

**PURCHASE AND SALE AGREEMENT**  
**(Northern Main Line, Concord, New Hampshire)**

**PURCHASE AND SALE AGREEMENT** (“Agreement”) made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, becoming effective upon approval by the New Hampshire Governor and Executive Council (the “Effective Date”), by and between the **NORTHERN RAILROAD**, a New Hampshire corporation with a place of business at 1700 Iron Horse Park, North Billerica, Massachusetts 01862 (the "Seller") and the **NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION**, having a usual place of business at 7 Hazen Drive, Concord, New Hampshire 03301 (the “Buyer” or “State”). The Seller and Buyer may be referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, this Agreement is for the purchase and sale of a portion of the Seller’s Northern Main Line (Horseshoe Pond Lane to Contoocook River) making up approximately 72.53 acres of land (“Premises”), as shown on Exhibit A, attached hereto and made a part of this Agreement hereof.

WHEREAS, the Buyer intends to assign this Agreement to the City of Concord (the “City”), at which point the City shall assume all obligations hereunder.

WHEREAS, the Seller desires to sell the Premises and, the Buyer desires to purchase the Premises upon the terms and conditions hereinafter set forth for the purpose of constructing a rail trail on the Premises.

WHEREAS, the Seller hereby states and affirms that the railroad line on the Premises has been discontinued and abandoned in accordance with all applicable laws, rules, and regulations associated with the Surface Transportation Board, the State of New Hampshire and any other regulatory authority having jurisdiction over the railroad line on the Premises (“Regulatory Authorities”).

NOW, THEREFORE, the Parties hereby agree as follows:

**I. NOTICES**

Any notice required or permitted to be given in writing under this Agreement shall be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or e-mail. Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter, by hand delivery, overnight delivery, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this section.

**SELLER:**

Northern Railroad  
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:

Northern Railroad  
c/o Pan Am Systems, Inc.  
Iron Horse Park  
North Billerica, Massachusetts 01862  
Attention: Michael Twidle, Vice President – Real Estate

**BUYER:**

State of New Hampshire  
Department of Transportation  
Bureau of Rail & Transit  
7 Hazen Drive  
Concord, New Hampshire 03301  
Attention: Shelley Winters

**BUYER UPON ASSIGNMENT FROM THE STATE:**

City of Concord  
41 Green Street  
Concord, New Hampshire 03301  
Attention: City Manager

Send a copy of any notice to:

City of Concord  
41 Green Street  
Concord, New Hampshire 03301  
Attention: Matthew R. Walsh, Director of Redevelopment, Downtown Services, &  
Special Projects

**II. PREMISES DESCRIPTION**

Approximately 72.53 acres of land now or formerly known as the Northern Main Line, beginning along the northerly sideline of Horseshoe Pond Lane thence running in a generally northwesterly direction to the southernmost edge of Seller's bridge spanning the Contoocook River at approximate engineering station 351+07.7 as shown on map 7 of railroad valuation section 32.1, including, but not limited to, City of Concord Assessor's Parcels map-block-lot 743Z /10, 6414 Z/2, 13 P/21, and 053 P/7 (the "Premises"), as more specifically described on maps prepared by the City of Concord Engineering Division shown on Exhibit A attached hereto and made a part hereof. The Premises specifically excludes property located on Hannah Dustin Island, as well as trestles located between parcel 053P/7 and Hannah Dustin Island.

**III. EXHIBITS**

Exhibit A: Map of the Premises.

Exhibit B: Release Deed.

#### **IV. PURCHASE PRICE**

The purchase price for the Premises shall be Four Hundred Thirty One Thousand Five Hundred and 00/100 Dollars (\$431,500.00).

#### **V. DEPOSIT**

In lieu of a deposit, the Buyer shall provide the Seller with joint ownership of all boundary surveys, studies, and reports commissioned by the Buyer as part of the Buyer's due diligence. The Buyer makes no representations or warranties regarding the accuracy of boundary surveys, studies, and reports which the Seller shall hold joint ownership as per the terms of this Agreement. The Seller hereby holds harmless, and releases the Buyer from any liabilities, claims, or injuries associated with any inaccuracies or errors in said boundary surveys, studies, and reports commissioned by the Buyer as part of the Buyer's due diligence.

#### **VI. CLOSING DATE**

The closing shall be on a date mutually agreeable to all parties, contingent upon necessary approvals from the Concord City Council and/or New Hampshire Governor and Executive Council, and shall hereinafter be referred to as the "Closing or Closing Date." Closing date shall be extended as mutually agreed by the Parties.

#### **VII. TITLE AND DEED**

A. The Premises shall be conveyed by a Release Deed prepared by the Seller, and acceptable to the Buyer, to be finalized on or before the Closing date, which is in draft form attached hereto and marked Exhibit "B". The Release 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.

B. As set forth in Section X, B, 2 below, the Buyer may conduct a title search to determine whether title to the Premises is good, marketable and insurable. The Release Deed shall not contain any mortgage or encumbrance not agreed upon by the Buyer shall convey all of the Seller's right, title and interest in the Premises, subject to the following:

1. Such agreements, leases, licenses, easements, restrictions and encumbrances, if any, as may appear of record, or otherwise; and expressly agreed upon by the Buyer in writing;
2. The provisions, conditions and covenants set forth in the Release Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Release Deed by executing the Release Deed at Closing;
3. Provisions of existing building, land use, subdivision control and zoning laws;
4. Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;
5. Any liens for municipal betterments assessed after the date of this Agreement; and,

## **VIII. DEED PLAN**

A. The Parties hereby acknowledge that the Buyer may engage a New Hampshire Licensed Land Surveyor to complete an American Land Title Association (ALTA) boundary survey of the Premises (the "Survey").

B. The Seller agrees to cooperate with the Buyer or the Buyer's agents to furnish the information necessary for the Buyer to complete the Survey. The Seller agrees to assist the Buyer with this effort by providing the Buyer with all plans and boundary surveys of the Premises in the Seller's possession, within ten (10) days of the Effective Date of this Agreement.

C. Should the Buyer complete an ALTA survey of the Premises, the survey and legal description associated therewith, shall be attached to, and become the Exhibit "A" referred to in the Release Deed.

D. If the Buyer does not complete an ALTA survey, the Seller shall be responsible for providing the description of the Premises, subject to the Buyer's review, to be used as Exhibit "A" to the Release Deed.

## **IX. ACCESS TO PREMISES**

A. The Seller hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Premises for the purpose of completing due diligence necessary to carry out the terms of this Agreement.

B. The Buyer and the Seller shall coordinate all access to the Premises by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

C. During Buyer's inspection of the Premises, the Buyer shall require that any and all contractors whom it retains for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this paragraph, and who access the Premises, to obtain insurance, evidenced by a certificate of insurance to be provided to Seller, in the amount of \$2 million in the aggregate, \$1 million per occurrence naming the Seller as an additional insured. Railroad exclusions for such policies shall not be permitted.

## **X. BUYER'S DUE DILIGENCE**

A. The Buyer shall complete any and all assessments, studies, surveys, and research, at its sole cost and expense, as the Buyer deems necessary or appropriate, including, but not limited to, real estate title reviews, boundary surveys, building and property inspections, flood zone reviews and certifications, reviews of all applicable governmental regulations and ordinances, economic and financial feasibility studies, engineering studies, geotechnical studies, and other similar studies to determine the condition of the Premises, as well as its suitability for the Buyer's intended usage ("Due Diligence"). Notwithstanding the foregoing, Buyer's due diligence regarding any environmental matters such as compliance with Environmental Laws or Releases of Hazardous Materials or Regulated Substances and remediation of same shall be limited to a Phase I Environmental Site Assessment in accordance with Section X.B.3 of this Agreement.

B. The Buyer shall have until a date mutually agreeable to all parties, subject to approval by the Concord City Council and/or New Hampshire Governor and Executive Council, to complete the Due Diligence, unless Buyer requests Seller to provide an additional thirty (30) days to complete, and which Seller shall not unreasonably deny (the "Due Diligence Period"), and the Closing Date shall be extended accordingly. The Due Diligence shall include:

## **1. REVIEW OF EXISTING AGREEMENTS**

- a. During the Due Diligence Period, the Seller shall provide the Buyer with a copy of all existing leases, licenses, crossing agreements, covenants, easements, rights-of-way usage agreements, or any other encumbrance or agreement, whether recorded at the Registry of Deeds or not, relative to the Premises (“Existing Agreements”). Upon the Buyer’s acquisition of the Premises, all Existing Agreement, rents and revenues associated therewith, which are in effect at the time of Closing, shall transfer and accrue to the Buyer, in full, and without limitation. This covenant shall survive Closing.
- b. In the event that any of the Existing Agreements are not acceptable to the Buyer, the Buyer, at its sole option, may terminate this Agreement, following which the obligations of the Parties shall cease and neither Party shall have further recourse against the other.

## **2. TITLE RESEARCH**

During the Due Diligence Period, the Buyer shall perform a title examination of the Premises, and shall be satisfied that title to the Premises is good, marketable and insurable, and not otherwise subject to any liens, encumbrances, covenants or other restrictions (including but not limited to existing building, land use, subdivision control and zoning laws), which would prevent the Buyer from using the Premises (“Title Defects”). In the event that the title to the Premises is not good, marketable and insurable, or is otherwise subject to any Title Defects, as determined by Buyer, prior to the expiration of the Due Diligence Period, Buyer shall provide written notice to Seller of such Title Defects. As part of its notice, the Buyer may 1) terminate the Purchase and Sales Agreement or 2) the Seller shall be provided a reasonable period of time, no less than one hundred eighty (180) days from the date of Buyer’s notice, within which to resolve such Title Defects. In the event the Buyer affords the Seller the opportunity to cure title defects, and the Seller does not provide good, marketable and insurable title, or to remove the Title Defects within the one hundred eighty (180) day period, whether because Seller is unable or otherwise unwilling to do so, the Buyer, at its sole option, may terminate this Agreement.

## **3. ENVIRONMENTAL INSPECTION OF THE PREMISES**

a. During the Due Diligence Period, the Buyer may, at its own expense, conduct environmental due diligences, provided, however, that such due diligence shall be limited to only a Phase 1 Environmental Site Assessment (“ESA”) concerning the presence of Hazardous Materials and/or Regulated Substances (defined below) and/or other pollutants regulated by law on the Premises from a duly qualified, certified engineer currently engaged in the business of rendering such ESA (“Consultants”). The Parties agree that the ESA shall not include: test pits, soil borings, soil sampling, ground water monitoring wells or groundwater sampling.

b. In accordance with Section IX of this Agreement, the Seller shall provide the Buyer (or its agents, employees, consultants, contractors, and representatives) reasonable access to the Premises for the purpose of carrying out the ESA. The Buyer shall perform the ESA at its own risk and at its own expense.

c. The Seller shall, within ten (10) business days of the Effective Date of this Agreement, provide the Buyer, at no cost, with copies of all Valuation Plans (also known as Val

Plans), environmental studies, assessments, or reports (“Reports”) for the Premises that are within Seller’s possession, without limitation.

d. The Buyer hereby acknowledges and agrees that it may not rely upon the representations, certifications, and statements contained in the Reports relative to the existence or non-existence of Hazardous Materials and/or Regulated Substances (defined below) and/or other pollutants regulated by law on the Premises without the express written consent of the person(s) who authored such reports or generated said data. Further, the Buyer acknowledges that the possession of such materials by the Seller does not constitute any representation or warranty by the Seller related to the existence or non-existence of Hazardous Materials and/or Regulated Substances (defined below) and/or other pollutants regulated by law on the Premises.

e. “Regulated Substances” shall mean 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. 1251 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. 2710 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 the Oil Spillage in Public Waters Statute, RSA 146-A, and any regulations adopted pursuant to those laws.

f. “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 the 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 (“CERCLA”);
- ii. The Resource Conservation and Recovery Act (“RCRA”);
- iii. The Hazardous Materials Transportation Act (“HMTA”);
- iv. The Toxic Substances Control Act (“TSCA”);
- v. The Clean Water Act (“CWA”);
- vi. The Clean Air Act;
- vii. The Safe Drinking Water Act;
- viii. The National Environmental Policy Act (“NEPA”);
- ix. The Superfund Amendments and Reauthorization Act of 1986;
- x. Title III of the Superfund Amendment and Reauthorization Act;
- xi. The Uranium Mill Tailings Radiation Control Act;
- xii. The Occupational Health and Safety Act;
- xiii. The Federal Insecticide, Fungicide, and Rodenticide Act;
- xiv. The Noise Control Act;
- xv. The Emergency Planning and Community Right to Know Act;

- xvi. Environmental Protection Agency Federal Regulations promulgated under any of the forgoing federal statutes, including but not necessarily limited to those codified in 40 C.F.R. Parts 206-265 and Parts 122-124;
- xvii. New Hampshire RSA Chapters 146-A, 146-C, 147, 147\_A, and 147-B; and,
- xviii. 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.

g. “Hazardous Materials” shall mean 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 health, 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:

- i. Hazardous waste under RCRA;
- ii. Hazardous substances under CERCLA;
- iii. Pollutants under the CWA;
- iv. Toxic Substances or “chemical substance or mixture” under the SCA;
- v. Hazardous materials under the HMT; and,
- vi. 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, RCRA 8 metals which are incorporated into such materials, and any oil or petroleum products and creosote treated railroad ties.

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

i. The Seller warrants and covenants that it does not possess or have any knowledge of the actual or suspected presence of Hazardous Materials and/or Regulated Substances on the Premises other than the Hazardous Materials and/or Regulated Substances as identified in environmental studies, assessments, or reports for the Premises in the possession of the Seller which were completed prior to the date of this Agreement and provided to the Buyer in accordance with this Agreement. The Seller also warrants that the Seller has no knowledge of any past or present violations of Environmental Laws involving the Premises.

j. Notwithstanding the foregoing, the Buyer and Seller agree that the Seller may leave railroad ties on the Premises as of the date of the Closing and Seller shall not have any liability after the Closing should the railroad ties be found to be in violation of Environmental Laws or otherwise required to be removed or relocated. Seller warrants and agrees that it will not deposit, place, dispose of, or otherwise store or leave any additional railroad ties, or any other materials of any kind whatsoever, on the Premises after the effective date of this Agreement.

k. The Buyer may complete an ESA as part of the Buyer’s Due Diligence, as described in this Agreement. Except as otherwise stated in this Agreement, in the event the Buyer, upon completion of the Buyer’s Due Diligence, elects to proceed with Closing, the Buyer hereby 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 the Seller except as stated herein. The Buyer further warrants and covenants that the 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 forgoing, all representations and warranties of the merchantability and fitness for a particular purpose are expressly disclaimed.

1. Prior to the Closing, should the State of New Hampshire, or any other local, state, or federal agency with appropriate jurisdiction notify the Seller of a potential violation of Environmental Laws relating to the Premises, then the Seller shall promptly notify the Buyer.

## **XI. BUYER’S TERMINATION RIGHT FOLLOWING DUE DILIGENCE**

On or before the conclusion of the Due Diligence Period, the Buyer may terminate this Agreement for any of the following reasons:

- A. Existing Agreements are not acceptable to the Buyer;
- B. Title Defects on the Premises;
- C. Seller’s failure to provide access to the Premises;
- D. Seller’s failure to provide due diligence documents and related information to the Buyer;
- E. Existence, or suspected existence of Hazardous Materials and/or Regulated Substances (defined above in Section X) and/or other pollutants regulated by law on the Premises;
- F. Inability to secure adequate appropriation for funding or governmental approvals; or
- G. Seller’s failure to prepare a Release Deed acceptable to the Buyer.

## **XII. TERMINATION DUE TO CASUALTY OR CONDEMNATION**

A. In the event that the Premises, prior to Closing, is damaged by fire, flood, collapse, or other casualty, the Buyer may terminate this Agreement.

## **XIII. TERMINATION**

In the event that either Party terminates this Agreement in accordance with any of the applicable sections herein, all other obligations of the Parties under this Agreement shall cease, and this Agreement shall thereupon be void and shall have no further force or effect.

## **XIV. FEES, COSTS, AND TRANSFER TAXES**

The Parties shall pay their respective shares of normal and customary recording fees and transfer taxes customarily associated with real estate transactions. The parties acknowledge that the Buyer is exempt from the Real Estate Transfer Tax pursuant to RSA 78-B:2, I. To the extent the Seller is not exempt from the real estate transfer tax; the Seller hereby agrees to pay its respective half of the transfer tax in the customary fashion.



**XV. CLOSING**

- A. Subject to the conditions set forth in this Agreement, as set forth in Section VI, the Closing Date shall be on a date mutually agreeable to all parties, subject to approval by the Concord City Council and/or New Hampshire Governor and Executive Council.
- B. Seller shall deliver the Release Deed and the Deed Plan of the Premises to Buyer.
- C. Buyer shall pay Seller the Purchase Price by certified or bank cashier's check, or by wire transfer on the Closing Date.

**XVI. POSSESSION**

A. REMOVAL OF SELLER'S PROPERTY. The Seller, at its sole option, may remove rails from that portion of the Premises located north of the Interstate 393 rights-of-way to the southern termination point of the Scenic Rail Riders pedal car lease near Second Street. In the event that the Seller removes rails from the Premises, it shall notify Buyer of such removal and at least thirty (30) days prior to such removal and Seller shall restore the Premises to a condition reasonably acceptable to the Buyer in the Buyer's sole discretion. The Seller shall have until the close of the Due Diligence period to remove said rails and coordinate a time for Buyer to inspect the removal and restoration of the Premises.

B. The Seller shall deliver possession of the Premises to the Buyer on the Closing Date, the Premises then being in the same condition as they now are, reasonable wear and tear excepted.

**XVII. ACCEPTANCE OF DEED**

The Buyer's acceptance of the Release Deed at the Closing shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller therein contained, except for such as are, by the terms thereof, to be performed after the delivery of the Release Deed.

**XVIII. BROKER**

The Parties represent and warrant to each other that neither has engaged the services of a real estate broker with respect to the Premises. The Buyer and Seller each agree to hold the other Party harmless from and against all other claims for brokerage or commission on account of this Agreement.

**XIX. WARRANTIES**

The Buyer and Seller each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement. The Buyer hereby expressly waives any claims against the Seller for any matters of public record or matters which a visual inspection of the Premises would reveal. This paragraph shall survive the delivery of the Release Deed.

**XX. RECORDING**

The Parties agree that neither this Agreement nor any memorandum, with the exception of the Memorandum of Understanding between the City and the State, shall be recorded at the registry of deeds.

**XXI. 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/she 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.

**XXII. BINDING EFFECT; SUCCESSORS AND ASSIGNORS**

A. 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.

B. The Buyer may assign the Agreement to the City without prior approval from the Seller. Upon assignment, all rights and obligations herein shall inure to the City. In the event the City does not proceed to Closing, it may reassign this Agreement to the State without prior approval from the Seller.

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

**XXIII. SEVERABILITY AND 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.

**XXIV. 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.

**XXV. APPLICABLE LAW**

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

**XXVI. CONSENT TO JURISDICTION AND VENUE**

The Buyer and Seller submit to the jurisdiction of a court of competent jurisdiction 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.

**XXVII. 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.

#### **XXVIII. SECTION 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.

#### **XXIX. COOPERATION**

The Buyer and the Seller agree to cooperate with each other in order 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 Seller, the Buyer, or their representatives, agents, and consultants.

#### **XXX. EXHIBITS**

All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.

#### **XXXI. INDEPENDENT PARTIES**

The Buyer and Seller 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.

#### **XXXII. SURVIVAL OF AGREEMENT**

All agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement and Closing.

#### **XXXIII. 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.

#### **XXXIV. TIME OF THE ESSENCE**

The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.

#### **XXXV. 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 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.

**XXXVI. GOVERNMENTAL APPROVALS**

A. This Agreement is specifically contingent upon the Buyer obtaining governmental approvals, including but not limited to Governor and Executive Council approval, and the Concord City Council holding a public hearing and voting in the affirmative to ratify this Agreement.

B. This Agreement is specifically contingent upon the appropriate governmental entity voting to appropriate the required funds to complete this transaction, including due diligence.

C. Other Municipal Approvals: The execution of this Agreement does not preempt or supersede the review process or powers of any City of Concord 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 governmental boards, committees, commissions or departments.

**XXXVII. INTENTIONALLY OMITTED**

**XXXVIII. FORCE MAJEURE / EXCUSABLE DELAYS**

For the purposes of any of the provisions of this Agreement, neither the Buyer nor the Seller, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not limited to, acts of God, or of the public enemy, acts of the other party, fires, floods, or other casualties, epidemics, pandemics, quarantine restrictions, labor disputes, litigation, unexpected delays in approvals by other Local, State or Federal Governmental Agencies, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during construction by the Buyer of Seller, or delays of contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such Party shall be extended for the period of the enforced delay, provided, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other Party thereof in writing stating the cause or causes thereof and requesting an extension for the period of the enforced delay. In calculating the length of the delay, the Buyer and the Seller shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

**XXXIX. EXECUTION**

IN WITNESS WHEREOF, the Parties execute this Agreement in two counterparts, effective as of the date of Governor and Executive Council approval.

SELLER:

NORTHERN RAILROAD

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: David A. Fink  
Title: President

BUYER:

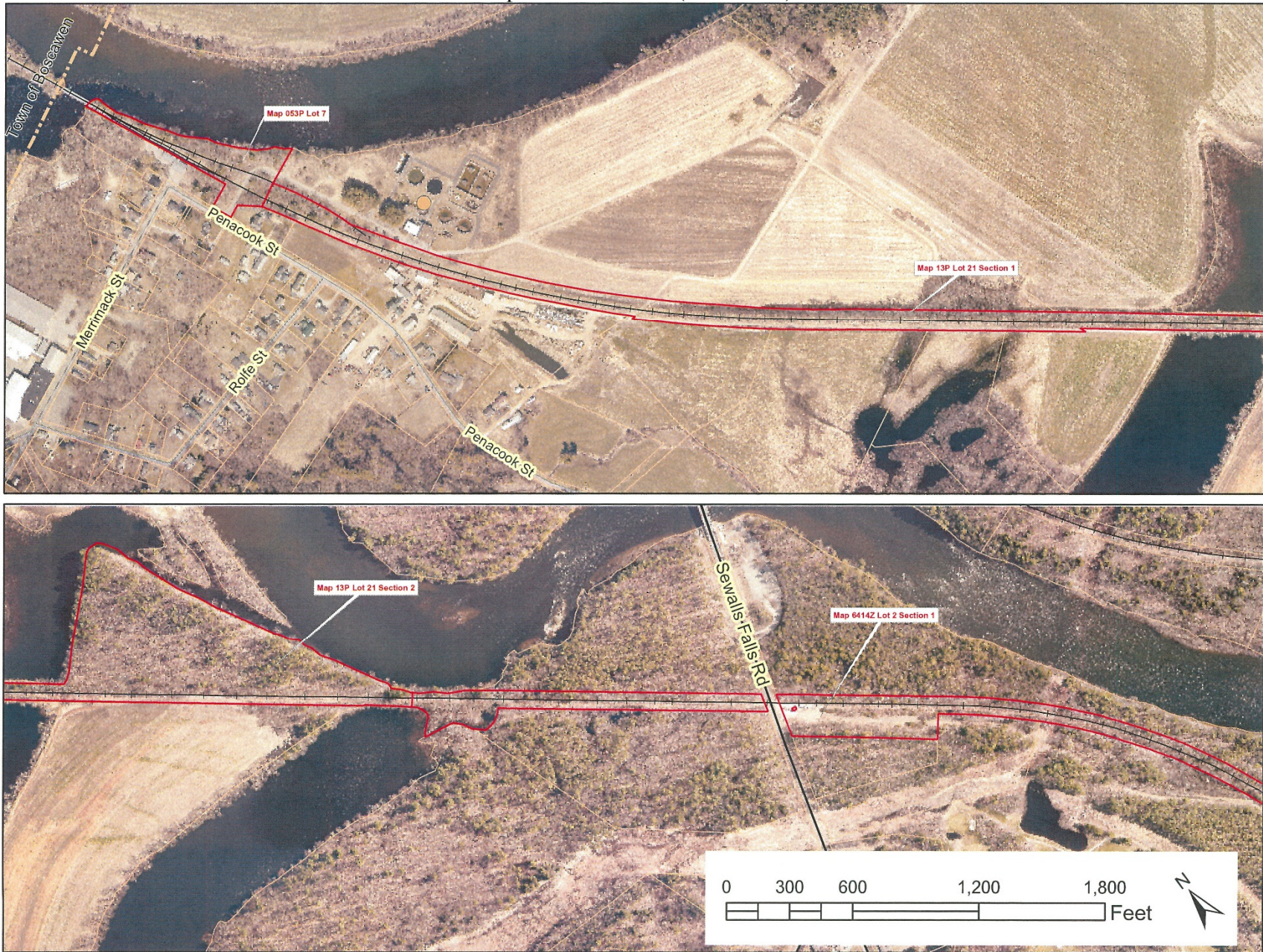
NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Victoria F. Sheehan  
Title: Commissioner, NHDOT

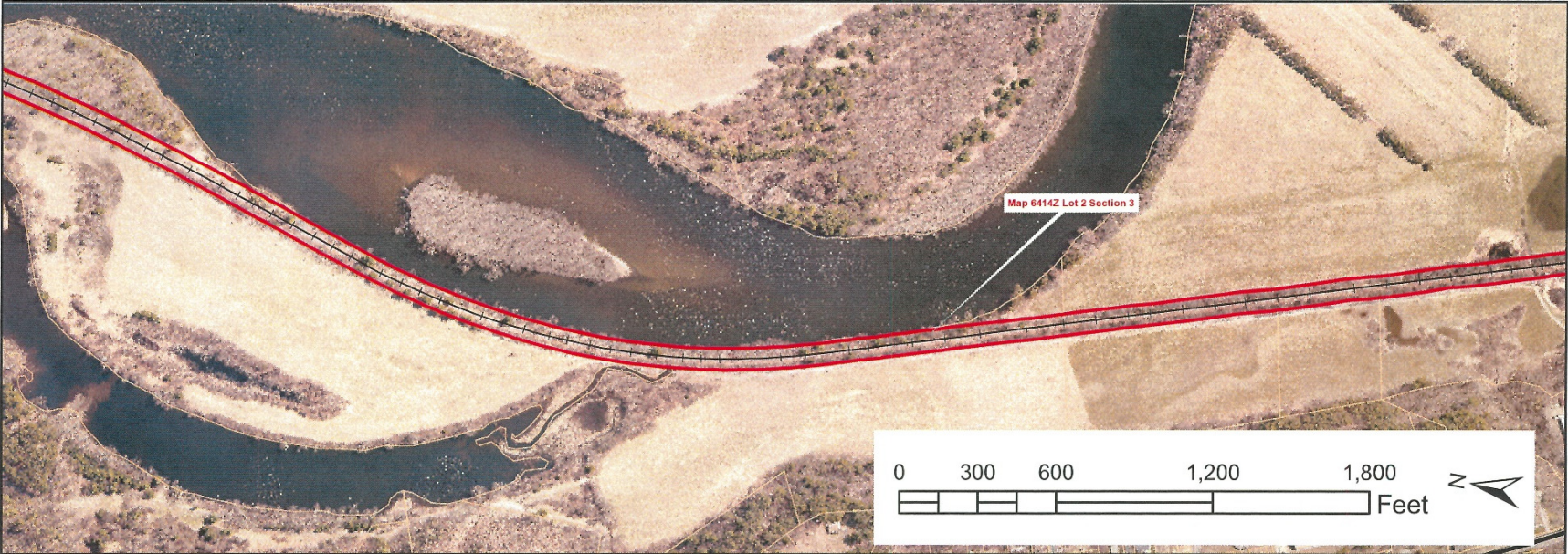
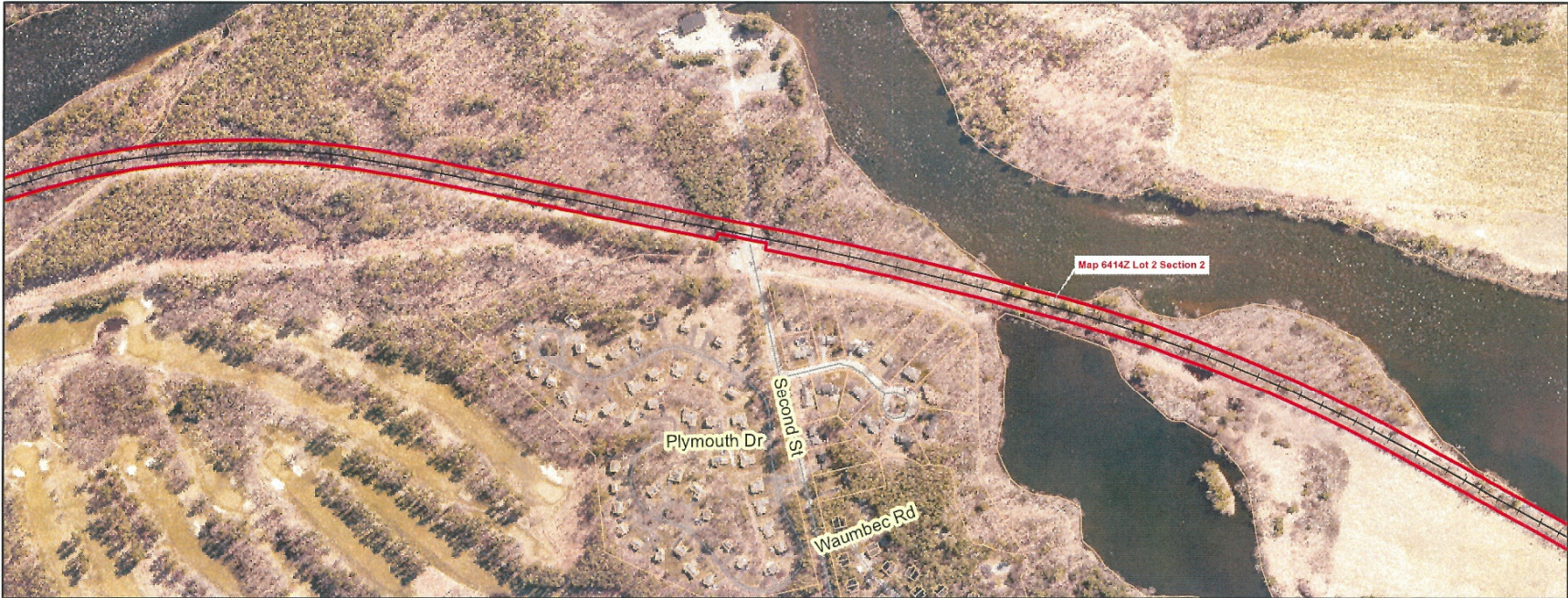


**EXHIBIT A – MAPS**  
Map of the Premises (Part 1 of 3)



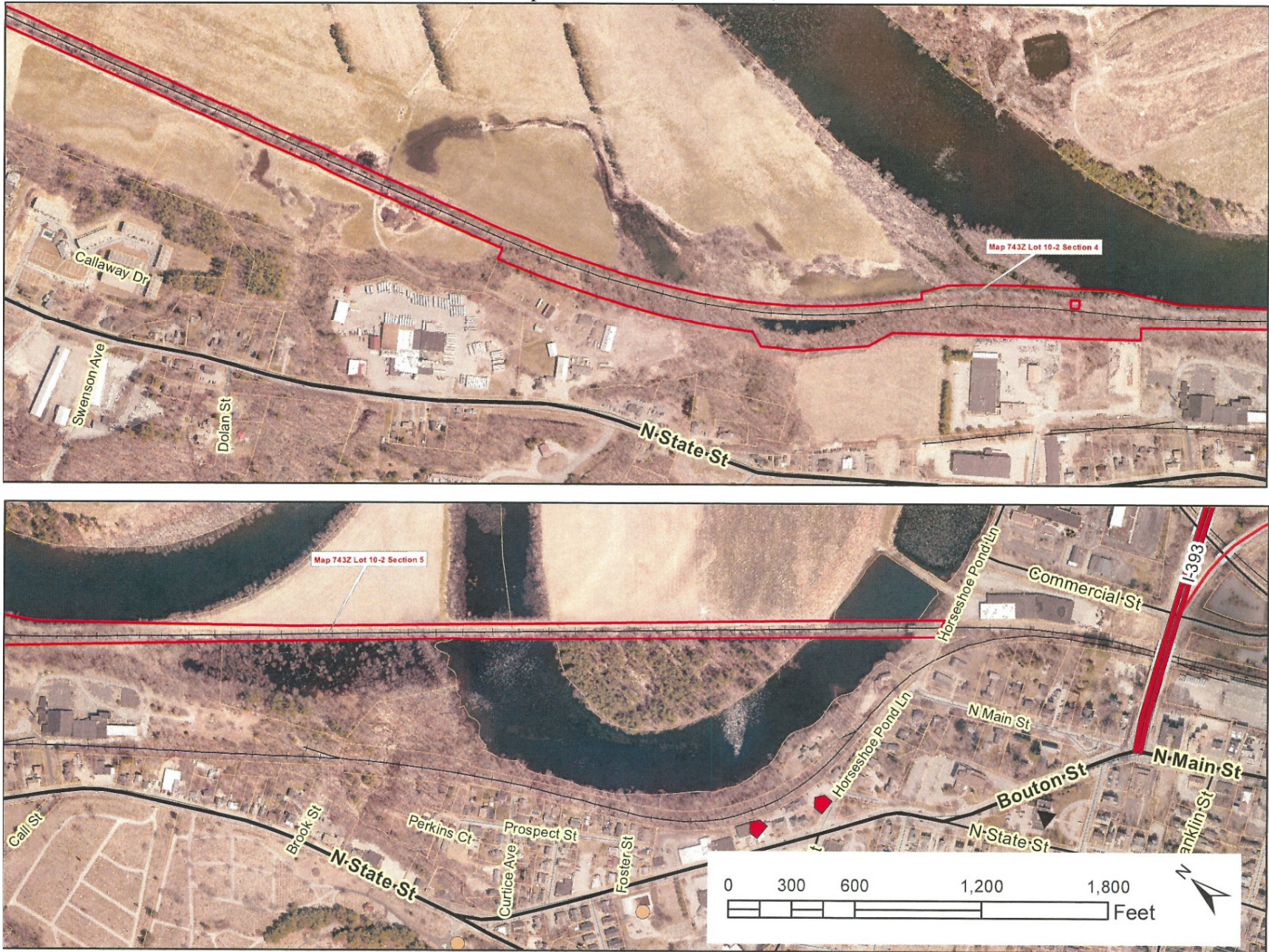


Map of Premises (Part 2 of 3)





Map of Premises (Part 3 of 3)





## **EXHIBIT B – RELEASE DEED**

### **RELEASE DEED (DRAFT)**

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 and the **NORTHERN RAILROAD**, a corporation duly organized and existing under the laws of the State of New Hampshire, with offices at 1700 Iron Horse Park, North Billerica, Middlesex County, Massachusetts, (collectively referenced herein as the "Grantor") in consideration of Four Hundred Thirty One Thousand Five Hundred and 00/100 Dollars (\$431,500 ) paid to it by **CITY OF CONCORD**, with a mailing address of 41 Green Street, Concord, New Hampshire 03301 (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 Concord, County of Merrimack, 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. 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 including but not limited 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. The Grantee further agrees that prior to the commencement of salvage activities by Grantee, Grantee shall: (1) consult with the National Geodetic Survey (NGS) and notify NGS at least ninety (90) days prior to beginning any salvage activities that could disrupt or destroy geodetic survey markers; (2) consult with the Army Corps of Engineers (Corps) regarding the potential impact of salvage activities on waterways and wetlands, and comply with the reasonable recommendations of the Corps; and (3) consult with the Department of Environmental Services (DES) regarding the potential impact of salvage activities on water quality, and comply with the reasonable recommendations of DES.
3. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not

limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.

4. 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.
5. All rents and revenues associated with leases, licenses, crossing agreements, covenants, easements, rights-of-way usage agreements, or any other encumbrance or agreement in effect as of the date of recording of this Release Deed shall transfer and accrue to the Grantee in full and without limitation.
6. Whenever used in this deed, the term "Grantor" shall not only refer to the **NORTHERN RAILROAD** and **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 maybe.
7. 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 **NORTHERN RAILROAD** 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 \_\_\_\_\_, 2022.

**GRANTOR: BOSTON AND MAINE CORPORATION**

By: \_\_\_\_\_  
David A. Fink, President

**GRANTEE: CITY OF CONCORD N.H.**

By: \_\_\_\_\_  
Thomas J. Aspell, Jr., City Manager

