
25	2+40	100	1.00	...	340
26	2+50	100	1.00	...	350
27	2+60	100	1.00	...	360
28	2+70	100	1.00	...	370
29	2+80	100	1.00	...	380
30	2+90	100	1.00	...	390
31	3+00	100	1.00	...	400
32	3+10	100	1.00	...	410
33	3+20	100	1.00	...	420
34	3+30	100	1.00	...	430
35	3+40	100	1.00	...	440
36	3+50	100	1.00	...	450
37	3+60	100	1.00	...	460
38	3+70	100	1.00	...	470
39	3+80	100	1.00	...	480
40	3+90	100	1.00	...	490
41	4+00	100	1.00	...	500
42	4+10	100	1.00	...	510
43	4+20	100	1.00	...	520
44	4+30	100	1.00	...	530
45	4+40	100	1.00	...	540
46	4+50	100	1.00	...	550
47	4+60	100	1.00	...	560
48	4+70	100	1.00	...	570
49	4+80	100	1.00	...	580
50	4+90	100	1.00	...	590
51	5+00	100	1.00	...	600
52	5+10	100	1.00	...	610
53	5+20	100	1.00	...	620
54	5+30	100	1.00	...	630
55	5+40	100	1.00	...	640
56	5+50	100	1.00	...	650
57	5+60	100	1.00	...	660
58	5+70	100	1.00	...	670
59	5+80	100	1.00	...	680
60	5+90	100	1.00	...	690
61	6+00	100	1.00	...	700
62	6+10	100	1.00	...	710
63	6+20	100	1.00	...	720
64	6+30	100	1.00	...	730
65	6+40	100	1.00	...	740
66	6+50	100	1.00	...	750
67	6+60	100	1.00	...	760
68	6+70	100	1.00	...	770
69	6+80	100	1.00	...	780
70	6+90	100	1.00	...	790
71	7+00	100	1.00	...	800
72	7+10	100	1.00	...	810
73	7+20	100	1.00	...	820
74	7+30	100	1.00	...	830
75	7+40	100	1.00	...	840
76	7+50	100	1.00	...	850
77	7+60	100	1.00	...	860
78	7+70	100	1.00	...	870
79	7+80	100	1.00	...	880
80	7+90	100	1.00	...	890
81	8+00	100	1.00	...	900
82	8+10	100	1.00	...	910
83	8+20	100	1.00	...	920
84	8+30	100	1.00	...	930
85	8+40	100	1.00	...	940
86	8+50	100	1.00	...	950
87	8+60	100	1.00	...	960
88	8+70	100	1.00	...	970
89	8+80	100	1.00	...	980
90	8+90	100	1.00	...	990
91	9+00	100	1.00	...	1000



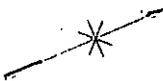
Revised To	By	Date
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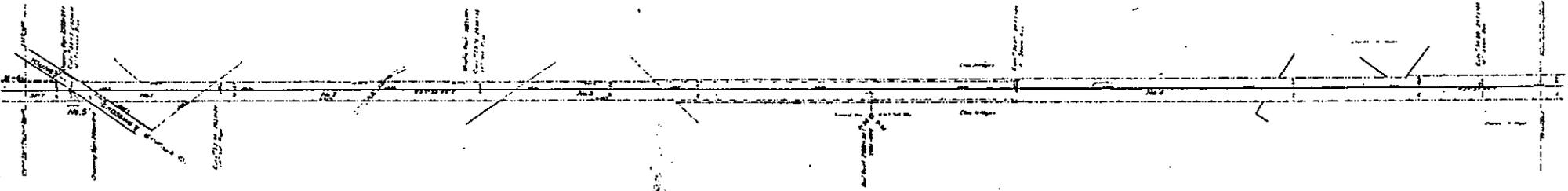
Map No. 10 of the Boston and Maine R.R. Right-of-Way and Track Map, from Station 200+00 to Station 270+00, June 1916.

RIGHT-OF-WAY AND TRACK MAP
BOSTON AND MAINE R.R.
 Operated by the
BOSTON AND MAINE R.R.
 Station 200+00 to Station 270+00
 KALIBRETT
 June 1916



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 PORTSMOUTH H.H.



Revised To	
By	Date

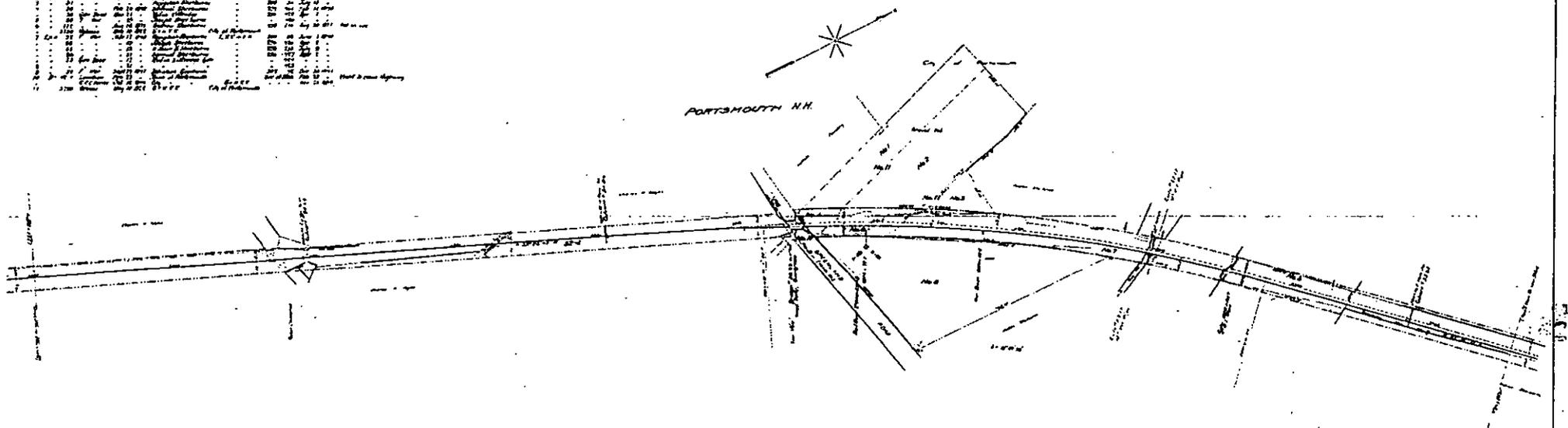
This is a list of changes primary tracks and the
 secondary tracks of Boston and Maine R.R. Portland, Maine.
 Date: ...

RIGHT-OF-WAY AND TRACK MAP
BOSTON AND MAINE R.R.
 Operated by the
BOSTON AND MAINE R.R.
 STATION 121415 to STATION 121425
 JUNE 1910



BOSTON AND MAINE R.R.

Account	Amount	Balance	Particulars	Amount	Balance
100	100.00		By Balance	100.00	
101	101.00		To Balance	101.00	
102	102.00		To Balance	102.00	
103	103.00		To Balance	103.00	
104	104.00		To Balance	104.00	
105	105.00		To Balance	105.00	
106	106.00		To Balance	106.00	
107	107.00		To Balance	107.00	
108	108.00		To Balance	108.00	
109	109.00		To Balance	109.00	
110	110.00		To Balance	110.00	
111	111.00		To Balance	111.00	
112	112.00		To Balance	112.00	
113	113.00		To Balance	113.00	
114	114.00		To Balance	114.00	
115	115.00		To Balance	115.00	
116	116.00		To Balance	116.00	
117	117.00		To Balance	117.00	
118	118.00		To Balance	118.00	
119	119.00		To Balance	119.00	
120	120.00		To Balance	120.00	



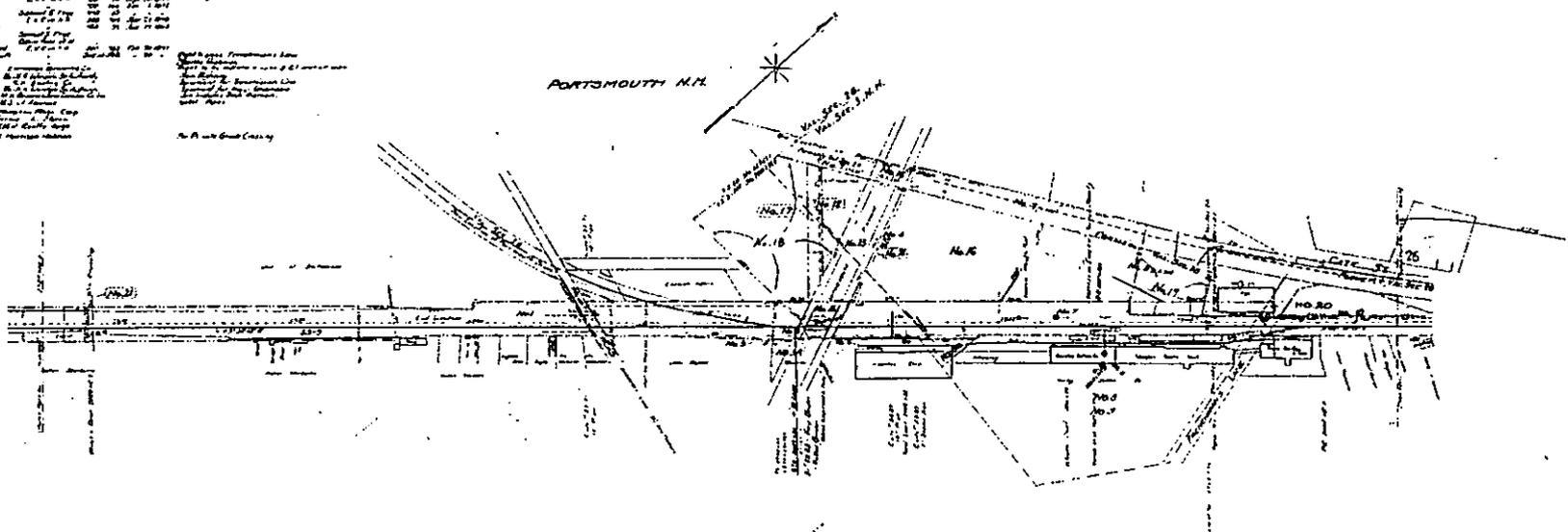
Devised By	
Approved	Checked
Jan 1911	Jan 1911
Jan 1911	Jan 1911
Jan 1911	Jan 1911

That the title of said property shall and the
 ownership of said property shall be
 the property of the Boston and Maine R.R.
 and that the same shall be used for the
 purpose of the said property.

RIGHT-OF-WAY AND TRACK MAP
 BOSTON AND MAINE R.R.
 Approved by the
BOSTON AND MAINE R.R.
 Station 107 1/2 in Station 117 1/2
 1911



Project	Station	Grade	Remarks
100	100	100	100
101	101	101	101
102	102	102	102
103	103	103	103
104	104	104	104
105	105	105	105
106	106	106	106
107	107	107	107
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Notes - See List of Plans of this map marked "Temporary" and "No. 10" and "No. 11" and "No. 12".

RIGHT-OF-WAY AND TRACK MAP
BOSTON AND MAINE R.R.
 Operated by the
BOSTON AND MAINE R.R.
 STATION MAINE TO STATION MAINE
 SCALE: AS SHOWN
 JUN 22, 1914
 BOSTON, MASS.

Revised To	By	Date
100	100	100
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EXHIBIT B

RELEASE DEED

The **BOSTON AND MAINE CORPORATION**, a corporation duly organized and existing under the laws of the State of Delaware, with offices at Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of five million and 00/100 (\$5,000,000.00) Dollars paid to it by the State of New Hampshire, Department of Transportation, with a mailing address of PO Box 483, Concord, New Hampshire 03302 (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in the Towns of Hampton, North Hampton, Rye, Greenland, and the City of Portsmouth, County of Rockingham, State of New Hampshire (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND
MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. The Grantor hereby reserves a permanent, non-exclusive underground right of way and easement through a fifteen (15) ft. wide strip of land located seven and one half (7 1/2) feet on either side of the center line of the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such pipes, wires, fibers, fiber optic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right

to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantor shall: (a) provide the Grantee with ten days' notice of Grantor's intention to commence such installation; (b) obtain the Grantee's approval of the location of such proposed installation, which approval shall not be unreasonably withheld or delayed; (c) furnish the Grantee with a complete and detailed description of such installation, including any applicable plans and construction schedules; and (d) replace and/or restore surface area disturbed by any work associated with the Telecommunications Easement, including but not limited to installation, maintenance, and removal. The Grantor agrees to indemnify, reimburse, defend and hold harmless the Grantee from any loss, liability, claims, damages, costs, and/or expenses arising out of or caused by the exercise or use of the Telecommunications Easement by the Grantor. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of any further consideration, to execute, acknowledge and deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably require to acknowledge title to the Telecommunications Easement in the Grantor.

~~3. The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.~~

~~4. The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.~~

5. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises, including but

not limited to all railroad track material. The Grantee further agrees that any future undertakings shall enter into consultation with the New Hampshire Division of Historical Resources and concerned Towns in order to identify possible adverse effects to the Premises, if changes to the Premises are proposed.

6. The Grantee acknowledges the presence of an estimated thirty-three thousand (33,000) creosote treated railroad ties and the suspected presence of Hazardous Materials and Regulated Substances on the Premises as identified in the Real Estate Appraisal Report of the Premises prepared by Fremeau Appraisal Inc. of Manchester, New Hampshire, with an effective date of November 5, 2013 (“Appraisal Report”) and that the Grantee is purchasing the Premises voluntarily upon Grantee’s judgments and does not rely upon any representation or warranty, either express or implied of Grantor. Except as expressly stated in this Deed, Grantee warrants and covenants that the Grantee shall purchase the Premises in its “AS IS, WHERE IS” CONDITION ON THE DATE HEREOF, WITH ALL FAULTS, SUBJECT TO ORDINARY WEAR AND TEAR AND WITHOUT RECOURSE TO GRANTOR. GRANTOR HAS MADE NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, AS TO THE PREMISES OR ANY IMPROVEMENTS LOCATED THEREON, IF ANY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL REPRESENTATIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. Grantee agrees that it shall have no right to claim or assert any defense, counterclaim or offset to any obligation it owes Grantor because of any real or purported problem or defect which exists or may arise with respect to the physical or environmental condition of the Premises and all improvements thereon except as otherwise set forth herein.

As of the closing date, the parties are not aware of any Hazardous Materials or Regulated Substances on the Premises that require remediation under Environmental Laws. As of and after the closing date, the Grantee shall assume any obligations and costs and not seek contribution from the Grantor for remediation or removal of Hazardous Materials or Regulated Substances on the Premises provided that the Hazardous Materials or Regulated Substances were identified in the Appraisal Report. The Appraisal Report is incorporated into this Deed by reference and identifies the following Hazardous Materials and Regulated Substances: petroleum products, asbestos containing materials (Transite utility pipes), solid waste (creosote covered railroad ties, construction/demolition debris, household appliances, and other debris), used oil and contaminated soils (including ash and cinders resulting from railroad operations). Prior to the closing date, the Grantee disclosed to the Grantor a copy of correspondence from New Hampshire Department of Environmental Services (“DES”) dated March

27, 1997, and an email from DES dated July 26, 2018, confirming that railroad ties on the Premises do not need to be removed from the Premises provided they are properly managed. If any creosote treated railroad ties are removed from the Premises on or after the closing date, the Grantee shall arrange for the removal and legal disposal of the creosote treated railroad ties at no cost to the Grantor and shall arrange sufficient funding prior to beginning any such removal or disposal work.

Notwithstanding anything to the contrary set forth in this Deed, nothing in this Deed shall preclude the State of New Hampshire from enforcing any and all State laws, including, but not limited to environmental laws and regulations. Should the State of New Hampshire or any local, state or federal governmental agency with appropriate jurisdiction notify Grantor of a potential violation of Environmental Laws relating to the Premises, then the Grantor shall promptly notify the Grantee. As of the closing date, the Grantee shall be responsible for remediating or removing Hazardous Materials or Regulated Substances identified in the Appraisal Report.

The Grantor warrants and covenants that it does not possess or have knowledge of the actual or suspected presence of any Hazardous Materials and/or Regulated Substances on the Premises other than the Hazardous Materials and/or Regulated Substances identified in the Appraisal Report, or of any past or present violations of Environmental Laws involving the Premises. The Grantor shall indemnify, reimburse, defend and hold harmless the Grantee from any loss, liability, claim, damage, charge, cost or expense, including costs for removal and remediation of Hazardous Materials and/or Regulated Substances on the Premises, arising from any knowing, willful, deliberate, or reckless breach or violation of Environmental Laws in connection with the Premises by the Grantor. Notwithstanding the foregoing Grantor shall have no indemnification obligation for any breach or violation of Environmental Laws resulting from the Grantor knowingly leaving existing railroad ties on the Premises as of the closing date or any release of Hazardous Materials and/or Regulated Substances identified in the Appraisal Report, as Grantee has assumed any such obligations.

For purposes of this Deed, the following terms shall be defined as set forth below:

“Hazardous Materials” means each and every element, compound, chemical mixture, product, solid, liquid, byproduct, contaminant, pollutant, material, waste or other substance which is hazardous, toxic, corrosive, carcinogenic, or otherwise dangerous to human, plant or animal life or to the environment or which is defined or identified as such under any Environmental Laws, including, but not limited to materials defined as (a) “hazardous waste” under RCRA, (b) “hazardous substances” under

CERCLA, (c) "pollutants" under the CWA, (d) "toxic substances" or "chemical substance or mixture" under the TSCA, (e) "hazardous materials" under the HMT, and (e) any other substance or material regulated by Environmental Laws. For purposes of this Deed, the term "Hazardous Material" also includes any building materials composed of asbestos, urea-formaldehyde or lead which are incorporated into such materials, and any oil or petroleum products and creosote treated railroad ties.

"Regulated Substances" means any hazardous substance, hazardous material, hazardous waste or oil, petroleum fraction, petroleum product or petroleum byproduct as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 6901 et seq. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., or under New Hampshire law, including but not limited to Hazardous Waste Clean-up Fund, RSA 147-B, Hazardous Waste Management, RSA 147-A, and Oil Spillage in Public Waters Statute, RSA 146-A, and any regulations adopted pursuant to those laws.

"Environmental Laws" shall mean any federal, state or local laws, statutes, regulations, rules, codes, injunctions, ordinances, judicial or administrative decrees or decisions and rules of common law, whether now existing or hereinafter enacted, promulgated or issued, with respect to (a) pollution or protection of the environment or natural resources, (b) any Release or threatened Release of, or any exposure of any person or property to, any Hazardous Materials and (c) the generation, manufacture, processing, distribution, use, treatment, storage, transport or handling of any Hazardous Materials. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time and all regulations promulgated thereunder: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA"); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.) ("HMT"); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.) ("TSCA"); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.) ("CWA"); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 3001 et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x)

Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.); (xv) EPA Federal Regulations promulgated under any of the forgoing federal statutes, including but not necessarily limited to those codified in 40 C.F.R. Parts 260-265 and Parts 122-124; (xvi) New Hampshire RSA Chapters 146-A, 146-C, 147, 147-A and 147-B; and (xvii) any federal, state, or local regulations, rules or orders listed or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency or other administrative regulatory or judicial body.

"Release" means any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping or disposing (including the abandonment or discarding of barrels, containers and other receptacles) of any Regulated Substance or Hazardous Materials.

~~7. By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor (the "Fences"), if Fences are ever required in the sole and reasonable opinion of said Principal Engineering Officer.~~

~~8. This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.~~

9. By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. ~~The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, cost, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenant.~~

~~10. The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.~~

11. Whenever used in this deed, the term "Grantor" shall not only refer to the **BOSTON AND MAINE CORPORATION**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.

12. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

IN WITNESS WHEREOF, the said **BOSTON AND MAINE CORPORATION** has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its President, thereunto duly authorized this day of , 2019.

**GRANTOR:
BOSTON AND MAINE CORPORATION**

DRAFT

Witness

By: _____
David A. Fink, President

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. _____, 2019

On this day of , 2019, before me, the undersigned notary public, personally appeared David A. Fink, President as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

GRANTEE:
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

DRAFT

By: _____

Witness

STATE OF NEW HAMPSHIRE

_____, 2019

, ss.

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____ as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: