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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



Victoria F. Sheehan
 Commissioner

William Cass, P.E.
 Assistant Commissioner

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

Bureau of Right-of-Way
 August 2, 2022

REQUESTED ACTION

Pursuant to RSA 4:39-c and RSA 228:31, authorize the New Hampshire Department of Transportation (Department) to sell 0.09 +/- acres of state-owned land located behind 530 Eastman Road, in the Town of Conway. The sale will be direct to David Smith (Grantee), for \$21,100.00, which includes an \$1,100.00 Administrative Fee, effective upon Governor and Executive Council approval.

The Department's Bureau of Finance and Contracts has determined that the funding for the parcel is 100% Federal Funds.

Funding is to be credited as follows:

04-096-096-960015-0000-UUU-402156	<u>FY 2022</u>
Administrative Fee	\$1,100.00
04-096-096-963015-3049-405215	<u>FY 2022</u>
Sale of Parcel (Federal Funds Payback)	\$20,000.00
(100% of \$20,000.00)	

EXPLANATION

The Department received a request from Kenneth R. Cargill, Esq. of Cooper Cargill Chant Attorneys at Law on behalf of the Grantee, to acquire the 0.09 +/- acres of vacant land abutting the Grantee's property. This parcel of vacant land was acquired from the Grantee in 2006 for the Conway By-pass 11339B Project (Project) for \$22,300.00, which included a 646 SF construction easement and landscaping. The land itself was valued at \$20,000.00, while the construction easement, landscaping, and the "cost to cure" fencing was valued at a total of \$2,300.00. The project did not proceed and has since been dissolved. The Grantee wishes to purchase the entire original parcel acquired by the Department in 2006.

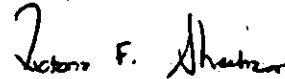
Pursuant to RSA 4:39-c, this disposal was reviewed by the Department and determined to be surplus to its operational needs and interests. The parcel will be sold as is, with no conditions.

On May 23, 2022, the Long-Range Capital Planning and Utilization Committee, approved the Department's request (LRCP 22-015) to sell this parcel of state-owned land directly to David Smith, for \$20,000.00, and to assess the administrative fee of \$1,100.00.

Pursuant to RSA 4:39-c, the Department solicited interest from the Town of Conway and did not receive a response. Pursuant to RSA 204-D:2, the Department solicited interest from the New Hampshire Housing Finance Authority which declined the offer of interest.

The Department respectfully requests authorization to sell the subject parcel, as noted above.

Respectfully,

A handwritten signature in black ink, appearing to read "Victoria F. Sheehan".

Victoria F. Sheehan
Commissioner

VFS/ARP
Attachments

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

LRCP 22-015

FROM: Stephen G. LaBonte
Administrator

DATE: May 5, 2022

AT: Dept. of Transportation
Bureau of Right-of-Way

SUBJECT: Sale of State Owned Land in Conway
RSA 4:39-c

**Approved by the Long
Range Capital Planning
& Utilization Committee
May 23, 2022**

TO: Representative John Graham, Chairman
Long Range Capital Planning and Utilization Committee

REQUESTED ACTION

The New Hampshire Department of Transportation (Department), pursuant to RSA 4:39-c, requests authorization to sell 0.09 +/- of an acre of state-owned land, located behind 530 Eastman Road, in the Town of Conway. The sale will be directly to David R. Smith (Grantee) in the amount of \$21,100.00, which includes an administrative fee of \$1,100.00.

EXPLANATION

This parcel of vacant land was acquired from the Grantee in 2006 for the Conway By-pass 11339B Project (Project) for \$22,300.00, which included a 646 SF construction easement and landscaping. The land itself was valued at \$20,000.00, while the construction easement, landscaping, and the "cost to cure" fencing was valued at total of \$2,300.00. The Project did not proceed and has since been dissolved. The Grantee wishes to purchase the entire original parcel acquired by the Department in 2006.

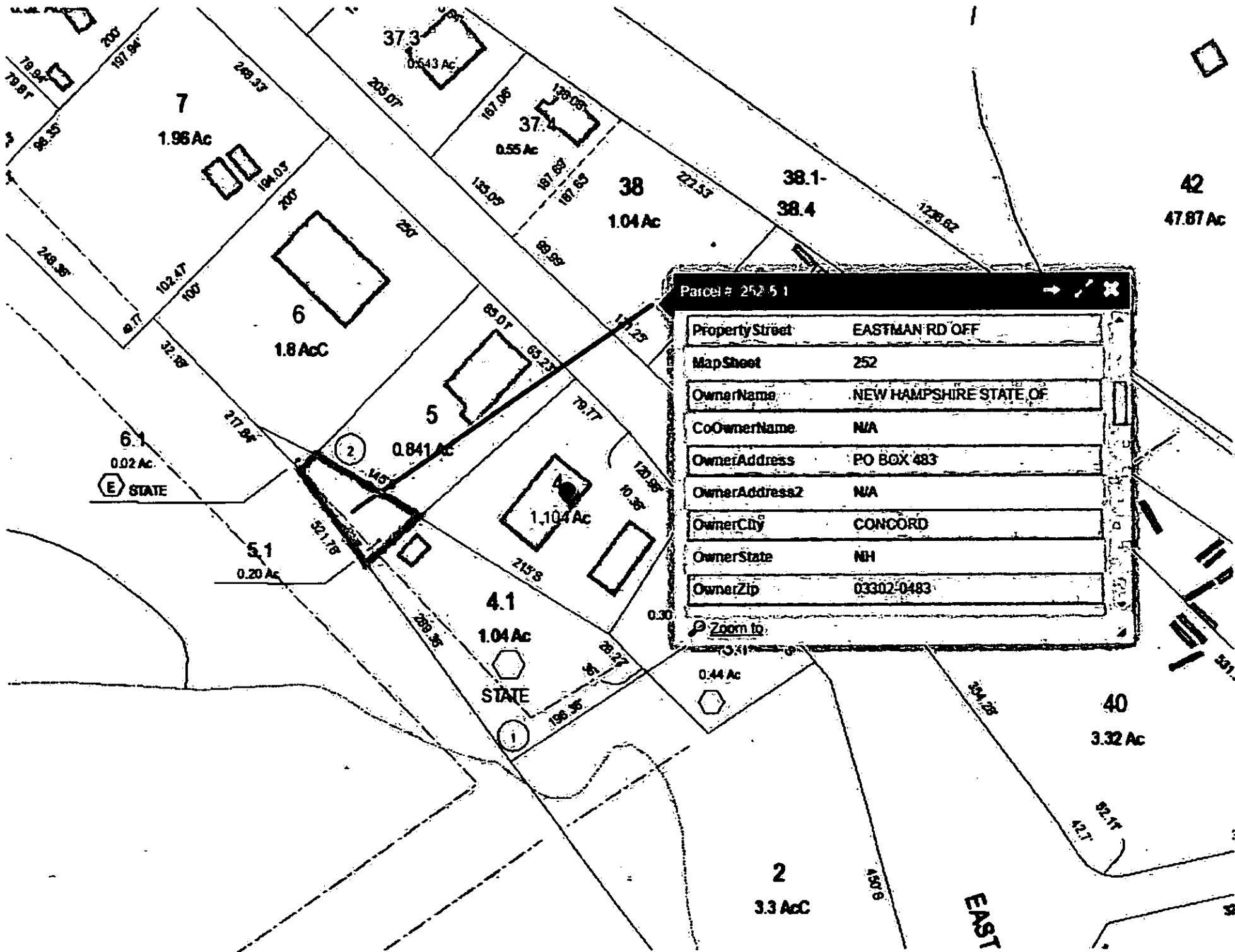
A Staff Appraiser from the Department evaluated the subject property. They then prepared a market value appraisal using the sales comparison approach that adheres to the requirements of the Right of Way Manual and the Uniform Standards of Professional Appraisal Practice. The subject property's market value as of December 17, 2021

After a departmental review, it was determined that the subject parcel is surplus to the Department's operational needs and available for disposal. The parcel will be sold as is, with no conditions.

Pursuant to RSA 4:39-c, the Department will solicit interest from the Town of Conway. Pursuant to RSA 204-D:2, the Department will also solicit interest from the New Hampshire Housing Finance Authority.

The Department respectfully requests authorization to sell the subject parcel as outlined above.

SGL/ARP/jl
Attachments



Parcel # 252 5 1

Property Street	EASTMAN RD OFF
Map Sheet	252
Owner Name	NEW HAMPSHIRE STATE OF
CoOwner Name	N/A
Owner Address	PO BOX 483
Owner Address 2	N/A
Owner City	CONCORD
Owner State	NH
Owner Zip	03302-0483

Zoom to

7
1.96 Ac

6
1.8 AcC

37.3
0.543 Ac

37.4
0.55 Ac

38
1.04 Ac

38.1-
38.4

42
47.87 Ac

5
0.841 Ac

4
1.104 Ac

4.1
1.04 Ac

0.44 Ac

40
3.32 Ac

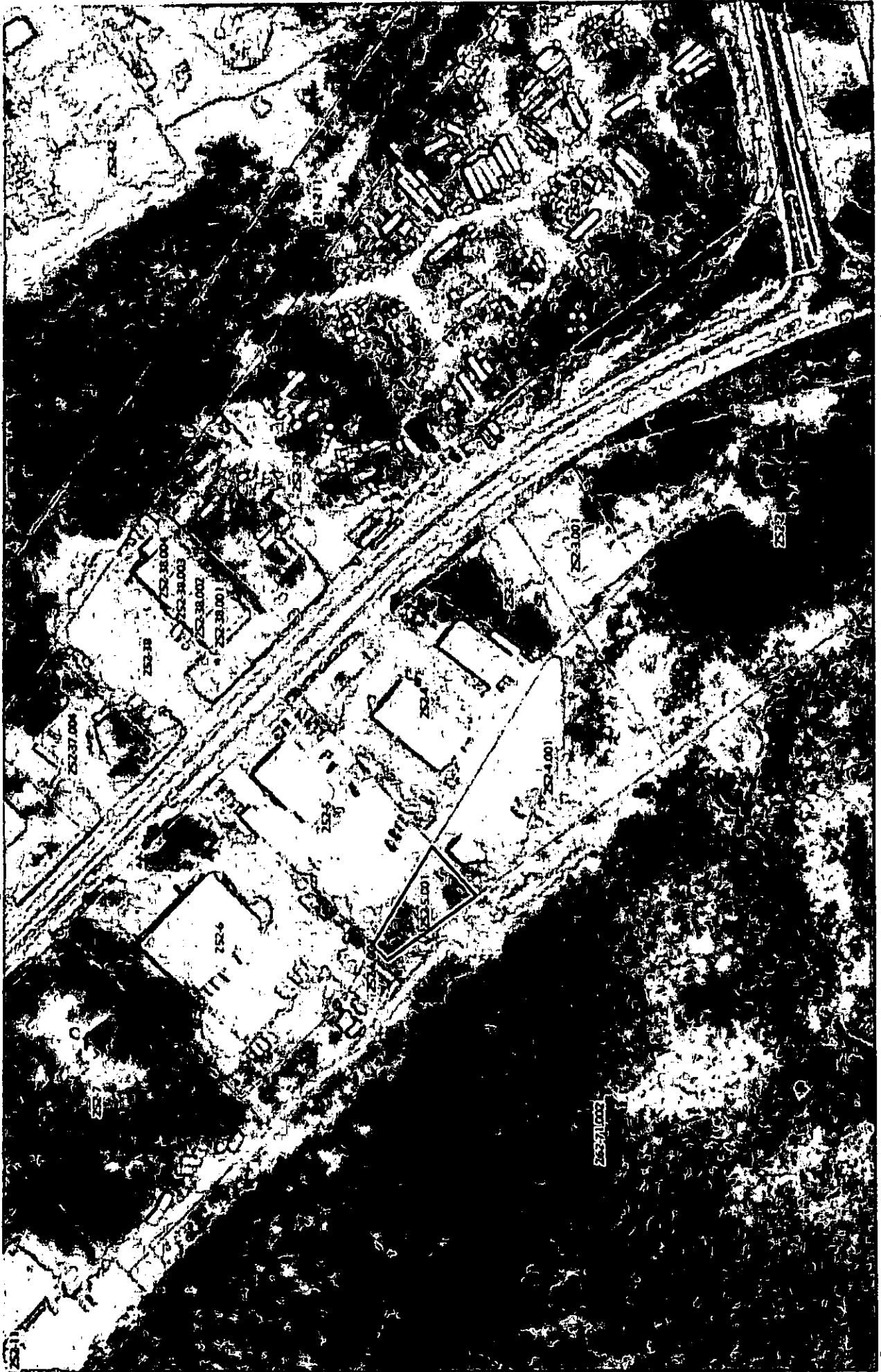
2
3.3 AcC

6.1
0.02 Ac
STATE

5.1
0.20 Ac

STATE

EAST



SHEET NO.	TOTAL AREA OF TRACT		AREA OF TRACT		SECTION		CASE NO.		DATE OF SURVEY
	AC.	SQ. FT.	AC.	SQ. FT.	1.	2.	1.	2.	
1	10.00	136,000	10.00	136,000	1	1	1	1	1950
2	10.00	136,000	10.00	136,000	1	1	1	1	1950
3	10.00	136,000	10.00	136,000	1	1	1	1	1950
4	10.00	136,000	10.00	136,000	1	1	1	1	1950
5	10.00	136,000	10.00	136,000	1	1	1	1	1950
6	10.00	136,000	10.00	136,000	1	1	1	1	1950
7	10.00	136,000	10.00	136,000	1	1	1	1	1950
8	10.00	136,000	10.00	136,000	1	1	1	1	1950
9	10.00	136,000	10.00	136,000	1	1	1	1	1950
10	10.00	136,000	10.00	136,000	1	1	1	1	1950

PROPOSED MINERAL SPRINGS
WETLAND PRESERVATION AREA
SEE SHEET 105A FOR EXISTING LINES.

FOR -00-00
25,000 SQ. FT.
114,000 SQ. FT.

FOR -00-00
25,000 SQ. FT.
114,000 SQ. FT.

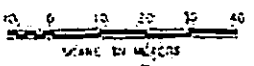
FOR -00-00
25,000 SQ. FT.
114,000 SQ. FT.

FOR -00-00
25,000 SQ. FT.
114,000 SQ. FT.

FOR -00-00
25,000 SQ. FT.
114,000 SQ. FT.

FOR -00-00
25,000 SQ. FT.
114,000 SQ. FT.

LIMIT OF WORK
STA. 200+98.500



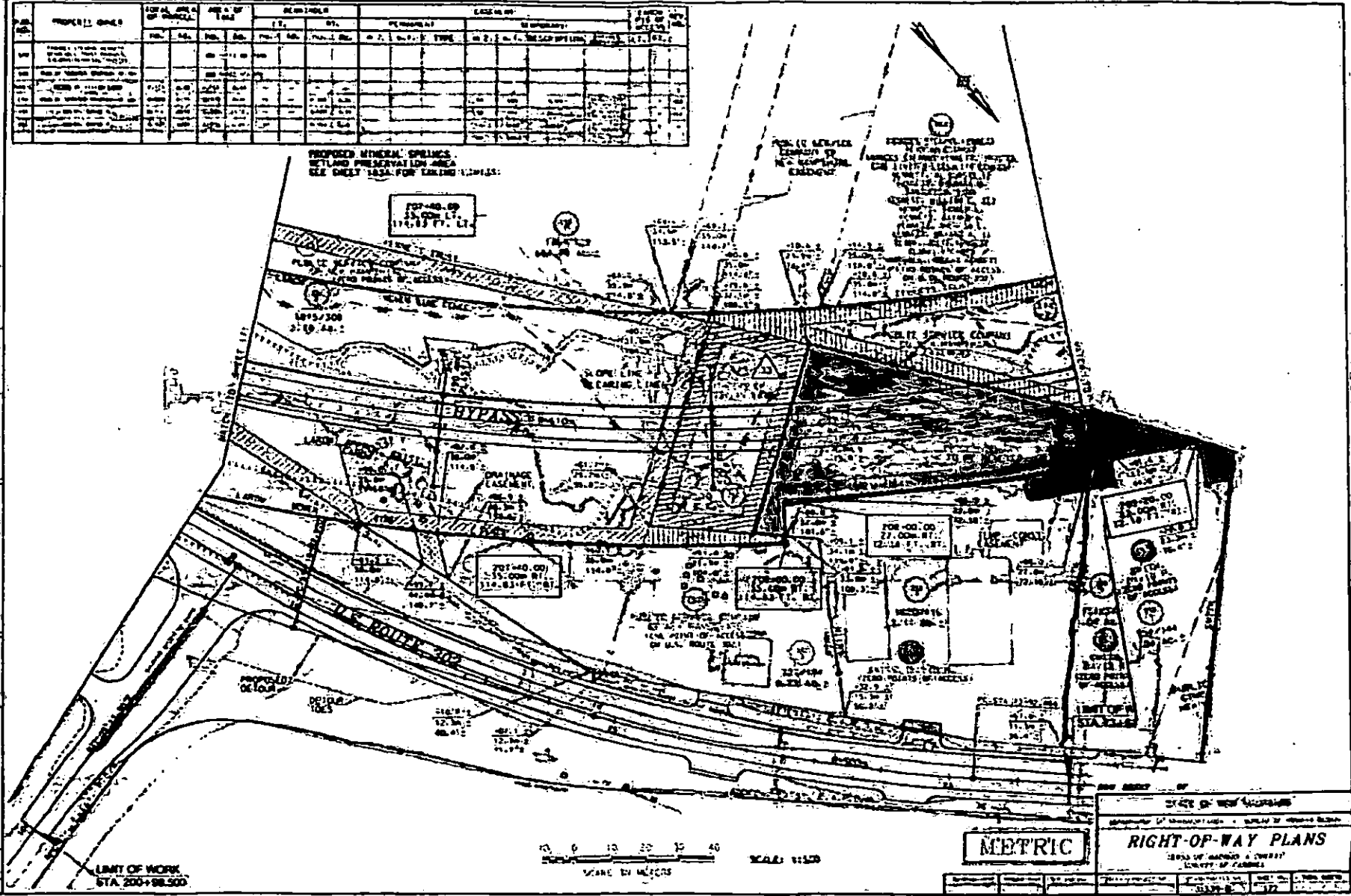
SCALE 1:1250

METRIC

RIGHT-OF-WAY PLANS

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

PROJECT NO.	DATE	SCALE	BY	CHECKED





**NEW HAMPSHIRE
HOUSING**

Rob Dapice
DEPT. OF TRANSPORTATION Director/CEO
BUREAU OF RIGHT OF WAY dapice@nhhfa.org

JUN 07 2022

RECEIVED

June 6, 2022

Stephen G. LaBonte, Administrator
Bureau of Right of Way
New Hampshire Department of Transportation
JO Morton Building, Room 100
7 Hazen Drive
P.O. Box 483
Concord, NH 03302-0483

RE: Conway property

Dear Mr. LaBonte:

New Hampshire Housing Finance Authority is not interested in purchasing the property located in Conway, described in your letter of May 24, 2022.

We would like to thank you for giving us the opportunity to review this parcel.

Sincerely,

Robert B. Dapice
Executive Director/CEO

Enclosures

PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the 2nd day of August, 2022, by and between the State of New Hampshire, Department of Transportation, having a principal place of business at 7 Hazen Drive, Concord, New Hampshire 03301 (referred to as the "Department") and David Smith, or their designee at closing (under common control), with a principal business address at 530 Eastman Road, Conway, New Hampshire 03813 (referred to as the "Buyer") (referred to individually as a "Party" and collectively as the "Parties").

RECITALS

This Agreement relates to the sale of real estate located behind 530 Eastman Road, (the "Property"), more particularly described as:

- Carroll County Registry of Deeds Book 2665, Page 0185, dated October 03, 2007.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Department owns certain real estate located behind 530 Eastman Road, in Conway, New Hampshire, consisting of approximately 0.09 +/- of an acre of unimproved land, as further described herein.
- II. The Department is divesting of a portion the Property totaling approximately 0.09 +/- of an acre, as it has been determined that this parcel is surplus to the Department's needs.
- III. The Buyer is afforded the ability to acquire the Property in accordance with RSA 4:39-c.
- IV. The Buyer, subject to the contingencies set forth within this Agreement, desires to acquire the Property from the Department for the purposes of remedying an encroachment on state-owned land.
- V. This Agreement is a binding contract which shall become effective upon approval of the Governor and Executive Council, pursuant to RSA 4:39-c.
- VI. All Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

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to execute the Buyer's standard indemnification form naming both the Buyer and the Department as indemnified parties. The standard indemnification form shall be as follows, unless written approval of a requested change is granted by both the Department and Buyer:

"The contractor agrees to indemnify, defend and save harmless the Buyer and State of New Hampshire Department of Transportation, their officials, officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the contractor in the performance of this contract. This indemnification shall survive the expiration or early termination of this contract."

- 1.6. **Closing:** The Parties agree that Closing shall occur within **ninety (90) days** after final approval of the sale by the Governor and Executive Council, unless otherwise mutually agreed by the Parties.

- 1.7. **Title and Deed Restrictions:** In addition to the terms and conditions set forth within this Agreement, the conveyance of the Property by the Department to the Buyer shall be of good and marketable title thereto by Quitclaim Deed and insurable, upon application by the Buyer, for the benefit of the Buyer, by a title insurer licensed in the State of New Hampshire and acceptable to the Buyer pursuant to an ALTA standard form title insurance policy in an amount equal to the Purchase Price, insuring that the Buyer holds marketable fee simple title to the Property subject to:
 - a) Easements, liens, restrictions, and/or encumbrances of record or any other matters of record in existence at the time of the Closing accepted and approved by the Buyer; and
 - b) Provisions of building and zoning laws in effect at the time of the Closing.

- 1.8. **Department's Affidavits and Certificates:** If requested to do so by the Buyer, the Department, at the Closing, shall deliver such affidavits (in customary form) as may be required by the Buyer or the Buyer's title insurance company with respect to: (1) parties in possession of the Property, (2) rights of third parties and title claims in or to the Property, and (3) mechanic's and materialmen's liens affecting the Property.

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- 1.9. **Deed Preparation; Recording Fees:** The Department shall convey the Property by Quitclaim Deed. The Department shall prepare all deeds (including all other applicable recording instruments, if any) at its expense.
- 1.10. **Transfer Taxes and Recording Fees:** In accordance with New Hampshire State Law RSA 78-B:2, the Department is exempt from the Real Estate Transfer Tax.
- 1.11. **Discharge of Liens:** The Department shall, at its expense, pay or discharge all legitimate liens, mechanics liens, encumbrances, and attachments, if any, which may exist on the Property through the date of closing or filed after recording of the deed transferring the Property to the Buyer due to an action by the Department prior to recording of the transfer deed. To enable the Department to make conveyance as herein provided, the Department may, at the time of delivery of the deed, use the Purchase Price or any portion thereof to clear the title or any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed. The Department shall also be entitled to use the proceeds to pay off any mortgagee, pursuant to standard customary practices for real estate transactions and conveyances and receive therefrom a discharge(s) to be recorded in the ordinary course of business.
- 1.12. **Title Insurance:** If applicable, the Department shall execute all customary documents required by the Buyer's Title Insurance Company.
- 1.13. **Department's Disclosures:** The Department makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Property.
- 1.14. **Casualty and Condemnation:** In the event that the Property, prior to closing, are damaged by fire, flood, collapse, or other casualty, the Department, or the Buyer, at any time after the occurrence of such damage or casualty, may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect. In the event of casualty, the Department and the Buyer agree to hold each other harmless from any claim for any costs, damages, liabilities, or financial losses it may incur.
2. **Buyer's Contingencies:** The Buyer's obligation to Close on acquisition of the Property shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Buyer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Buyer shall have no further obligation to the Department.

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2.1. **Title: Time being of the essence**, upon execution of this Agreement by the Parties, the Buyer may perform a title examination of the Property within fifteen (15) days, to be reasonably satisfied that title to the Property is marketable and insurable. If upon examination of the title it is found not marketable or insurable, after identifying to the Department in writing any apparent title defects and providing the Department reasonable opportunity to cure them, this agreement may be rescinded at the option of the Buyer or Department and all deposits shall be refunded to the Buyer; provided that written notice is delivered within said time frame, **time being of the essence**. If no notice is given within said time frame, then any objections to title are waived.

REPRESENTATIONS AND WARRANTIES

2.2. **Representations and Warranties of the Buyer**. The Buyer hereby represents and warrants that:

- 2.2.1. The execution and delivery of this Agreement and the performance of the Buyer's obligations hereunder have been duly authorized by such action as necessary, and this Agreement constitutes the legal, valid, and binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms subject only to the conditions set out in this Agreement.
- 2.2.2. Subject to the conditions set out in this Agreement, neither the execution or delivery by the Buyer of this Agreement, the performance by the Buyer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Buyer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law, charter, ordinance or governmental regulation applicable to the Buyer, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Buyer is a party or by which the Buyer or any of its properties or assets are bound, or constitutes a default there under.
- 2.2.3. Except as set forth in this Agreement, no approval, authorization, order, or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Buyer, except such as have been duly obtained or made or disclosed in this Agreement.
- 2.2.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Buyer, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Buyer of its obligations hereunder or the

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performance by the Buyer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Buyer in connection with the transactions contemplated hereby.

2.3. Representations and Warranties of the Department. The Department hereby represents and warrants to the best of its knowledge and belief that:

- 2.3.1. The Department has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery, and performance by it of this Agreement subject to the Department seeking and obtaining final approval by Governor and Executive Council pursuant to RSA 4:39-c. This Agreement will, upon execution and delivery thereof by the Department and upon approval by Governor and Executive Council, constitute valid, legal, and binding obligations of the Department enforceable against the Department in accordance with the respective terms thereof.
- 2.3.2. Neither the execution or delivery by the Department of this Agreement, the performance by the Department of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Department of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Department, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Department are a party or by which the Department or any of its properties or assets are bound, or constitutes a default there under.
- 2.3.3. Except as set forth in this Agreement, no approval, authorization, order, or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Department, except such as have been duly obtained or made.
- 2.3.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Department, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Department of their obligations hereunder or the performance by the Department of its obligations under the transactions contemplated hereby, or which, in any way,

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questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Department in connection with the transactions contemplated hereby.

3. GENERAL PROVISIONS

- 3.1. **Cooperation.** The Buyer and the Department agree to cooperate with each other to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Department, the Buyer, or their representatives, agents, and consultants.
- 3.2. **Entire Agreement; Amendments.** This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification, or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 3.3. **Binding Effect; Successors and Assignors.** The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 3.4. **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit, or expand the express provisions of this Agreement.
- 3.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 3.6. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 3.7. **Enforceability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

- 3.8. **Consent to Jurisdiction and Venue.** The Department and the Buyer submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County Superior Court. Both Parties hereby waive their right to a jury trial.
- 3.9. **Independent Parties.** The Department and the Buyer are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.
- 3.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations, and warranties contained herein shall survive the execution and delivery of this Agreement.
- 3.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 3.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 3.13. **Preservation of Rights.** Nothing herein or in any related Agreement shall limit or be construed to limit in any way rights or remedies the Buyer may have for the collection of real property taxes under law, unless expressly set forth herein.
- 3.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 3.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this

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Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

- 3.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any Buyer or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable Buyer or other governmental Boards, Committees, Commissions, or Departments, including but not limited to the requirement that the agreement be approved by the Governor and Executive Council pursuant to RSA 4:39-c prior to the Department being required and/or authorized to convey the property to the Buyer.
- 3.17. **Warranties and Representations:** The Department and the Buyer each acknowledge that they have not been influenced to enter this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 3.18. **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect.

LIST OF EXHIBITS

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DEPARTMENT:

STATE OF NEW HAMPSHIRE

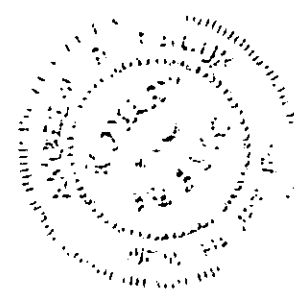
By: *[Signature]* Date: 8/2/22
Printed: Stephen Gail LaBonte
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In Concord, on the 2nd day of August, 2022, before me, personally appeared, Stephen G. LaBonte, Administrator for the Bureau of Right-Of-Way of the New Hampshire Department of Transportation, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

Andrew R. Pacuk
Justice of the Peace/Notary Public
My Commission Expires: 11/25/2024

ANDREW R. PACUK, Notary Public
State of New Hampshire
My Commission Expires Nov. 25, 2024



Initial DLS

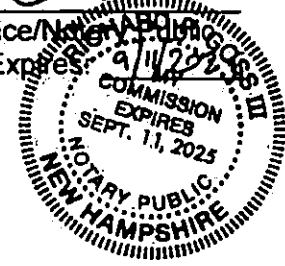
Executed as a sealed instrument this 2nd day of August, 2022.

BUYER:

By: David L. Smith Date: 7/18/22
Printed: David L. Smith
David Smith
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF CARROLL

In Conway on the 18th day of July, 2022, before me, personally appeared David R. Smith, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

Richard P. Dwyer
Justice of the Peace/Notary Public
My Commission Expires: 9/1/2025


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