UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

TOWN OF HOPEDALE, MASSACHUSETTS, Plaintiff, v. 3M COMPANY (f/k/a Minnesota Mining and Manufacturing, Co.), AGC CHEMICALS AMERICAS, INC., ARCHROMA, U.S., INC., ARKEMA, INC., BUCKEYE FIRE EQUIPMENT COMPANY, CARRIER GLOBAL CORPORATION, CLARIANT CORPORATION, CHEMGUARD, INC., Corteva, Inc., DUPONT DE NEMOURS, INC., DYNAX CORPORATION, E.I. DU PONT DE NEMOURS AND COMPANY, KIDDE FENWAL, INC., NATIONAL FOAM, INC., THE CHEMOURS COMPANY L.L.C. F/K/A THE CHEMOURS COMPANY, TYCO FIRE PRODUCTS LP (successor-in-interest to the Ansul Co.), UTC FIRE & SECURITY AMERICAS CORPORATION, INC.; and JOHN DOE DEFENDANTS 1-49, Defendants.	MDL No. 2873 Master Docket No. 2:18-mn-2873 Judge Richard Mark Gergel Civil Action No. COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT
(JURY TRIAL DEMANDED)

SUMMARY OF THE CASE

1. Plaintiff, Town of Hopedale, Massachusetts ("Plaintiff") owns a water system that provides drinking water to residents and businesses in the Town of Hopedale, Massachusetts. Plaintiff brings this action to recover the substantial costs necessary to protect and restore its drinking water supplies, which are contaminated with synthetic per- and polyfluoroalkyl substances ("PFAS").

2. Plaintiff brings this action to address widespread contamination of stormwater, surface water and groundwater that provides drinking water to Plaintiff with PFAS, to recover costs associated with the contamination of drinking water, stormwater, surface water, and groundwater with PFAS, and further seek abatement of the ongoing nuisance these chemicals constitute in the environment, and for such other action as is necessary to ensure that the PFAS that contaminate the stormwater, surface water and aquifers supplying drinking water for Plaintiff does not present a risk to the public. In this Complaint, the term PFAS, includes without limitation, perfluorooctanesulfonic acid ("PFOS") and perfluorooctanoic acid ("PFOA"), as well as all of their salts and ionic states as well as the acid forms of the molecules and their chemical precursors.

3. PFOA and PFOS are persistent, toxic, and bioaccumulative compounds when released into the environment. PFOA and PFOS have impacted stormwater, surface water and groundwater, and now contaminate the water pumped from the Plaintiff's water supplies.

4. Defendants are companies that designed, manufactured, marketed, distributed, and/or sold PFOA and PFOS, the chemical precursors of PFOA and PFOS, and/or products containing PFOA and PFOS, and/or their chemical precursors. Defendants made products with PFAS including but are not limited to, Teflon®, Scotchguard®, waterproofing compounds, stain-proofing compounds, waxes, cloth coatings, paper and food package coatings like Zonyl®, aqueous film-forming foam ("AFFF"), a firefighting agent used to control and extinguish Class B fuel fires, and fluorosurfactants used in the manufacture of AFFF as well as telomer building blocks used to make fluorosurfactants that were then used to manufacture other PFAS-containing products, including AFFF. Collectively, Defendants' PFOA, PFOS, precursors, products containing PFOA and PFOS, AFFF, and other products and intermediates containing PFAS are referred to herein as "Fluorochemical Products."

5. Defendants designed, advertised, manufactured, marketed, distributed, stored and/or sold Fluorochemical Products with the knowledge that these toxic compounds would be released into the environment during fire protection, fire training, and response activities, even when used as directed and intended by defendants.

6. Defendants were also aware that their Fluorochemical Products would be and have been used, released, stored, and/or disposed of at, near, or within the vicinity of Plaintiff's drinking water supplies such that PFOS and PFOA, and their chemical precursors would enter the environment, migrate through the soil, sediment, stormwater, surface water, and groundwater, thereby contaminating Plaintiff's drinking water supplies.

7. As a result of the use of Defendants' Fluorochemical Products for their intended purpose, PFOS, PFOA, and/or their chemical precursors have been detected in Plaintiff's drinking water supply at levels exceeding Massachusetts maximum contamination level ("MCL").

8. Defendants knew or reasonably should have known that their PFOA and PFOS compounds would reach groundwater, pollute drinking water supplies, render drinking water unusable and unsafe, and threaten public health and welfare.

9. Plaintiff files this lawsuit to seek abatement of an ongoing nuisance, to recover compensatory and all other damages and relief, including all necessary funds to compensate Plaintiff for the costs of investigating and remediating the contamination of drinking water supplies impacted by PFOA and PFOS; designing, constructing, installing, operating, and maintaining the treatment facilities and equipment required to remove PFOA and PFOS from public water supplies; and for such other damages and relief the Court may order. Such costs include all necessary funds to investigate, monitor, assess, evaluate, remediate, abate, or contain contamination of groundwater resources that are polluted with PFOA and/or PFOS.

PARTIES

10. Plaintiff is a Town in Worcester County, Massachusetts having its principal place of business at 78 Hopedale Street, Hopedale, Massachusetts 01747. Plaintiff operates a public water system that serves approximately 5,996 people with approximately 2,183 residential, commercial and municipal customer connections. Customers are provided potable water primarily from its tubular well field consisting of over thirty wells within the Hopedale golf course. Customers are also provided water from five separate wells located on the Town's treatment plant.

11. Upon information and belief, Defendants' Fluorochemical Products, including, but not limited to, PFOA and PFOS containing fluorochemicals/intermediates and AFFF, were used at fire training facilities, and/or fire departments such that those compounds traveled by stormwater, surface water, groundwater, and contaminated Plaintiff's drinking water supplies. Defendants' Fluorochemical Products have also been used and disposed of into wastewater systems, causing contamination to stormwater, surface water, and groundwater that traveled to Plaintiff's drinking water supplies.

12. Defendant 3M Company (f/k/a Minnesota Mining and Manufacturing Company) ("3M") is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 3M Center, St. Paul, Minnesota 55133 but registered to do business in Massachusetts.

a. Beginning before 1970 and until at least 2002, 3M manufactured, distributed, and sold Fluorochemical Products. 3M manufactured, distributed, and sold AFFF containing PFOS throughout the United States, including in Massachusetts. 3M was the only company that manufactured or sold AFFF containing PFOS.

b. 3M researched, developed, manufactured, designed, marketed, distributed, released, promoted, and/or otherwise sold products and raw materials containing PFAS in markets around the country, including within Massachusetts, since at least the 1970s. These product and raw material sales were based on intentional direction at the Massachusetts market for these products and raw materials and availment of Massachusetts laws.

13. Defendant Tyco Fire Products LP ("Tyco") is a limited partnership formed in the State of Delaware with its principal place of business at 1400 Pennbrook Parkway, Landsdale, Pennsylvania. Tyco is an indirect subsidiary ultimately wholly owned by Johnson Controls International plc, an Irish public limited company listed on the New York Stock Exchange [NYSE: JCI]. Tyco is the successor in interest of The Ansul Company ("Ansul"), having acquired Ansul in 1990. (Ansul and Tyco, as the successor in interest to Ansul, will hereinafter be collectively referred to as "Tyco/Ansul.") Beginning in or around 1975, Ansul manufactured and/or distributed and sold AFFF that contained fluorochemical surfactants containing PFOA throughout the United States, including in Massachusetts. After Tyco acquired Ansul in 1990, Tyco/Ansul continued to manufacture, distribute, and sell AFFF that contained fluorocarbon surfactants containing PFOA throughout the United States, including in Massachusetts. Tyco does business throughout the United States and is registered to do business in the Commonwealth of Massachusetts. Upon information and belief, Tyco manufactured, distributed, and/or sold AFFF foam containing PFOA, which was used in Massachusetts.

14. Defendant Chemguard, Inc. is a Texas corporation with its principal place of business at One Stanton Street, Marinette, Wisconsin 54143. Beginning in or around 1994, Chemguard began manufacturing AFFF that contained PFOA. Upon information and belief,

Chemguard manufactured, distributed, and/or sold AFFF foam containing PFOA throughout the United States, including in Massachusetts. Upon information and belief, Chemguard manufactured, distributed, and/or sold AFFF foam containing PFOA, which has contaminated Plaintiff's drinking water supplies.

15. Defendant Buckeye Fire Equipment Company ("Buckeye") is a foreign corporation organized and existing under the laws of the State of Ohio, with its principal place of business at 110 Kings Road, Kings Mountain, North Carolina 28086. Beginning in or around 2004, Buckeye manufactured, distributed, and/or sold AFFF containing PFOA. Buckeye does business throughout the United States. Upon information and belief, Buckeye manufactured, distributed, and/or sold AFFF foam containing PFOA in Massachusetts and which has contaminated Plaintiff's drinking water supplies.

16. Defendant Kidde-Fenwal, Inc. ("Kidde-Fenwal") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 400 Main Street, Ashland, MA 01721. Kidde-Fenwal is the successor-in-interest to Kidde Fire Fighting, Inc. (f/k/a Chubb National Foam, Inc. f/k/a National Foam System, Inc.). Kidde-Fenwal does business throughout the United States. Kidde-Fenwal, Inc. was part of UTC Fire & Security Americas Corporation, Inc. Upon information and belief, Kiddie-Fenwal manufactured, distributed, and/or sold AFFF foam containing PFOA in Massachusetts and which has contaminated Plaintiff's drinking water supplies.

17. Defendant UTC Fire & Security Americas Corporation, Inc. ("UTC") is a Delaware corporation with its principal place of business at 13995 Pasteur Blvd., Palm Beach Gardens, Florida 33418. Upon information and belief, UTC was a division of United Technologies Corporation. UTC does and/or has done business throughout the United States,

including in Massachusetts. Upon information and belief, UTC manufactured, distributed, and/or sold AFFF foam containing PFOA, which has contaminated Plaintiff's drinking water supplies.

18. Defendant Carrier Global Corporation ("Carrier") is a Delaware corporation with its principal place of business located at 13995 Pasteur Boulevard, Palm Beach Gardens, Florida 33418. Upon information and belief, UTC is now a division of Carrier. Upon information and belief, Carrier does and/or has done business throughout the United States, including in Massachusetts.

19. Defendant National Foam, Inc. (a/k/a Chubb National Foam) is a Pennsylvania corporation, having a principal place of business at 350 East Union Street, West Chester, Pennsylvania 19382. National Foam manufactures the Angus brand of products and is the successor-in-interest to Angus Fire Armour Corporation (collectively, "National Foam/Angus Fire"). At all relevant times, National Foam manufactured fire suppression products, including AFFF that contained PFAS compounds. Upon information and belief, National Foam manufactured, distributed, and/or sold AFFF foam containing PFOA in Massachusetts and which has contaminated Plaintiff's drinking water supplies.

20. Defendant Arkema, Inc. ("Arkema") is a corporation organized and existing under the laws of Pennsylvania, having a principal place of business at 900 First Avenue, King of Prussia, PA 19406. Arkema and/or its predecessors manufactured fluorosurfactants used in AFFF. Arkema is a successor in interest to Atochem North American, Inc., Elf Atochem North America, Inc., and Atofina Chemicals, Inc. and does and/or has done business throughout the United States and is registered to business in the Commonwealth of Massachusetts.

21. AGC Chemicals Americas Inc. ("AGC") is a corporation organized and existing under the laws of Delaware, having a principal place of business in 5 East Uwchlan Avenue,

Suite 201, Exton, PA 19341. AGC and/or its affiliates manufactured fluorochemicals used in AFFF. AGC does and/or has done business throughout the United States. On information and belief, AGC is the North American subsidiary of AGC Inc. (f/k/a Asahi Glass, Co., Ltd.) and does business throughout the United States, including in Massachusetts.

22. Defendant Dynax Corporation ("Dynax") is a corporation organized and existing under the laws of Delaware, having a principal place of business at 79 Westchester Avenue, Pound Ridge, New York 10576 and an address for service of process at 103 Fairview Park Drive Elmsford, New York 10523-1544. Dynax manufactured fluorosurfactants used in AFFF and does and/or has done business throughout the United States, including in Massachusetts.

23. Defendant Clariant Corporation ("Clariant") is a corporation organized and existing under the laws of New York, having a principal place of business at 4000 Monroe Road, Charlotte, North Carolina. Clariant manufactured fluorochemicals used in AFFF. On information and belief, Clariant was formerly known as Sandoz Chemicals Corporation and as Sodyeco, Inc and does and/or has done business throughout the United States, including in Massachusetts.

24. Defendant Archroma U.S., Inc. ("Archroma") is a Delaware corporation with its principal place of business located at 5435 77 Center Dr., #10, Charlotte, North Carolina 28217. Upon information and belief, Archroma U.S., Inc. is a subsidiary of Archroma Management, LLC, and supplied Fluorochemical Products for use in AFFF sold throughout the United States, including in Massachusetts where it is registered to do business. On information and belief, Archroma is a successor to Clariant.

25. Defendant E. I. du Pont de Nemours and Company ("Old DuPont") is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805. Old DuPont has done

business throughout the United States, including conducting business in Massachusetts, and is registered to do business in Massachusetts.

a. Old DuPont has been involved in the production and sale of fluorochemical intermediaries for use in AFFF manufacturing since the 1950s. When 3M left the market, Old DuPont took on a larger role in the AFFF market.

b. Old DuPont has also manufactured, distributed, and sold Fluorochemical Products and raw PFAS chemicals around the country pursuant to a nationwide marketing campaign, including in Massachusetts.

c. Also on information and belief, Old DuPont was engaged in joint ventures and other business arrangements with Massachusetts entities for the development of Fluorochemical Products.

26. Defendant The Chemours Company ("Chemours") is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 1007 Market Street, Wilmington, Delaware 19899. Chemours does business throughout the United States, including conducting business in Massachusetts, and is registered to do business in Massachusetts.

a. Chemours was a wholly owned subsidiary of Old DuPont. In July 2015, Old DuPont completed its spin-off of Chemours as a separate publicly traded entity.

b. Chemours has received and begun manufacturing certain product lines from Old DuPont, including some product lines involving manufacture, sale, and distribution of PFAS-containing intermediates and Fluorochemical Products.

c. In connection with the spin-off, Chemours assumed direct liability for Old DuPont's decades long history of causing widespread PFAS contamination in

Massachusetts, around the country, and indeed the world.

27. Defendant DuPont de Nemours, Inc., formerly known as DowDuPont Inc. ("New DuPont") is a corporation duly organized under the laws of the State of Delaware, with its principal place of business at 974 Centre Road, Wilmington, Delaware 19805. New DuPont does business throughout the United States, including in Massachusetts.

a. New DuPont assumed direct liability for Old DuPont's decades long history of causing widespread PFAS contamination in Massachusetts, around the country, and indeed the world.

28. Defendant Corteva, Inc. ("Corteva") is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 974 Center Road, Wilmington, Delaware 19805. Corteva does business throughout the United States, including conducting business in Massachusetts, and is registered to do business in Massachusetts.

a. Corteva assumed direct liability for Old DuPont's decades long history of causing widespread PFAS contamination in Massachusetts, around the country, and indeed the world.

29. Upon information and belief, Defendant John Does 1-49 were manufacturers, distributors, and/or sellers of Fluorochemical Products. Although the identities of the John Doe Defendants are currently unknown, Plaintiff expects that their names will be ascertained during discovery, at which time Plaintiff will move for leave of this Court to add those entities' actual names to the complaint as defendants.

30. Any and all references to a defendant or defendants in this Complaint include any predecessors, successors, parents, subsidiaries, affiliates, and divisions of the named defendants.

JURISDICTION AND VENUE

31. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

32. Plaintiff is filing this complaint as permitted by Case Management Order No. 3 (CMO 3) issued by Judge Richard M. Gergel of this Court. Pursuant to CMO 3, Plaintiff designates the United States District Court for the District of Massachusetts as the "home venue" where Plaintiff would have otherwise filed suit pursuant to 28 U.S.C. § 1391. But for CMO 3, venue is proper in the United States District Court for District of Massachusetts in that the events or omissions giving rise to the claim occurred in that district. Plaintiff respectfully requests that at the time of the transfer of this action back to trial court for further proceedings, this case be transferred to the United States District Court for the District of Massachusetts.

33. The United States District Court for the District of Massachusetts has personal jurisdiction over the Defendants because at all times relevant to this lawsuit, the Defendants purposefully manufactured, designed, marketed, advertised, distributed, released, promoted and/or otherwise sold (directly or indirectly) PFAS-containing Fluorochemical Products, including AFFF, to various locations in the United States and Massachusetts, such that each Defendant knew or should have known that said products would be delivered to areas in Massachusetts for active use including, but not limited to, during the course of training and firefighting activities, including areas within Plaintiff's drinking water supplies.

34. Plaintiff is informed and believes, and based thereon alleges that, at all relevant times, the Defendants engaged in and were authorized to do business in the Commonwealth of Massachusetts.

35. Plaintiff is informed and believes, and based thereon alleges that, at all relevant times, the Defendants have engaged in substantial, continuous economic activity in Massachusetts, including the business of researching, designing, formulating, handling,

disposing, manufacturing, labeling, using, testing, distributing, promoting, marketing, selling, advertising and/or otherwise being responsible for PFOS, PFOA, and/or products that contain PFOS and/or PFOA, and that said activity by the Defendants is substantially connected to the Plaintiff's claims as alleged herein.

36. Based on information and belief, the Defendants purposefully affiliated themselves with the forum of the Commonwealth of Massachusetts giving rise to the underlying controversy. Such purposeful availment and activities within and related to the Commonwealth of Massachusetts are believed to include, but are not limited to: 1) the Defendants' contractual relationships with the entities giving rise to researching, designing, formulating, handling, disposing, manufacturing, labeling, using, testing, distributing, promoting, marketing, selling, and/or otherwise being responsible for PFOS, PFOA, and/or products that contain PFOS and/or PFOA, and that said activity is substantially connected to the Plaintiff's claims as alleged herein; 2) agreements between the Defendants and entities, institutions and thought leader academics within the Commonwealth of Massachusetts regarding the PFOS, PFOA, and/or products that contain PFOS and/or PFOA where the Defendants contractually consented to have state courts within the Commonwealth of Massachusetts adjudicate disputes; 3) conducted purposeful and direct promotion, marketing, advertising, selling, and advising third-party sellers of, the PFOS, PFOA, and/or products that contain PFOS and/or PFOA, targeted specifically to consumers and businesses within the Commonwealth of Massachusetts; 4) lobbying, consulting, and advisory efforts on behalf of the Defendants with regard to the PFOS, PFOA, and/or products that contain PFOS and/or PFOA stemming from law firms and other agents in the Commonwealth of Massachusetts; and 5) and other actions by Defendants targeted to the Commonwealth of Massachusetts to be obtained through discovery and other means. As the location from which the

Defendants' suit-related conduct arose, Massachusetts has a substantial vested interest in the acts of the Defendants which led to the underlying controversy.

37. At all times herein mentioned, the Defendants, each of them, had actual knowledge that each of the other Defendants was going to intentionally and negligently engage in the tortious misconduct and acts alleged in the causes of action set forth in this complaint, including but not limited to the acts, failures to act, misrepresentations and breaches of duties of care owed by each of the Defendants to Plaintiff.

38. Therefore, the exercise of jurisdiction over the Defendants by the United States District Court for the District of Massachusetts does not offend traditional notions of fair play and substantial justice.

BACKGROUND AND FACTUAL ALLEGATIONS
THE PFAS COMPOUNDS

39. PFAS are a family of chemical compounds containing fluorine and carbon atoms.

40. PFAS have been prevalently used for decades in industrial settings and in the production of thousands of common household and commercial products, including those that are heat resistant, stain resistant, long lasting, and water and oil repellant.

41. The PFAS family of chemicals are entirely anthropogenic and do not exist in nature.

42. PFOA and PFOS are PFAS that are known to have characteristics that cause extensive and persistent environmental contamination.

43. Specifically, PFOA and PFOS are persistent, toxic, and bioaccumulative, as well as highly mobile in soil and groundwater.

44. PFOA and PFOS are mobile in that they are soluble and do not easily adsorb (stick) to soil particles.

45. PFOA and PFOS are readily transported through the air and in stormwater, as well as the soil and into groundwater where they can migrate long distances.

46. PFOA and PFOS are persistent in that they do not readily biodegrade or chemically degrade in the environment or in conventional treatment systems for drinking water or wastewater.

47. PFOA and PFOS are thermally, chemically, and biologically stable in the environment and resistant to biodegradation, atmospheric photo-oxidation, direct photolysis, and hydrolysis.

48. Once PFOA and/or PFOS are applied, discharged, disposed of, or otherwise released onto land or into the air, soil, sediments, or water, they migrate through the environment and into stormwater, surface water and groundwater.

49. PFOA and PFOS resist natural degradation and are difficult and costly to remove from soil and water.

50. PFOA and PFOS bioaccumulate, biopersist, and biomagnify in the food web, including in people and other organisms.

51. Exposure to PFOA and PFOS has been associated with several negative health outcomes in both humans and animals, including, but not limited to, the following:

a. Altered growth, learning, and behavior of infants and older children;

b. Lowering a woman's chance of getting pregnant;

c. Interference with the body's natural hormones;

d. Increased cholesterol levels;

e. Modulation of the immune system;

f. Increased risk of certain cancers;

g. Increased risk of thyroid disease;

h. Increased risk of pre-eclampsia; and

i. Increased risk of ulcerative colitis.

52. Contamination from PFOA and/or PFOS presents a threat to public health and the environment.

53. In addition to drinking contaminated water, humans can be exposed to PFOA and PFOS through inhalation, ingestion of contaminated food, and dermal contact.

54. PFOA and PFOS enter the environment from industrial facilities that use PFAS in the manufacture or production of other products.

55. Releases of PFAS to land, air, and water from industrial sites are known pathways to the environment for PFOA and PFOS.

56. Due to their widespread use in consumer and commercial products, PFOA and PFOS may also enter the environment from wastewater treatment facilities after the products containing them have been disposed of in landfills, during the use of the products, or in other manners.

57. On information and belief, PFAS have been released into the environment from these various pathways of contamination to surface and groundwater in and around Plaintiff's drinking water supplies.

58. In the same way that PFAS are released from consumer products through their disposal in landfills, PFAS are also released from consumer products directly into the wastewater stream, *e.g.*, by laundering PFAS-coated clothing, through use of PFAS-containing home care products, like Scotchguard®, Stainmaster®, Polartec®, and Gore-tex® fabric coatings and cleaners, paper and food package coatings like Zonyl®, and through use of PFAS-containing

cook wear, including Teflon®.

59. Also, on information and belief, the Defendants sold PFAS and/or PFAS-containing products to companies with Massachusetts locations that Defendants knew or should have known would be used and/or disposed of in Massachusetts.

60. 3M and Old DuPont branded products are sold throughout the United States and inside Massachusetts based on nationwide advertising and marketing campaigns.

61. Old DuPont (and later Chemours) branded intermediate products, including (for example) automobile-coating products, are sold to and applied within Worcester County, which coatings would have been applied at and pursuant to Old DuPont's (and later Chemours') instruction and, on information and belief, with training from Old DuPont (and later Chemours).

62. Defendants have directed PFAS or PFAS-containing products and intermediates to Massachusetts consumers or businesses for consumption and disposal in Massachusetts.

63. All the while, the Defendants have known of health and environmental risks associated with PFAS compounds for decades but concealed that knowledge until it was exposed through litigation and regulatory action in relatively recent years.

64. The Defendants' manufacture, distribution and/or sale of PFOA and/or PFOS and/or products containing PFOA and/or PFOS resulted in the release of PFOS and/or PFOA into the environment in Massachusetts.

65. Through their involvement and/or participation in the creation of consumer or other commercial products and materials and related training and instructional materials and activities, the Defendants knew, foresaw, and/or should have known and/or foreseen that PFOA and/or PFOS would contaminate the environment.

66. The Defendants knew, foresaw, and/or should have known and/or foreseen that

their marketing, promotion, advertising, development, manufacture, distribution, release, training of users of, production of instructional materials about, sale and/or use of PFOA and/or PFOS containing materials, including in Massachusetts, would result in the contamination of the groundwater that is the primary source of water supply for Plaintiff's drinking water supply system.

67. The Defendants' products were unreasonably and inherently dangerous and the Defendants failed to warn of this danger.

THE PLAINTIFF'S DRINKING WATER SUPPLY

68. On information and belief, Plaintiff's drinking water supplies have been impacted by use and discharge of Fluorochemical Products, including AFFF, such that Fluorochemical Products has traveled via surface water, stormwater and groundwater to contaminate Plaintiff's drinking water supplies.

69. PFOA and PFOS have impacted surface water, stormwater and groundwater, and now contaminate the water pumped from Plaintiff's drinking water supplies.

70. Because of the risks that PFOA and PFOS pose to human health, the Commonwealth of Massachusetts regulates PFOA and PFOS in drinking water at very low levels.

71. On October 20, 2020, the Commonwealth of Massachusetts established a maximum contamination level ("MCL") of 20 parts per trillion for the sum of the following PFAS compounds: PFOS, PFOA, perfluorohexane sulfonic acid, perfluorononanoic acid, perfluoroheptanoic acid, perfluorodecanoic acid (collectively referred to as PFAS6).

72. Defendants' PFAS has been detected in Plaintiff's drinking water supplies.

3M COMPANY'S MANUFACTURE AND DISTRIBUTION OF PFAS

73. For most of the past seven decades through the early 2000s, 3M was the primary manufacturer of PFOS in the United States.

74. 3M is the only known manufacturer of PFOS in the United States.

75. 3M began producing PFOS and PFOA as raw materials or ingredients that it used to produce other products, or that it sold to third parties for use in other products.

76. 3M produced PFOS by electrochemical fluorination beginning in the 1940s.

77. Electrochemical fluorination results in a product that contains and/or breaks down into compounds containing PFOS and/or PFOA.

78. 3M went on to market and promote PFAS and shipped PFAS to manufacturers, including Old DuPont, throughout the United States, including Massachusetts. 3M made enormous profits from PFAS and products containing PFAS and shipped PFAS and products containing PFAS to Massachusetts and throughout the country for decades until announcing in 2000 that it would cease production of PFOA and PFOS (described in more detail below).

OLD DUPONT'S USE AND MANUFACTURE OF PFOA

79. Beginning in 1951, Old DuPont began purchasing PFOA from 3M for use in the manufacturing process for Old DuPont's name-brand product Teflon®, commonly known for its use as a coating for non-stick cookware.

80. Old DuPont has also used PFAS in other name-brand products such as Stainmaster®, and manufactured a variety of PFAS-containing products, such as fluorochemical-based surfactants used in AFFF, including through a telomerization process that included, contained, degraded, or broke down into and/or generated PFOA.

81. Although Old DuPont was fully aware that PFOA was an inherently dangerous and toxic chemical for decades, it produced its own PFAS compounds for use in its

manufacturing processes, including its initiation of PFOA production as 3M phased out production of PFOA.

82. Old DuPont marketed and promoted PFAS, and it shipped PFAS and PFAS-containing products to manufacturers throughout the United States, including Massachusetts. Old DuPont made enormous profits from PFAS and products containing PFAS and shipped PFAS and products containing PFAS to Massachusetts as well as throughout the country for decades, including with PFOA, which Old DuPont publicly claimed to have stopped manufacturing in 2013.

3M'S KNOWLEDGE OF THE DANGERS OF PFAS

83. In the 1950s, based on its own internal studies, 3M concluded that PFAS are "toxic."

84. 3M knew as early as the mid-1950s that PFAS bioaccumulate in humans and animals.

85. By the early 1960s, 3M understood that some PFAS are highly persistent in the environment, meaning that they do not degrade.

86. 3M knew as early as 1960 that chemical wastes from its PFAS manufacturing facilities that were dumped to landfills would leach into groundwater and otherwise enter the environment. A 3M internal memo from 1960 described the company's understanding that such wastes "[would] eventually reach the water table and pollute domestic wells."

87. As early as 1963, 3M was aware that its PFAS products were persistent in the environment and would not degrade after disposal.

88. 3M began monitoring the blood of its employees for PFAS, as early as 1976, because 3M was concerned about health effects of PFAS.

89. 3M documents from 1977 relating to these worker tests further confirm that PFAS bioaccumulate.

90. By at least 1970, 3M knew that its PFAS products were hazardous to marine life.

91. One study of 3M's PFAS around this time had to be abandoned to avoid severe local pollution of nearby surface waters.

92. In 1975, 3M found there was a "universal presence" of at least one form of PFAS in blood serum samples taken from across the United States.

93. Because PFAS are not naturally occurring in any amount, anywhere on the planet, this finding unquestionably alerted 3M to the near inevitability that its products were a pathway for widespread public exposure to its toxic ingredient—a likelihood that 3M considered internally but did not share outside the company.

94. This finding also alerted 3M to the likelihood that this PFAS is mobile, persistent, bioaccumulative, and biomagnifying, as those characteristics would explain the ubiquitous presence of this PFAS from 3M's products in human blood.

95. According to a deposition transcript in a lawsuit brought by the State of Minnesota against 3M [No. 27-cv-10-28862 (4th Judicial Dist. Ct. Hennepin Cty.)] ("Minn. Lawsuit") for damages to the state's natural resources from PFAS, 3M began monitoring the blood of its employees for PFAS, as early as 1976, because the company was "concerned" about "health" effects of PFAS. 3M documents from 1977 relating to these worker tests further confirmed that PFAS bioaccumulate.

96. Other studies by 3M in 1978 showed that PFOA and PFOS are toxic to monkeys.

97. In the late 1970s, 3M studied the fate and transport characteristics of PFOS in the environment, including in surface water and biota.

98. A 1979 report drew a direct line between effluent from 3M's Decatur, Alabama plant and PFAS bioaccumulating in fish tissue taken from the Tennessee River.

99. 3M resisted calls from its own ecotoxicologists going back to 1979 to perform an ecological risk assessment on PFOS and similar chemicals.

100. 3M's own ecotoxicologists continued raising concerns to 3M until at least 1999.

101. In 1983, 3M scientists opined that concerns about PFAS "give rise to legitimate questions about the persistence, accumulation potential, and ecotoxicity of [PFAS] in the environment."

102. In 1984, 3M's internal analyses demonstrated that PFAS were likely bioaccumulating in 3M fluorochemical employees.

103. According to the Minnesota Attorney General, despite 3M's understanding of the risks associated with PFAS, 3M engaged in a campaign to distort scientific research concerning PFAS and to suppress research into the potential harms associated with PFAS.

104. According to a deposition transcript from the Minn. Lawsuit, 3M recognized that if the public and governmental regulators became aware of the risks associated with PFAS, 3M would be forced to halt its manufacturing of PFAS and PFAS-derived products that would result in the loss of hundreds of millions of dollars in annual revenue.

105. The potential loss of 3M's massive profits from PFAS drove 3M to engage in a campaign to influence the science relating to PFAS and, according to internal 3M documents,to conduct scientific "research" that it could use to mount "[d]efensive [b]arriers to [l]itigation."

106. A key priority of an internal 3M committee—referred to as the FC Core Team—was to "[c]ommand the science" concerning "exposure, analytical, fate, effects, human health and ecological" risks posed by PFAS and for 3M to provide "[s]elective funding of outside

research through 3M 'grant' money."

107. In exchange for providing grant money to friendly researchers, 3M obtained the right to review and edit draft scientific papers regarding PFAS and sought control over when and whether the results of scientific studies were published at all.

108. A significant aspect of 3M's campaign to influence independent scientific research involved 3M's relationship with Professor John Giesy. 3M provided millions of dollars in grants to Professor Giesy, who presented himself publicly as an independent expert but, as revealed in his deposition transcript in the Minn. Lawsuit, he privately characterized himself as part of the 3M "team."

109. According to Professor Giesy's deposition transcript in the Minn. Lawsuit, Professor Giesy worked on behalf of 3M to "buy favors" from scientists in the field for the purpose of entering into a "quid pro quo" with the scientists.

110. According to emails produced by Professor Giesy in the Minn. Lawsuit, through his position as an editor of academic journals, Professor Giesy reviewed "about half of the papers published in the area" of PFAS ecotoxicology and billed 3M for his time reviewing the articles and, in performing reviews of these articles, Professor Giesy stated that he was always careful to ensure that there was "no paper trail to 3M" and that his goal was to "keep 'bad' papers [regarding PFAS] out of the literature" because "in litigation situations" those articles "can be a large obstacle to refute."

111. According to Professor Giesy's deposition transcript in the Minn. Lawsuit, despite spending most of his career as a professor at public universities, Professor Giesy has a net worth of approximately $20 million which is, according to the Minnesota Attorney General, in part, a direct result from his long-term involvement with 3M for the purpose of suppressing independent

scientific research on PFAS.

112. 3M's own employees recognized that 3M was concealing known dangers relating to PFAS. For example, in a 1999 resignation letter, an employee stated that "I can no longer participate in the process that 3M has established for the management of [PFAS.] For me, it is unethical to be concerned with markets, legal defensibility and image over environmental safety."

113. In response to pressure from the United States Environmental Protection Agency ("EPA"), 3M began to phase out production of PFOS and PFOA products in 2000.

114. On May 16, 2000, 3M issued a news release asserting that "our products are safe," citing the company's "principles of responsible environmental management" as the reason to cease production.

115. On the same day as 3M's phase-out announcement, an EPA press release stated: "3M data supplied to EPA indicated that these chemicals are very persistent in the environment, have a strong tendency to accumulate in human and animal tissues and could potentially pose a risk to human health and the environment over the long term."

116. In a memo explaining its decision, EPA stated that PFOS "appears to combine Persistence, Bioaccumulation, and Toxicity property to an extraordinary degree."

117. 3M knew or should have known that through their intended and/or common use, products containing PFAS would very likely injure and/or threaten public health and the environment in Massachusetts.

OLD DUPONT'S KNOWLEDGE OF THE DANGERS OF PFAS AND MOUNTING LIABILITIES

118. Beginning in the 1950s, Old DuPont manufactured, produced, or utilized PFOA and other PFAS at several facilities in the United States.

119. Throughout this time, Old DuPont was aware that PFOA was toxic, harmful to animals and humans, bioaccumulative, and biopersistent in the environment. Old DuPont also knew that it directly emitted and discharged, and continued to emit and discharge, PFOA in large quantities into the environment from its manufacturing plants, such that hundreds of thousands of people had been exposed to its PFOA, including through public and private drinking water supplies.

120. Old DuPont company scientists issued internal warnings about the toxicity associated with their PFAS products as early as 1961.

121. Old DuPont's Toxicology Section Chief opined that such products should be "handled with extreme care," and that contact with the skin should be "strictly avoided."

122. In 1978, based on information it received from 3M about elevated and persistent organic fluorine levels in workers exposed to PFAS, Old DuPont initiated a plan to review and monitor the health conditions of potentially exposed workers in order to assess whether any negative health effects could be attributed to PFAS exposure.

123. This monitoring plan involved obtaining blood samples from the workers and analyzing them for the presence of organic fluorine.

124. By 1979, Old DuPont had data indicating that its workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers.

125. Old DuPont did not report this data or the results of its worker health analysis to any government agency or community.

126. The following year, Old DuPont internally confirmed that PFOA "is toxic," that humans bioaccumulate PFOA in their tissue, and that "continued exposure is not tolerable."

127. Not only did Old DuPont know that PFOA bioaccumulates in humans, but it was

also aware that PFOA could cross the placenta from an exposed mother to her gestational child.

128. In fact, Old DuPont had reported to EPA in March 1982 that results from a rat study showed PFOA crossing the placenta if present in maternal blood, but Old DuPont concealed the results of internal studies of its own plant workers confirming placental transfer of PFOA in humans.

129. While Old DuPont knew about this toxicity danger as early as the 1960s, Old DuPont also was aware that PFAS was capable of contaminating the surrounding environment and causing human exposure.

130. By at least 1981, Old DuPont also knew that PFOA could be emitted into the air from its facilities, and that those air emissions could travel beyond the facility boundaries and enter the environment and natural resources.

131. By 1984, Old DuPont unquestionably was aware that PFOA is biopersistent.

132. Old DuPont was long aware that the PFOA it was releasing from its facilities was leaching into groundwater used for public drinking water.

133. After obtaining data on these releases and the resulting contamination near Old DuPont's Washington Works plant in West Virginia in 1984, Old DuPont held a meeting at its corporate headquarters in Wilmington, Delaware, to discuss health and environmental issues related to PFOA (the "1984 Meeting").

134. Old DuPont employees who attended the 1984 Meeting discussed available technologies that could control and reduce PFOA releases from its manufacturing facilities, as well as potential replacement materials.

135. Old DuPont chose not to use either available technologies or replacement materials, despite knowing of PFOA's toxicity.

136. During the 1984 Meeting, Old DuPont employees in attendance spoke of the PFOA issue as "one of corporate image, and corporate liability."

137. They were resigned to Old DuPont's "incremental liability from this point on if we do nothing" because Old DuPont was "already liable for the past 32 years of operation."

138. They also stated that the "legal and medical [departments within Old DuPont] will likely take the position of total elimination" of PFOA use in Old DuPont's business, and that these departments had "no incentive to take any other position."

139. By 2000, Old DuPont's in-house counsel was particularly concerned about the threat of punitive damages resulting from Old DuPont's releases of PFOA at its Washington Works facility in West Virginia.

140. Old DuPont's own Epidemiology Review Board repeatedly raised concerns about Old DuPont's statements to the public that there were no adverse health effects associated with human exposure to PFOA.

141. For example, in February 2006, the Epidemiology Review Board "strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health" and questioned "the evidential basis of [Old DuPont's] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health."

142. In 2004, EPA filed an action against Old DuPont based on its failure to disclose toxicity and exposure information for PFOA, in violation of federal environmental laws.

143. In 2005, Old DuPont eventually settled the action by agreeing to pay $10.25 million in a civil administrative penalty and to complete $6.25 million in supplemental environmental projects.

144. The combined settlement resolved eight counts brought by the EPA alleging

violations of the Toxic Substances Control Act and the Resource Conservation and Recovery Act concerning the toxicity of PFAS compounds.

145. Old DuPont also promised to phase out production and use of PFOA by 2015.

146. EPA called the settlement the "largest civil administrative penalty EPA has ever obtained under any federal environmental statute."

147. Old DuPont and Chemours knew or should have known that in their intended and/or common use products containing PFAS would very likely injure and/or threaten public health and the environment in Massachusetts.

148. Also, in 2005, a final court order was entered approving Old DuPont's 2004 settlement in the class action lawsuit styled *Leach, et al. v. E. I. du Pont de Nemours & Co.*, Civil Action No. 01-C-608 (Wood Cty. W. Va. Cir. Ct.) (the "Leach Action") filed on behalf of approximately 70,000 individuals with PFOA-contaminated drinking water supplies in Ohio and West Virginia for benefits valued at over $300 million.

149. Under the terms of the final class action settlement, Old DuPont agreed to fund a panel of independent scientists (the "C8 Science Panel") to conduct whatever studies were necessary to confirm which diseases were linked to class member PFOA exposure, to remove PFOA from the contaminated water sources, and to pay up to $235 million for medical monitoring of class members with respect to any diseases linked by the C8 Science Panel to their PFOA exposure. "C-8," a term used internally by DuPont employees, is an alternative name for PFOA.

150. After seven years of study and analyses, the C8 Science Panel confirmed that PFOA exposures among class members were linked to six serious human diseases, including two types of cancer.

151. More than 3,500 personal injury claims were filed against Old DuPont in Ohio and West Virginia following the final settlement in the *Leach* Action and the findings of the C8 Science Panel.

152. These claims were consolidated in the federal multidistrict litigation styled *In Re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL No. 2433) in the United States District Court for the Southern District of Ohio (the "C8 MDL").

153. Between 2015 and 2016, juries in three bellwether trials in the C8 MDL returned multi-million-dollar verdicts against Old DuPont, awarding compensatory damages and, in two cases, punitive damages to plaintiffs who claimed PFOA exposure caused their cancers.

154. As discussed below, Old DuPont required that Chemours both directly assume its historical PFAS liabilities and indemnify Old DuPont from those liabilities. Chemours explained in its November 2016 SEC filing: "[s]ignificant unfavorable outcomes in a number of cases in the [C8] MDL could have a material adverse effect on Chemours' consolidated financial position, results of operations or liquidity."

155. On February 13, 2017, Old DuPont and Chemours agreed to pay $670.7 million to resolve the approximately 3,500 then-pending cases in the C8 MDL.

156. In January 2021, Old DuPont and Chemours agreed to pay an additional $83 million to resolve additional cases that had been filed in the C8 MDL since the 2017 settlement.

OLD DUPONT'S MULTI-STEP, FRAUDULENT SCHEME TO ISOLATE ITS VALUABLE TANGIBLE ASSETS FROM ITS PFAS LIABILITIES AND HINDER CREDITORS

157. By 2013, Old DuPont knew that it faced substantial environmental and other liabilities arising from its use of PFOA at Washington Works alone, as well as liability related to PFAS contamination at other sites and areas throughout the country, and its sale of products

containing PFAS, and that its liability was likely billions of dollars.

158. These liabilities include clean-up costs, remediation obligations, tort damages, natural resource damages and, most importantly, likely massive and potentially crippling punitive damages arising from Old DuPont's intentional misconduct.

159. In light of this significant exposure, upon information and belief, by 2013 Old DuPont's management began to consider restructuring the company to, among other things, avoid responsibility for the widespread environmental harm and personal injuries that Old DuPont's PFAS and associated conduct caused, and to shield billions of dollars in assets from these substantial liabilities. Old DuPont referred to this initiative internally as "Project Beta."

160. Upon information and belief, Old DuPont contemplated various restructuring opportunities, including potential merger structures. In or about 2013, Old DuPont and The Old Dow Chemical Company ("Old Dow") began discussions about a possible "merger of equals."

161. Upon information and belief, Old DuPont recognized that neither Old Dow, nor any other rational merger partner, would agree to a transaction that would result in exposing Old Dow, or any other merger partner, to the substantial PFAS liabilities that Old DuPont faced.

162. Accordingly, Old DuPont's management decided to pursue a corporate restructuring strategy specifically designed to isolate Old DuPont's massive legacy liabilities from its valuable tangible assets in order to shield those assets from creditors and entice Old Dow to pursue the proposed merger.

163. Old DuPont engaged in a three-part restructuring plan, further explained below.

164. The first step in Old DuPont's plan was to transfer its Performance Chemicals business (which included Teflon® and other products, the manufacture of which involved the use of PFOA and other PFAS) into its wholly owned subsidiary, Chemours. And then, in July

2015, Old DuPont "spun-off" Chemours as a separate publicly traded entity and saddled Chemours with Old DuPont's massive legacy liabilities (the "Chemours Spinoff").

165. Old DuPont knew that Chemours was undercapitalized and could not satisfy the massive liabilities that it caused Chemours to assume. Old DuPont also knew that the Chemours Spinoff alone would not isolate its own assets from its PFAS liabilities, and that Old DuPont still faced direct liability for its own conduct.

166. Accordingly, Old DuPont moved on to the next step of its plan, designed to further distance itself from the exposure it had created over its decades of illicit conduct with regard to PFAS.

167. The second step involved Old DuPont and Old Dow entering into an "Agreement and Plan of Merger" in December 2015, pursuant to which Old DuPont and Old Dow merged with subsidiaries of a newly formed holding company, DowDuPont, Inc. ("DowDuPont"), which was created for the sole purpose of effectuating the merger. Old DuPont and Old Dow became subsidiaries of DowDuPont.

168. Then, through a series of subsequent agreements, DowDuPont engaged in numerous business segment and product line "realignments" and "divestitures."

169. The net effect of these transactions was to transfer, either directly or indirectly, a substantial portion of Old DuPont's assets to DowDuPont.

170. The third step involved DowDuPont spinning off two, new, publicly traded companies: (i) Corteva, which currently holds Old DuPont as a subsidiary, and (ii) Dow, Inc. ("New Dow") which currently holds Old Dow as a subsidiary. DowDuPont was then renamed New DuPont.

171. As a result of these transactions, between December 2014 (pre-Chemours

Spinoff) and December 2019 (post-Dow merger), the value of Old DuPont's tangible assets decreased by $20.85 billion.

172. New DuPont and New Dow now hold the vast majority of the tangible assets that Old DuPont formerly owned.

173. Many of the details about these transactions are hidden from the public in confidential schedules and exhibits to the various restructuring agreements. Upon information and belief, Old DuPont, New DuPont, New Dow, and Corteva have intentionally buried these details in an attempt to hide from creditors, like Plaintiff, where Old DuPont's valuable assets went and to hide the inadequate consideration that Old DuPont received in return.

STEP 1: THE CHEMOURS SPINOFF

174. In February 2014, Old DuPont formed Chemours as a wholly owned subsidiary. Chemours was originally incorporated on February 18, 2014, under the name "Performance Operations, LLC."

175. On or about April 15, 2014, the company was renamed "The Chemours Company, LLC," and on April 30, 2015, it was converted from a limited liability company to a corporation named "The Chemours Company."

176. Prior to July 1, 2015, Chemours was a wholly owned subsidiary of Old DuPont. On July 1, 2015, Old DuPont completed the spinoff of its Performance Chemicals Business, consisting of Old DuPont's Titanium Technologies, Chemical Solutions, and Fluoroproducts segments, and Chemours became a separate, publicly traded entity.

177. The Performance Chemicals Business included fluorochemical products and the business segment that had manufactured, used, and discharged PFOA into the environment.

178. Prior to the Chemours Spinoff, Chemours was a wholly owned subsidiary of Old

DuPont, and its Board of Directors had three members, all of whom were Old DuPont employees.

179. On June 19, 2015, a fourth member of the Board was appointed, and upon information and belief, this fourth member had served as a member of Old DuPont's Board of Directors from 1998 to 2015.

180. On July 1, 2015, effective immediately prior to the Chemours Spinoff, the size of the Chemours Board of Directors was expanded to eight members. The three initial Old DuPont employees resigned from the Board, and to fill the vacancies created thereby, seven new members were appointed.

181. To effectuate the Chemours Spinoff, Old DuPont and Chemours entered into the June 26, 2015 Separation Agreement (the "Chemours Separation Agreement").

182. Pursuant to the Chemours Separation Agreement, Old DuPont agreed to transfer to Chemours all businesses and assets related to the Performance Chemicals Business, including 37 active chemical plants.

183. Old DuPont completed a significant internal reorganization prior to the Chemours Spinoff, such that all of the assets that Old DuPont deemed to be part of the Performance Chemicals Business would be transferred to Chemours.

184. At the same time, Chemours accepted a broad assumption of liabilities for Old DuPont's historical use, manufacture, and discharge of PFAS, although the specific details regarding the nature, probable maximum loss value, and anticipated timing of the liabilities that Chemours assumed are not publicly available.

185. Notwithstanding the billions of dollars in PFAS liabilities that Chemours would face, on July 1, 2015, Chemours transferred to Old DuPont approximately $3.4 billion as a cash

dividend, along with a "distribution in kind" of promissory notes with an aggregate principal amount of $507 million.

186. Thus, in total, Chemours distributed $3.9 billion to Old DuPont. Chemours funded these distributions by entering into approximately $3.995 billion of financing transactions, including senior secured term loans and senior unsecured notes, on May 12, 2015. Also, Chemours distributed approximately $3.0 billion in common stock to Old DuPont shareholders on July 1, 2015 (181 million shares at $16.51 per share price).

187. Accordingly, most of the valuable assets that Chemours may have had at the time of the Chemours Spinoff were unavailable to creditors with current or future PFAS claims, and Old DuPont stripped Chemours's value for itself and its shareholders. In total, Chemours transferred almost $7 billion in stock, cash, and notes to Old DuPont and its shareholders. Old DuPont, however, only transferred $4.1 billion in net assets to Chemours. And, Chemours assumed billions of dollars of Old DuPont's PFAS and other liabilities.

188. In addition to the assumption of such liabilities, the Chemours Separation Agreement required Chemours to provide broad indemnification to Old DuPont in connection with these liabilities, which is uncapped and does not have a survival period.

189. The Chemours Separation Agreement requires Chemours to indemnify Old DuPont against, and assume for itself, all "Chemours Liabilities," which is defined broadly to include, among other things, "any and all Liabilities relating . . . primarily to, arising primarily out of or resulting primarily from, the operation or conduct of the Chemours Business, as conducted at any time prior to, at or after the Effective Date . . . including . . . any and all Chemours Assumed Environmental Liabilities . . . ," which includes Old DuPont's historic liabilities relating to and arising from its decades of emitting PFOA into the environment from

Washington Works and elsewhere.

190. The Chemours Separation Agreement also requires Chemours to indemnify Old DuPont against, and assume for itself, the Chemours Liabilities regardless of (i) when or where such liabilities arose; (ii) whether the facts upon which they are based occurred prior to, on, or subsequent to the effective date of the spinoff; (iii) where or against whom such liabilities are asserted or determined; (iv) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of law, fraud or misrepresentation by any member of the Old DuPont group or the Chemours group; (v) the accuracy of the maximum probable loss values assigned to such liabilities; and (vi) which entity is named in any action associated with any liability.

191. The Chemours Separation Agreement also requires Chemours to indemnify Old DuPont from, and assume all, environmental liabilities that arose prior to the spinoff if they were "primarily associated" with the Performance Chemicals Business.

192. Chemours also agreed to use its best efforts to be fully substituted for Old DuPont with respect to "any order, decree, judgment, agreement or Action with respect to Chemours Assumed Environmental Liabilities . . . ."

193. Notably, Chemours sued Old DuPont in Delaware state court in 2019, alleging, among other things, that if (i) the full value of Old DuPont's PFAS liabilities were properly estimated and (ii) the Court does not limit Chemours' liability that the Chemours Separation Agreement imposes, then Chemours would have been insolvent at the time of the Chemours Spinoff.

194. There was no meaningful, arms-length negotiation of the Separation Agreement.

195. In its Delaware lawsuit, Chemours alleges that Old DuPont refused to allow any

procedural protections for Chemours in the negotiations, and Old DuPont and its outside counsel prepared all the documents to effectuate the Chemours Spinoff. Indeed, during the period in which the terms of commercial agreements between Chemours and Old DuPont were negotiated, Chemours did not have an independent board of directors or management independent of Old DuPont.

196. Although Chemours had a separate board of directors, Old DuPont employees controlled the Chemours board. Indeed, when the Chemours Separation Agreement was signed, Chemours was a wholly owned subsidiary of Old DuPont, and the Chemours board consisted of three Old DuPont employees and one former, long-standing member of the Old DuPont board.

197. Chemours' independent board of directors, newly appointed on July 1, 2015, immediately prior to the Chemours Spinoff, did not participate in the negotiations of the terms of the separation.

198. It is apparent that Old DuPont's goal with respect to the Chemours Spinoff was to segregate a large portion of Old DuPont's legacy environmental liabilities, including liabilities related to its PFAS chemicals and products, and in so doing, shield Old DuPont's assets from any financial exposure associated therewith.

199. Not surprisingly, given Old DuPont's extraction of nearly $4 billion from Chemours immediately prior to the Chemours Spinoff, Chemours was thinly capitalized and unable to satisfy the substantial liabilities that it assumed from Old DuPont. Indeed, Chemours disclosed in public SEC filings that its "significant indebtedness" arising from its separation from Old DuPont restricted its current and future operations.

200. Shortly after the Chemours Spinoff, market analysts described Chemours as "a bankruptcy waiting to happen" and a company "purposely designed for bankruptcy."

201. At the end of December 2014, Chemours reported it had total assets of $5.959 billion and total liabilities of $2.286 billion. At the end of 2015, following the Chemours Spinoff, Chemours reported that it had total assets of $6.298 billion and total liabilities of $6.168 billion as of December 31, 2015, yielding total net worth of $130 million.

202. Removing Chemours' goodwill and other intangibles of $176 million yields tangible net worth of negative $46 million (that is, Chemours' liabilities were greater than its tangible assets). According to unaudited pro forma financial statements, as of March 31, 2015 (but giving effect to all of the transactions contemplated in the Chemours Spinoff), Chemours had total assets of $6.4 billion and total liabilities of $6.3 billion.

203. Chemours also reported that these liabilities included $454 million in "other accrued liabilities," which in turn included $11 million for accrued litigation and $68 million for environmental remediation. Chemours also had $553 million in "other liabilities," which included $223 million for environmental remediation and $58 million for accrued litigation.

204. Chemours significantly underestimated its liabilities, including the liabilities that it had assumed from Old DuPont with respect to PFAS, and which Old DuPont and Chemours knew or should have known would be tens of billions of dollars.

205. Had Chemours taken the full extent of Old DuPont's legacy liabilities into account, as it should have done, it would have had negative equity (that is, total liabilities that are greater than total assets), not only on a tangible basis, but also on a total equity basis, and, Chemours would have been rendered insolvent at the time of the Chemours Spinoff.

STEP 2: THE OLD DOW/OLD DUPONT "MERGER"

206. After the Chemours Spinoff, Old DuPont took the untenable position that it was somehow no longer responsible for the widespread PFAS contamination that it had caused over

several decades. Old DuPont publicly claimed that the PFAS liabilities associated with the Performance Chemicals business that Old DuPont had transferred to Chemours rested solely with Chemours, and not with Old DuPont.

207. Of course, Old DuPont could not contractually discharge all of its historical liabilities through the Chemours Spinoff, and Old DuPont remained liable for the liabilities it had caused, and that Chemours had assumed.

208. Old DuPont knew that it could not escape liability and would still face exposure for PFAS liabilities, including for potentially massive punitive damages. So Old DuPont moved to the next phase of its fraudulent scheme.

209. On December 11, 2015, less than six months following the Chemours Spinoff, Old DuPont and Old Dow announced that their respective boards had approved an agreement "under which the companies [would] combine in an all-stock merger of equals" and that the combined company would be named DowDuPont, Inc. ("Dow-DuPont Merger"). The companies disclosed that they intended to subsequently separate the combined companies' businesses into three publicly traded companies through further spinoffs, each of which would occur 18 to 24 months following the closing of the merger.

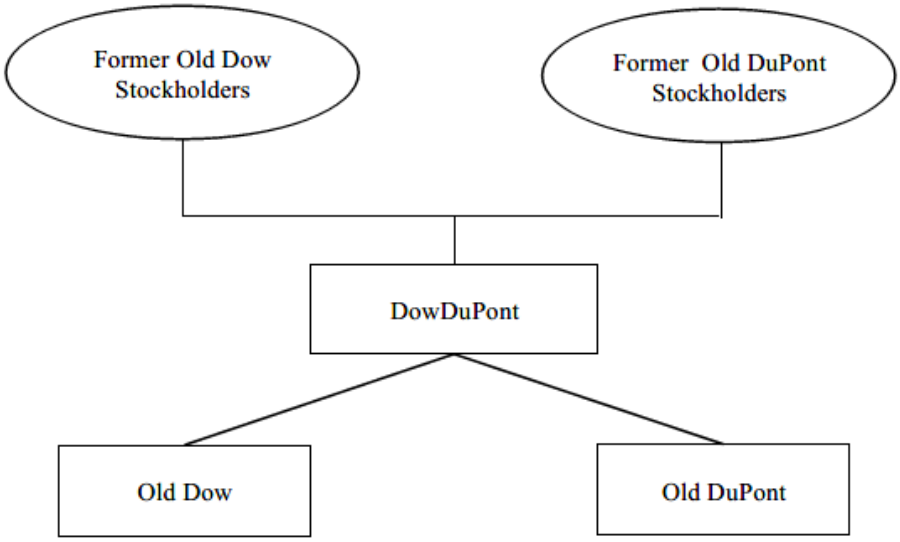
210. To effectuate the transaction, Old DuPont and Old Dow entered into an Agreement and Plan of Merger (the "Dow-DuPont Merger Agreement") that provided for (i) the formation of a new holding company – Diamond-Orion HoldCo, Inc., later named DowDuPont, and then renamed DuPont de Nemours, Inc., (*i.e.*, New DuPont) and (ii) the creation of two new merger subsidiaries into which Old Dow and Old DuPont each would merge.

211. Upon the closing of the DowDuPont Merger, Old Dow merged into one merger subsidiary, and Old DuPont merged into the other merger subsidiary. Thus, as a result of the

merger, and in accordance with the DowDuPont Merger Agreement, Old Dow and Old DuPont each became wholly owned subsidiaries of DowDuPont.

212. Although Old DuPont and Old Dow referred to the transaction as a "merger of equals," the two companies did not actually merge at all, because doing so would have infected Old Dow with all of Old DuPont's historical PFAS liabilities. Rather, Old DuPont and Old Dow became affiliated sister companies that were each owned by the newly formed DowDuPont (*i.e.*, New DuPont).

213. The below image reflects the corporate organization following the "merger":



STEP 3: THE SHUFFLING, REORGANIZATION, AND TRANSFER OF VALUABLE ASSETS AWAY FROM OLD DUPONT AND SEPARATION OF CORTEVA AND NEW DOW

214. Following the Dow-DuPont Merger, DowDuPont (*i.e.*, New DuPont) underwent a significant internal reorganization, and engaged in numerous business segment and product line "realignments" and "divestitures." The net effect of these transactions has been the transfer, either directly or indirectly, of a substantial portion of Old DuPont's assets out of the company.

215. While, again, the details of these transactions remain hidden from Plaintiff and other creditors, it is apparent that the transactions were intended to frustrate and hinder creditors

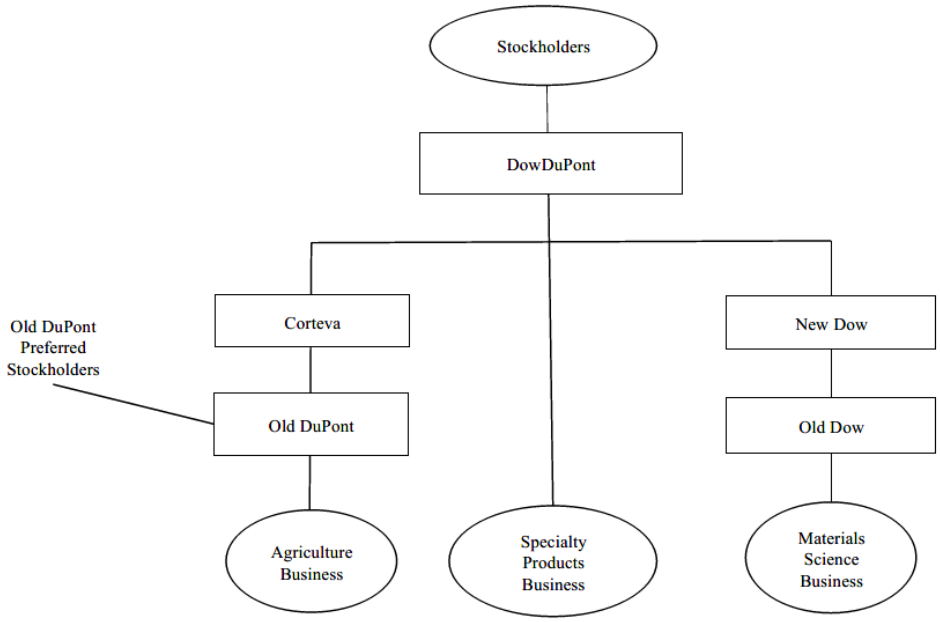
with claims against Old DuPont, including with respect to its substantial PFAS liabilities. The significant internal reorganization instituted by DowDuPont (*i.e.*, New DuPont) was in preparation for the conglomerate being split into three, separate, publicly traded companies.

216. Old DuPont's assets, including its remaining business segments and product lines, were transferred either directly or indirectly to DowDuPont (*i.e.*, New DuPont), which reshuffled the assets and combined them with the assets of Old Dow, and then reorganized the combined assets into three distinct divisions: (i) the "Agriculture Business"; (ii) the "Specialty Products Business"; and (iii) the "Material Sciences Business."

217. While the precise composition of these divisions, including many details of the specific transactions, the transfer of business segments, and the divestiture of product lines during this time, are not publicly available, it is apparent that Old DuPont transferred a substantial portion of its valuable assets to DowDuPont (*i.e.*, New DuPont), for far less than the assets were worth.

218. Once the assets of Old DuPont and Old Dow were combined and reorganized, DowDuPont (*i.e.*, New DuPont) incorporated two new companies to hold two of the three newly formed business lines: (i) Corteva, which became the parent holding company of Old DuPont, which in turn holds the Agriculture Business; and (ii) New Dow, which became the parent holding company of Old Dow, and which holds the Materials Science Business. DowDuPont (*i.e.*, New DuPont) retained the Specialty Products Business, and prepared to spin off Corteva and New Dow into separate, publicly traded companies.

219. The below graph depicts the structure of DowDuPont after the internal reorganization and realignment:



220. The mechanics of the separations are governed by the April 1, 2019 Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont (*i.e.*, New DuPont) (the "DowDuPont Separation Agreement").

221. The Dow DuPont Separation Agreement generally allocates the assets primarily related to the respective business divisions to Corteva (Agriculture Business), New Dow (Materials Science Business) and New DuPont (Specialty Products Business), respectively. New DuPont also retained several "non-core" business segments and product lines that once belonged to Old DuPont.

222. Similarly, Corteva, New Dow, and New DuPont each retained the liabilities primarily related to the business divisions that they retained, *i.e.*, (i) Corteva retained and assumed the liabilities related to the Agriculture Business; (ii) New DuPont retained and assumed the liabilities related to the Specialty Products Business; and (iii) New Dow retained

and assumed the liabilities related to the Materials Science Business.

223. Corteva and New DuPont also assumed direct financial liability of Old DuPont that was not related to the Agriculture, Material Science or Specialty Products Businesses, including, upon information and belief, the PFAS liabilities. These assumed PFAS liabilities are allocated on a pro rata basis between Corteva and New DuPont pursuant to the DowDuPont Separation Agreement, such that, after both companies have satisfied certain conditions, future liabilities are allocated 71% to New DuPont and 29% to Corteva.

224. This "allocation" applies to Old DuPont's legacy liabilities for PFAS contamination and its former Performance Chemicals business, including Plaintiff's claims in this case.

225. While New DuPont and Corteva have buried the details in non-public schedules, upon information and belief, New DuPont and Corteva each assumed these liabilities under the DowDuPont Separation Agreement, along with other liabilities related to Old DuPont's discontinued and divested businesses. Plaintiff can therefore bring claims against New DuPont and Corteva directly for Old DuPont's contamination of the groundwater and surface water within Plaintiff's Water System.

226. The separation of New Dow was completed on or about April 1, 2019, when DowDuPont (*i.e.*, New DuPont) distributed all of New Dow's common stock to DowDuPont stockholders as a pro rata dividend. New Dow now trades on the New York Stock Exchange ("NYSE") under Old Dow's stock ticker "DOW."

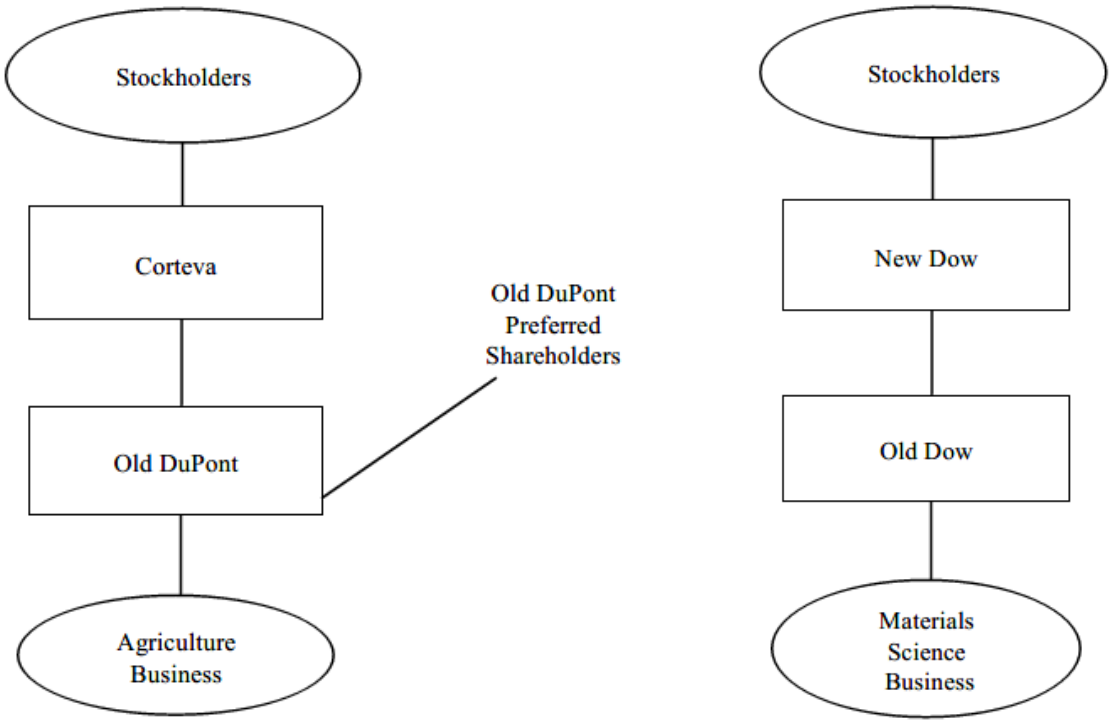
227. On or about May 2, 2019, DowDuPont (*i.e.*, New DuPont) consolidated the Agricultural Business line into Old DuPont, and then, on or about May 31, 2019, it "contributed" Old DuPont to Corteva. The following day, on June 1, 2019, DowDuPont (i.e., New DuPont)

spun off Corteva as an independent public company.

228. Corteva now holds 100% of the outstanding common stock of Old DuPont. Corteva now also trades on the NYSE under the stock ticker "CTVA."

229. The separation of Corteva was completed on or about June 1, 2019, when DowDuPont distributed all of Corteva's common stock to DowDuPont (*i.e.*, New DuPont) stockholders as a pro rata dividend.

230. The corporate structures of New Dow and Old Dow, and Corteva and Old DuPont, respectively, following the separations are depicted below:



231. Also, on or about June 1, 2019, DowDuPont changed its registered name to Du Pont de Nemours Inc. (*i.e.*, New DuPont).

THE EFFECT OF THE YEARS-LONG SCHEME TO DEFRAUD PLAINTIFF AND OTHER CREDITORS AND AVOID FINANCIAL RESPONSIBILITY FOR LEGACY LIABILITIES

232. The net result of these transactions was to strip away valuable tangible assets from Old DuPont and transfer those assets to New DuPont and Corteva for far less than the assets are worth.

233. Old DuPont estimated that the Dow-DuPont Merger created "goodwill" worth billions of dollars. When the Corteva separation was complete, a portion of this "goodwill" was assigned to Old DuPont in order to prop up its balance sheet. But, in reality, Old DuPont was left with substantially fewer tangible assets than it had prior to the restructuring.

234. In addition, Old DuPont owes a debt to Corteva of approximately $4 billion. Recent SEC filings demonstrate the substantial deterioration of Old DuPont's finances and the drastic change in its financial condition before and after the above transactions.

235. For example, for the fiscal year ended 2014, prior to the Chemours Spinoff, Old DuPont reported $3.6 billion in net income and $3.7 billion in cash provided by operating activities. For the fiscal year ended 2019, just months after the Corteva separation, however, Old DuPont reported a net loss of negative $1 billion and only $996 million in cash provided by operating activities. That is a decrease of 128% in net income and a decrease of 73% in annual operating cash flow.

236. Additionally, Old DuPont reported a significant decrease in Income From Continuing Operations Before Income Taxes ("EBT"). Old DuPont reported $4.9 billion in EBT for the period ending December 31, 2014. For the period ending December 31, 2019, Old DuPont reported EBT of negative $422 million.

237. The value of Old DuPont's tangible assets further underscores Old DuPont's precarious financial situation. For the fiscal year ended 2014, prior to the Chemours Spinoff, Old

DuPont owned nearly $41 billion in tangible assets. For the fiscal year ended 2019, Old DuPont owned just under $21 billion in tangible assets.

238. That means in the five-year period over which the restructuring occurred, when Old DuPont knew that it faced billions of dollars in PFAS liabilities, Old DuPont transferred or divested approximately half of its tangible assets—totaling $20 billion.

239. As of September 2019, just after the Corteva spinoff, Old DuPont reported $43.251 billion in assets. But almost $21.835 billion of these assets were comprised of intangible assets, including "goodwill" from its successive restructuring activities.

240. At the same time, Old DuPont reported liabilities totaling $22.060 billion. Thus, when the Corteva spinoff was complete, Old DuPont's tangible net worth (excluding its intangible assets) was negative $644 million.

241. Old DuPont's financial condition has continued to deteriorate. By end of fiscal year 2019, Old DuPont reported $42.397 billion in total assets, half of which (or $21.653 billion) are intangible assets. Old DuPont's reported liabilities for the same period totaled $21.869 billion.

242. Old DuPont's tangible net worth between September 30, 2019 and December 31, 2019 declined even further, whereby Old DuPont ended fiscal year 2019 with tangible net worth of negative $1.125 billion.

243. In addition, Plaintiff cannot take comfort in the "allocation" of liabilities to New DuPont and Corteva. Neither of those Defendants has publicly conceded that they assumed Old DuPont's historical PFAS liabilities. And it is far from clear that either entity will be able to satisfy any judgment in this case.

244. Indeed, New DuPont—to which 71% of PFAS liabilities are "allocated" under the

DowDuPont Separation Agreement once certain conditions are satisfied—is in the process of divesting numerous business segments and product lines, including tangible assets that it received from Old DuPont, and for which Old DuPont has received less than reasonably equivalent value.

245. New DuPont has received or will receive significant proceeds on the sales of Old DuPont's former business segments and product lines.

246. In September 2019, New DuPont sold the Sustainable Solutions business for $28 million to Gyrus Capital.

247. On or about December 15, 2019, New DuPont agreed to sell the Nutrition and Biosciences business to International Flavors & Fragrances for $26.2 billion.

248. In March 2020, New DuPont completed the sale of Compound Semiconductor Solutions for $450 million to SK Siltron.

249. In addition, New DuPont has issued Notices of Intent to Sell relating to six non-core segments (estimated by market analysts at approximately $4.5 billion), as well as the Transportation and Industrial Chemicals business, which had reported net sales revenue in 2019 of $4.95 billion and estimated annual operating earnings before interest, taxes, depreciation, and amortization of $1.3 billion.

250. Old DuPont's parent holding company, Corteva—to which 29% of PFAS liabilities are "allocated" under the DowDuPont Separation Agreement once certain conditions are satisfied—holds as its primary tangible asset the intercompany debt owed to it by its wholly owned subsidiary, Old DuPont. But Old DuPont does not have sufficient tangible assets to satisfy this debt obligation.

FIRST CAUSE OF ACTION
Strict Product Liability Based on Design Defect

(By Plaintiff against all Defendants)

251. Plaintiff repeats and restates the allegations set forth in the previous paragraphs as if fully restated in this cause of action.

252. Defendants were engaged in the business of researching, designing, manufacturing, testing, marketing, distributing, and/or selling Fluorochemical Products.

253. As commercial designers, manufacturers, distributors, suppliers, sellers, and/or marketers of Fluorochemical Products, Defendants had a strict duty not to place into the stream of commerce a product that is unreasonably dangerous.

254. At the time of manufacture, Defendants knew that the chosen formulation(s) of Fluorochemical Products was not biodegradable, would bioaccumulate in humans and wildlife, and was toxic to humans and the environment.

255. Defendants were also aware and/or in possession of an available safer design that was functional and reasonably priced.

256. Defendants were also aware that their Fluorochemical Products, when sold would contaminate Plaintiff's drinking water supplies and cause damages.

257. Defendants' Fluorosurfactant Products were manufactured for placement into trade or commerce.

258. On information and belief, the Fluorochemical Products as manufactured and/or sold by Defendants reached Plaintiff's drinking waters supplies without substantial change in its condition and was used by consumers, local manufacturers, local fire training academies, local fire departments, and airports, among others, in a reasonably foreseeable and intended manner.

259. The Fluorochemical Products, as manufactured and/or sold by the Defendants, were "defective" and "unreasonably dangerous" when they left the Defendants' control, entered

the stream of commerce, and were received by consumers, manufacturers, firefighting training academies, local fire departments, and airports, among others because it was dangerous to an extent beyond that which would be contemplated by the ordinary user.

260. The Fluorochemical Products Defendants manufactured and/or sold were defective in design because, even when used as intended and directed by Defendants, they can result in the contamination of soil and groundwater with PFOA and/or PFOS creating a significant threat to groundwater and drinking water supplies.

261. The Fluorochemical Products Defendants manufactured did not meet a consumer's reasonable expectation as to their safety because of the propensity to contaminate soil and groundwater when used as intended.

262. Defendants failed to develop and make available alternative products that were designed in a safe or safer manner, even though such products were technologically feasible, practical, commercially viable, and marketable at the time Defendants introduced Fluorochemical Products containing PFOA and/or PFOS into the stream of commerce.

263. The specific risk of harm in the form of soil, groundwater, and drinking water contamination from Fluorochemical Products containing PFOA and/or PFOS that Defendants manufactured and/or sold was reasonably foreseeable or discoverable by Defendants.

264. The design, formulation, manufacture and/or distribution and sale of Fluorochemical Products containing PFOA and/or PFOS that were known to be toxic and extremely mobile and persistent in the environment was unreasonably dangerous.

265. Fluorochemical Products' failure to perform safely was a proximate cause of Plaintiff's damage requiring investigation, clean-up, abatement, remediation, and monitoring costs and other damages in an amount to be determined at trial. Defendants are strictly, jointly,

and severally liable for all such damages.

SECOND CAUSE OF ACTION
Strict Products Liability Based on Failure to Warn
(By Plaintiff against all Defendants)

266. Plaintiff repeats and restates the allegations set forth in the previous paragraphs as if fully set forth herein.

267. The use of Fluorochemical Products in the capture zone and in proximity to Plaintiff's drinking water supplies for consumer use, manufacturing, training of fire personnel, firefighting, and disposal in landfills was a reasonably foreseeable use. Defendants knew or should have known that Fluorochemical Products used in this manner can contaminate soil, surface water, stormwater and groundwater with PFOA and/or PFOS, creating a significant threat to human health and the environment.

268. It was foreseeable that PFOA and/or PFOS from the Fluorochemical Products that Defendants manufactured and sold would enter the environment, resulting in the contamination of drinking water supplies that rely upon groundwater as a source, including Plaintiff's drinking water supplies.

269. Defendants knew or should have known of the risks posed by their Fluorochemical Products.

270. The ordinary consumer—whether residential, industrial, municipal or otherwise—would not have known or appreciated the risk of contamination from ordinary use and disposal of Defendants' Fluorochemical Products without an appropriate warning.

271. Defendants had a duty to warn the users of Fluorochemical Products of these hazards.

272. Defendants, however, failed to provide adequate warnings of these hazards.

273. Defendants' failure to issue the proper warnings relating to Fluorochemical Products containing PFOA and/or PFOS affected the market's acceptance of these products containing PFOA and/or PFOS.

274. Defendants' failure to issue the proper warnings relating to Fluorochemical Products containing PFOA and/or PFOS prevented the users of the product from treating it differently with respect to its use and environmental cleanup.

275. Defendants' failure to issue the proper warnings related to Fluorochemical Products containing PFOA and/or PFOS prevented the users of the product from seeking alternative products, including but not limited to, using alternative products for purposes of training.

276. Defendants' action in placing Fluorochemical Products containing PFOA and/or PFOS into the stream of commerce without an appropriate warning as to use and disposal was a direct and proximate cause of Plaintiff's injury.

277. As a direct and proximate result of the Defendants' failure to warn, Plaintiff has suffered damage, requiring investigation, clean-up, abatement, remediation, and monitoring costs and suffered other damages in an amount to be determined at trial. Defendants are strictly, jointly, and severally liable for all such damages.

THIRD CAUSE OF ACTION
Negligence
(By Plaintiff against all Defendants)

278. Plaintiff repeats and restates the allegations set forth in the previous paragraphs as if fully set forth herein.

279. Defendants had a duty to Plaintiff to manufacture and/or market, distribute, and sell their Fluorochemical Products in a manner that avoided contamination of the environment

and drinking water supplies and avoided harm to those who foreseeably would be injured by the PFOA and/or PFOS contained in Defendants' Fluorochemical Products.

280. The use, including the disposal of, Defendants' Fluorochemical Products by consumers, manufacturers, local fire training academies, fire departments, airports and others was a reasonably foreseeable use. Defendants knew or should have known that their Fluorochemical Products used and disposed of in this manner would contaminate soil and groundwater with PFOA and/or PFOS, creating a significant threat to human health and the environment. Defendants had a duty to prevent the release into the environment of PFOA and/or PFOS, in the foreseeable uses of their Fluorochemical Products.

281. Defendants breached their duties when they negligently manufactured a dangerous product, negligently marketed, distributed, and sold that product, and/or negligently failed to give adequate warning that such products should not have been used and/or disposed of in a manner such as to result in the contamination of soil and groundwater.

282. As a direct and proximate result of Defendants' breaches of their duties, Defendants caused Plaintiff to suffer actual losses. Specifically, Plaintiff suffered damage requiring investigation, clean-up, abatement, remediation, and monitoring costs and suffered other damages in an amount to be determined at trial. Defendants are strictly, jointly, and severally liable for all such damages.

FOURTH CAUSE OF ACTION
Continuing Trespass
(By Plaintiff against all Defendants)

283. Plaintiff repeats and restates the allegations set forth in all previous paragraphs of this Complaint as if fully set forth herein.

284. Plaintiff owns, possesses, and actively exercises rights to extract and use

groundwater and surface water relied upon for its drinking water supplies.

285. The Defendants were engaged in the business of researching, designing, formulating, handling, training, disposing, manufacturing, labeling, using, testing, distributing, promoting, marketing, selling, and/or otherwise being responsible for Fluorochemical Products and knew or should have known that the subsequent and foreseeable use and disposal of these products would contaminate drinking water supplies. Thus, the Defendants intentionally, recklessly, negligently or as the result of engaging in an extra-hazardous activity caused noxious and hazardous contaminants and pollutants to enter the surface water, stormwater, groundwater, and drinking water supplies.

286. Fluorochemical Products and PFAS compounds manufactured and/or supplied by the Defendants continue to be located in the drinking water supply within Plaintiff's drinking water supply system including the groundwater and surface water that serve as Plaintiff's drinking water supply.

287. Plaintiff did not, and do not, consent to the trespass alleged herein. The Defendants knew or reasonably should have known that Plaintiff would not consent to this trespass.

288. The contamination of Plaintiff's surface water, stormwater, groundwater, and wells alleged herein has not yet ceased. PFAS continue to migrate into and enter groundwater and surface water within Plaintiff's drinking water supplies.

289. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, the surface water, stormwater, groundwater, and drinking water supplies have been, and continue to be, contaminated with PFAS, causing Plaintiff significant injury and damage.

290. As a direct and proximate result of these Defendants' acts and omissions as

alleged herein, Plaintiff has incurred, is incurring, and will continue to incur, investigation, treatment, remediation, monitoring, and disposal costs and expenses related to the contamination of groundwater within Plaintiff's drinking water supply system in an amount to be proved at trial.

291. As a further direct and proximate result of the Defendants' acts and omissions as alleged herein, Plaintiff seeks the value of the use of its property for the time of the wrongful occupation, the reasonable costs of repair or restoration of all of Plaintiff's property to its original condition, costs associated with recovering the possession, any benefits or profits obtained by Defendants related to the trespass. The Defendants knew and/or should have known that it was substantially certain that their alleged acts and omissions described in this Complaint would cause injury and damage, including contamination of drinking water supplies with PFAS. The Defendants committed each of the above-described acts and omissions knowingly, willfully, and with oppression, fraud, and/or malice. Such conduct was performed to promote sales of and maximize profits, in conscious disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon health, property, and the environment, including groundwater within Plaintiff's drinking water supply system. Therefore, Plaintiff also requests an award of exemplary damages in an amount that is sufficient to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.

FIFTH CAUSE OF ACTION
Public and Private Nuisance
(By Plaintiff against all Defendants)

292. Plaintiff repeats and restates the allegations set forth in the previous paragraphs as if fully set forth herein.

293. Plaintiff is the owner of land, easements, and/or water rights which permit it to extract groundwater and surface water for use as its drinking water supply.

294. The actions of the Defendants as alleged herein, have resulted in the continuing contamination of Plaintiff's drinking water supply by PFAS, and such contamination is a public nuisance and is reasonably abatable and varies over time. Each Defendant has caused, maintained, assisted and/or participated in such nuisance, and is a substantial contributor to such nuisance.

295. The actions of the Defendants constitute a nuisance in that the contamination of groundwater and drinking water is injurious to public health, is indecent or offensive to the senses and is an obstruction to the Plaintiff's free use of their property, so as to interfere with the comfortable enjoyment of life or property. The contamination of Plaintiff's drinking water supplies significantly affects, at the same time, a considerable number of people in an entire community.

296. Each Defendant has caused, maintained, assisted and/or participated in such nuisance, and is a substantial contributor to such nuisance.

297. By its design, the Defendants' Fluorochemical Products were known by Defendants to contain compounds that would likely be discharged to the environment in a manner that would create a nuisance and further failed to properly instruct intermediaries and end-users to properly use and dispose of such contaminants in such a manner as to avoid creating or contributing to a nuisance.

298. The Defendants knew, or should have known, of the harmful effects and adverse impacts that exposure to PFOA and/or PFOS would have on the environment and human health.

299. The Defendants caused or contributed to the creation of the nuisance at issue by directing and instructing intermediaries and end users of its products to dispose of products and materials containing PFOA and PFOS in a manner that the Defendants knew or should have known would result in the contamination of soil and groundwater and ultimately impact drinking water.

300. Plaintiff did not and does not consent to the public nuisance alleged herein. Defendants knew or reasonably should have known that Plaintiff would not consent to this public nuisance.

301. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, Plaintiff's drinking water supplies continue to be, contaminated with PFOA and PFOS, causing Plaintiff significant injury and damage.

302. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, Plaintiff has incurred, is incurring, and will continue to incur, investigation, treatment, remediation, and monitoring costs and expenses related to the PFOA and PFOS in an amount to be proved at trial.

303. Furthermore, as a direct and proximate result of the Defendants' acts and omissions as alleged herein, the contamination of groundwater and drinking water supplies constitutes an ongoing public nuisance.

304. The Defendants are jointly and severally responsible to take such action as is necessary to abate the public nuisance and to take such action as is necessary to ensure that the PFOA and PFOS that contaminate the aquifer and other water resources supplying water to the Plaintiff's Water System do not present a risk to the public.

305. Plaintiff has been damaged because the Defendants' acts and omissions, have unreasonably interfered with, and continue to interfere with, Plaintiff's use and enjoyment of its public water supply systems and has suffered and continues to suffer significant damages and injuries, including but not limited to, incurring costs related to the investigation, sampling, treatment system design, acquisition, installation, operations and maintenance, and other costs and damages related to the detection and remediation of the PFAS contamination of its water supply systems.

306. The Defendants knew and/or should have known that it was substantially certain that their alleged acts and omissions described in this Complaint would cause injury and damage, including contamination of drinking water supplies with PFOA and PFOS.

307. The Defendants knew with substantial certainty at the time of their manufacture and sale of fluorosurfactants, fluorochemicals, and containing PFOA and/or PFOS that their products would result in contamination of Plaintiff's drinking water resources.

308. The Defendants' acts and omissions were substantially certain to and did result in an unreasonable interference with Plaintiff's drinking water supplies.

309. As a direct and proximate result of the Defendants' acts and omissions, the Defendants caused Plaintiff to suffer actual losses.

310. The Defendants committed each of the above-described acts and omissions knowingly, willfully, and with oppression, fraud, and/or malice. Such conduct was performed to promote sales of Fluorochemical Products, fluorosurfactants, and fluorochemicals to maximize profits, in conscious disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon health, property, and the environment.

311. Specifically, Plaintiff suffered damage requiring investigation, clean-up,

abatement, remediation, and monitoring costs and suffered other damages in an amount to be determined at trial.

312. Additionally, Plaintiff also requests an award of exemplary damages in an amount that is sufficient to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.

SIXTH CAUSE OF ACTION
Declaratory Relief
(By Plaintiff against All Defendants)

313. Plaintiff repeats and restates the allegations set forth in all previous paragraphs of this Complaint as if fully set forth herein.

314. Defendants knew, or should have known, that their Fluorochemical Products, when used in a foreseeable and intended manner, were dangerous and created an unreasonable and excessive risk of harm to human health and the environment.

315. Defendants intentionally, willfully, deliberately and/or negligently failed to properly warn, train, handle, control, dispose, and release noxious and hazardous contaminants and pollutants, such that Defendants created substantial and unreasonable threats to human health and the environment, which resulted from the foreseeable and intended use and storage of Fluorochemical Products and products containing fluorosurfactants and fluorochemicals.

316. Among other things, Plaintiff must take costly remedial action to remove PFAS contamination which will result in substantial costs, expenses, and damages in an amount to be proved at trial.

317. These Defendants, and each of them, have failed to reimburse Plaintiff for the cost of investigation, remediation, cleanup, and disposal costs and/or deny any responsibility or liability for these damages and expenses Plaintiff will incur in the future.

318. An actual controversy exists concerning who is financially responsible for abating

actual or threatened pollution or contamination of Plaintiff's drinking water supplies by PFAS.

319. In order to resolve this controversy, Plaintiff seeks an adjudication of the respective rights and obligations of the parties, and other relief to the extent necessary to provide full relief.

SEVENTH CAUSE OF ACTION
(Actual Fraudulent Transfer In Relation to Chemours Spinoff – As Against Old DuPont, Chemours, Corteva, and New DuPont)

320. Plaintiff repeats and restates the allegation set forth in the previous paragraphs as if fully set forth herein.

321. Plaintiff seeks equitable and other relief pursuant to the Uniform Fraudlent Transfer Act (the "UFTA") against Old DuPont and Chemours and was a creditor of Chemours at all relevant times.

322. Through its participation in the Chemours Spinoff, as detailed above, Chemours transferred valuable assets to Old DuPont, including the $3.9 billion dividend (the "Chemours Transfers"), while simultaneously assuming significant liabilities pursuant to the Chemours Separation Agreement (the "Chemours Assumed Liabilities").

323. The Chemours Transfers and Chemours Assumed Liabilities were made for the benefit of Old DuPont.

324. At the time that the Chemours Transfers were made and Chemours Assumed Liabilities were assumed, and until the Chemours Spinoff was complete, Old DuPont was in a position to, and in fact did, control and dominate Chemours.

325. Old DuPont and Chemoursacted with the actual intent to hinder, delay and defraud creditors or future creditors.

326. Plaintiff has been harmed as a result of the Chemours Transfers.

327. Under Del. Code. Tit. 6 Sec. 1301 to 1312 and Massachusetts General Law Chapter 109A, Plaintiff is entitled to void the Chemours Transfers and to recover property or value that Chemours transferred to Old DuPont.

328. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

EIGHTH CAUSE OF ACTION
(Constructive Fraudulent Transfer in Relation to Chemours Spinoff – As Against Old DuPont, Chemours, Corteva, and New DuPont)

329. Plaintiff repeats and restates the allegations set forth in the previous paragraphs as if fully set forth herein.

330. Plaintiff seeks equitable and other relief pursuant to the UFTA against Old DuPont and Chemours and was a creditor of Chemours at all relevant times.

331. Chemours did not receive reasonably equivalent value from Old DuPont in exchange for the Chemours Transfers and Chemours Assumed Liabilities.

332. Each of the Chemours Transfers and Chemours' assumption of the Chemours Assumed Liabilities was made to or for the benefit of Old DuPont.

333. At the time that the Chemours Transfers were made and the Chemours Assumed Liabilities were assumed, and until the Chemours Spinoff was complete, Old DuPont was in a position to, and in fact did, control and dominate Chemours.

334. Chemours made the Chemours Transfers and assumed the Chemours Assumed Liabilities when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business and debt obligations.

335. Chemours was insolvent at the time or became insolvent as a result of the Chemours Transfers and its assumption of the Chemours Assumed Liabilities.

336. At the time that the Chemours Transfers were made and Chemours assumed the Chemours Assumed Liabilities, Old DuPont and Chemours intended Chemours to incur, or believed, or reasonably should have believed that Chemours would incur debts beyond its ability to pay as they became due.

337. Plaintiff has been harmed as a result of the Chemours Transfers.

338. Under Del. Code. Tit. 6 Sec. 1301 to 1312 and Massachusetts General Law Chapter 109A, Plaintiff is entitled to void the Chemours Transfers and to recover property or value transferred to Old DuPont.

339. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

NINTH CAUSE OF ACTION
(Actual Fraudulent Transfer In Relation to Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers and Separations – As Against Old DuPont, New DuPont, and Corteva)

340. Plaintiff repeats and restates the allegations set forth in the previous paragraphs as if fully set forth herein.

341. Plaintiff seeks equitable and other relief pursuant to the UFTA against Old DuPont, New DuPont, and Corteva and was a creditor of Old DuPont at all relevant times.

342. Following the Dow-DuPont Merger, and through the separations of New DuPont, New Dow, and Corteva, Old DuPont sold or transferred, directly or indirectly, valuable assets and business lines to Corteva and New DuPont (the "Old DuPont Transfers").

343. The Old DuPont Transfers were made for the benefit of New DuPont or Corteva.

344. At the time that the Old DuPont Transfers were made, New DuPont was in a position to, and in fact did, control and dominate Old DuPont and Corteva.

345. Old DuPont, New DuPont, and Corteva acted with the actual intent to hinder, delay, and defraud creditors or future creditors.

346. Plaintiff has been harmed as a result of the Old DuPont Transfers.

347. Old DuPont engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as the Plaintiff that have been damaged as a result of the actions described in this Complaint.

348. Pursuant to Del. Code. Tit. 6 Sec. 1301 to 1312 and Massachusetts General Law Chapter 109A. Plaintiff also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seeks a constructive trust over such proceeds for the benefit of Plaintiff.

TENTH CAUSE OF ACTION
(Constructive Fraudulent Transfer In Relation to Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers and Separations – As Against Old DuPont, New DuPont, and Corteva)

349. Plaintiff repeats and restates the allegations set forth in the previous paragraphs as if fully set forth herein.

350. Plaintiff seeks equitable and other relief pursuant to the UFTA against Old DuPont, New DuPont, and Corteva, and Plaintiff is and was a creditor of Old DuPont at all relevant times.

351. Old DuPont did not receive reasonably equivalent value from New DuPont and Corteva in exchange for the Old DuPont Transfers.

352. Each of the Old DuPont Transfers was made to or for the benefit of New DuPont or Corteva.

353. At the time that the Old DuPont Transfers were made, New DuPont was in a position to, and in fact did, control and dominate Old DuPont and Corteva.

354. Old DuPont made the Old DuPont Transfers when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business.

355. Old DuPont was insolvent at the time or became insolvent as a result of the Old DuPont Transfers.

356. At the time that the Old DuPont Transfers were made, Old DuPont, New DuPont, and Corteva intended to incur, or believed, or reasonably should have believed that Old DuPont would incur debts beyond its ability to pay as they became due.

357. Plaintiff has been harmed as a result of the Old DuPont Transfers.

358. Under Del. Code. Tit. 6 Sec. 1301 to 1312 and Massachusetts General Law Chapter 109A, Plaintiff is entitled to void the Old DuPont Transfers and to recover property or value transferred to New DuPont and Corteva.

359. Pursuant to Del. Code. Tit. 6 Sec. 1301 to 1312 and Massachusetts General Law Chapter 109A. Plaintiff also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seeks a constructive trust over such proceeds for the benefit of Plaintiff.

ELEVENTH CAUSE OF ACTION
M.G.L. ch. 40 § 39G
(By Plaintiff against All Defendants)

360. Plaintiff repeats and restates the allegation set forth in the previous paragraphs as if fully set forth herein.

361. Pursuant to Mass. Gen. Laws ch. 40 § 39G:

> Whoever willfully or wantonly corrupts, pollutes or diverts any of the waters taken or held under said sections thirty-nine A to thirty-nine E, inclusive, or injures any structure, work or other property owned, held or used by a town under the authority and for the purposes of said sections, shall forfeit and pay to said town three times the amount of damages assessed therefor, to be recovered in an action of tort; and upon conviction of any one of the above willful or wanton acts shall be punished by a fine of not more than $5,000 or by imprisonment in state prison for not more than 5 years or in the house of correction for not more than 2 years or by both such fine and imprisonment.

362. As set forth above, Defendants negligently, knowingly, willfully, and wantonly distributed products they knew would contaminate public water resources when used as intended and as instructed.

363. Defendants are therefore liable pursuant to Mass. Gen. Laws ch 40 §39G for treble damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Enter judgment in its favor and against Defendants on each Count of this Complaint;

B. An order that Defendants pay all damages suffered by Plaintiff, including but not limited to investigation, clean-up, abatement, remediation, monitoring and operation and maintenance costs incurred by Plaintiff, or for which Plaintiff is or was legally responsible, to comply with Massachusetts's MCL and groundwater and soil cleanup target levels;

C. An order that Defendants are required to abate the nuisance Defendants have caused;

D. An order voiding the Chemours Transfers and the DuPont Transfers to the extent necessary to satisfy Plaintiff's claims;

E. An order enjoining New DuPont from distributing, transferring, capitalizing, or

otherwise transferring any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont;

F. An order imposing a constructive trust over any such proceeds for the benefit of the Plaintiff;

G. An award to Plaintiff for the costs of this suit (including but not limited to expert fees) and reasonable attorneys' fees, as provided by law;

H. An award for punitive damages; and

I. An award for such other and further relief as the nature of this case may require or as this court deems just, equitable and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a jury trial.

January 7, 2022

Respectfully submitted,
By Its Attorneys,

/s/ *Michael A. London*

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December 21, 2021

Board of Selectmen
Town of Hopedale
78 Hopedale Street
Hopedale, MA 01747

Re: Programming Advisory

Dear Chairman and Members of the Board:

As part of our ongoing commitment to keep you and our customers informed about changes to Xfinity TV services, we wanted to inform you that effective December 14, 2021, Universal Living Faith Network was added to ch. 1098.

Please feel free to contact me at **Catherine_Maloney@cable.comcast.com** should you have any questions.

Very truly yours,

Catherine Maloney

Catherine Maloney, Sr. Manager
Government Affairs

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

WORCESTER, SS. CASE NO. 20 MISC 000467 (DRR)

TOWN OF HOPEDALE,

Plaintiff,

v.

JON DELLI PRISCOLI and MICHAEL R. MILANOSKI, as Trustees of the ONE HUNDRED FORTY REALTY TRUST, and GRAFTON & UPTON RAILROAD COMPANY,

Defendants.

MOTION TO VACATE STIPULATION OF DISMISSAL

Pursuant Mass. R. Civ. P. 60(b), Plaintiff Town of Hopedale ("Hopedale" or "Town") hereby moves to vacate the Stipulation of Dismissal with Prejudice filed in this action on February 10, 2021, and to reinstate this action so that Hopedale can enforce its option to purchase certain real property under G.L. c. 61, § 8 (the "Chapter 61 Option").

Compelling and extraordinary circumstances justify vacating the Stipulation of Dismissal and reinstating this action in order to accomplish substantial justice for Hopedale. Conditions have changed since the parties filed the Stipulation of Dismissal pursuant to the Settlement Agreement reached after mediation: in a subsequent ten-taxpayer action, the Worcester Superior Court determined that the Town lacked authority to complete the agreed-upon land acquisition and that the Settlement Agreement was not effective and void for failure of consideration. Because the Settlement Agreement is null and void, any obligations required to be performed pursuant to it are themselves null and void—including the filing of the Stipulation of Dismissal.

The Court is therefore justified under either Rule 60(b)(5) or Rule 60(b)(6) to vacate the Stipulation of Dismissal and reinstate this action. Reinstatement of the action is the most efficient, and perhaps the only, way for Hopedale to pursue enforcement of its option to purchase the forest land classified under Chapter 61 which was the subject of this action.

FACTUAL AND PROCEDURAL BACKGROUND[1]

1. On June 27, 2020, the One Hundred Forty Realty Trust (under the control of a prior trustee and prior owner of the beneficial interest, both of whom were unaffiliated with the Railroad at the time; hereinafter, the "Trust") entered into a purchase and sale agreement with Jon Mark Delli Priscoli, as Trustee of the New Hopping Brook Realty Trust, for two parcels of land located in Hopedale, known as 363 West Street and 364 West Street, for a purchase price of $1,175,000.00 (the "P&S Agreement").

2. At the time of execution of the P&S Agreement, the Trust owned both parcels. The parcel located at 364 West Street consisted of 155.24 total acres of generally undeveloped land, of which 130.18 acres was classified as forest land under G.L. c. 61 (the "Chapter 61 Land" or the "Forestland"). The remaining 25.06 acres of land at 364 West Street was unclassified wetlands adjacent to the Forestland (the "Wetlands").

3. The Forestland portion of 364 West Street has been under Chapter 61 classification since 1992. The Hopedale Board of Assessors approved the most recent re-certification of the Chapter 61 classification on September 3, 2014. The current Chapter 61 tax lien is recorded in the Worcester South Registry of Deeds (the "Registry") in Book 52875, Page 355. The 364 West Street parcel is generally undeveloped except for a single railroad track

[1] Reference is made to Hopedale's Amended Verified Complaint, at ¶¶ 5-36, for the factual background as of the time of the original filing of this action.

and a gas pipeline easement that run through the managed Forestland. There are no buildings or other structures located on the parcel.

4. The Grafton & Upton Railroad (the "Railroad") owns and operates the railroad track that runs through the 364 West Street parcel. The Railroad is a short line railroad that runs for 16.5 miles from Grafton to Milford. The Railroad is owned by Mr. Delli Priscoli.

5. On July 9, 2020, the prior trustee of the Trust served a Notice of Intent to Sell Forest Land Subject to Chapter 61 Tax Lien on the Hopedale Board of Selectmen and other parties as required pursuant to G.L. c. 61, § 8 (the "Notice of Intent"). See Amended Verified Complaint, at Ex. A.

6. On October 12, 2020, the Trust and the Railroad entered into a series of transactions relating to the parcels that were the subject of the P&S Agreement. First, the Trust conveyed the 363 West Street parcel and the Wetlands portion of 364 West Street to the Railroad by quitclaim deed for $1.00. Second, the owner of 100% of the beneficial interest of the Trust assigned the beneficial interest to the Railroad for $1,175,000.00. Third, the prior trustees of the Trust resigned as trustees. These transactions were recorded simultaneously in the Registry. Fourth, the Trust appointed successor trustees affiliated with the Railroad: Mr. Delli Priscoli (CEO) and Mr. Milanoski (President). As a result of these transactions, the Railroad came to own the controlling beneficial interest in the Trust, which holds legal title to the Chapter 61 Land.

7. On October 24, 2020, at a Special Town Meeting attended by over 400 residents, the Town of Hopedale adopted warrant articles by unanimous consent to appropriate money for the acquisition of the Chapter 61 Land for $1,175,000 and to maintain and preserve the Chapter 61 Land "and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks

Commission." The Town Meeting also adopted a warrant article by unanimous consent authorizing the Town to take by eminent domain the Wetlands parcel and appropriated $25,000 as compensation for the parcel.

8. On or around October 27, 2020, agents and/or representatives of the Trust and/or the Railroad began to undertake site work activities on the Chapter 61 Land, including but not limited to flagging for wetlands delineation and tree cutting. See Amended Verified Complaint, at ¶ 33; Memo. in Support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, at 5; Affidavit of David Sarkisian, at ¶¶ 7-10.

9. On October 28, 2020, Hopedale commenced this action in the Land Court for injunctive relief to prevent the Trust and the Railroad from clearing trees on the Chapter 61 Land and for declaratory relief relating to the validity of the Chapter 61 Option.

10. On October 30, 2020, the Hopedale Board of Selectmen (the "Board") voted at a duly noticed public hearing to exercise the Chapter 61 Option.

11. On November 2, 2020, Hopedale recorded a Notice of Exercise of First Refusal Option Pursuant to M.G.L. c. 61, § 8 (the "Notice of Exercise") in the Registry at Book 63651, Page 272. See Amended Verified Complaint, at Ex. E.

12. Also on November 2, 2020, Hopedale recorded an Order of Taking for the Wetlands portion of 364 West Street in the Registry at Book 63651, Page 269.

13. Also on November 2, 2020, Hopedale sent written notice to the current and former trustees of the Trust that the Board voted to exercise the Chapter 61 Option. The Board included a copy of the Notice of Exercise and a proposed purchase and sale agreement as required by G.L. c. 61, § 8. See **Exhibit 1** (notice to former trustee) **and Exhibit 2** (notice to current trustees).

14. Also on November 2, 2020, Hopedale filed the Amended Verified Complaint in the Land Court action to incorporate the Board's vote to exercise the Chapter 61 Option and the recording of the Notice of Exercise.

15. On November 22, 2020, the Railroad filed a petition with the Surface Transportation Board ("STB") seeking a declaratory order that federal law preempted the application of Chapter 61.

16. On November 23, 2020, the Land Court (Rubin, J.) held a Hearing on Hopedale's request for a preliminary injunction and an Initial Case Management Conference for the Land Court action. The Court made a docket entry following the hearing (the "Nov. 23 Docket Entry"). See Docket Entry dated Nov. 23, 2020.

17. On November 24, 2020, the Land Court (Rubin, J.) issued an Order Referring Case to Dispute Resolution Screening Session.

18. On January 8 and 21, 2021, Hopedale, the Trust, and the Railroad participated in mediation sessions with the Hon. Leon J. Lombardi (ret.).

19. On February 8, 2021, Hopedale, the Trust, and the Railroad entered into a Settlement Agreement and Mutual Release after mediation (the "Settlement Agreement.").

20. Pursuant to the Settlement Agreement, the Town agreed to purchase a 64-acre parcel comprised of the Chapter 61 Land and the Wetlands from the Trust for $587,500. The parties agreed that the Trust would retain ownership to the rest of the Chapter 61 Land; that this land would no longer be classified under Chapter 61; and that the Town would waive its Chapter 61 Option. The parties also agreed to file a stipulation of dismissal with prejudice in the Land Court action.

21. On February 10, 2021, pursuant to the Settlement Agreement, Hopedale, the Trust, and the Railroad filed a Stipulation of Dismissal with Prejudice in the Land Court action.

22. On March 3, 2021, a group of ten citizens of Hopedale filed an action in Worcester Superior Court seeking to enjoin the Board and the Railroad from completing the land acquisition contemplated in the Settlement Agreement; to enforce the Town's right to exercise the Chapter 61 Option; and to protect the Chapter 61 Land under Article 97 of the Amendments to the Massachusetts Constitution (the "Citizens Suit"). See **Exhibit 3** (Verified Complaint).

23. On September 24, 2021, the Worcester Superior Court (Goodwin, J.) issued a Memorandum and Order on Motion for Preliminary Injunction in the Citizens Suit (the Sept. 24 Decision"). See **Exhibit 4**. Addressing the plaintiffs' allegations (supported by affidavits) that the Railroad had resumed cutting trees on the Forestland, the Superior Court enjoined the Railroad and the Trust "from any further alteration or destruction of the 130.18 acres of Forestland that is the subject of this lawsuit pending further order of the court." Id. at 5.

24. On November 4, 2021, the Worcester Superior Court (Goodwin, J.) issued a Memorandum of Decision on Cross-Motions for Judgment on the Pleadings in the Citizens Suit (the "Nov. 4 Decision"), which included an order prohibiting the Railroad from clearing trees or performing any other site work for a period of 60 days. See **Exhibit 5**.

25. Prior to a public hearing on December 13, 2021, the Board received a petition signed by hundreds of residents of the Town requesting that the Board continue to move forward to exercise the Chapter 61 Option and acquire the Forestland and the Wetlands pursuant to the October 2020 Town Meeting vote. See **Exhibit 6**.

26. On December 14, 2021, the Worcester Superior Court (Goodwin, J.) issued a Memorandum of Decision on Hopedale's Motion for Clarification in the Citizens Suit (the

"Dec. 14 Decision"). See **Exhibit 7**. In addition, the Court granted an assented-to motion to extend the 60-day injunction order against the Railroad through January 31, 2022.

LEGAL STANDARD

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... (5) ... it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." Mass. R. Civ. P. 60(b).

"Rule 60 (b) (5) is designed to allow 'relief from a judgment which was valid and equitable when rendered but whose prospective application has, because of changed conditions, become inequitable.'" Atlanticare Med. Ctr. v. Div. of Med. Assistance, 485 Mass. 233, 247 (2020), quoting Reporters' Notes (1973) to Mass. R. Civ. P. 60. "The rule 'derives from the traditional power of a court of equity to modify its decree in light of changed circumstances.'" Id., quoting Mitchell v. Mitchell, 62 Mass. App. Ct. 769, 778 (2005).

> [I]n essence, rule 60(b)(6) vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice. ... It is the function of rule 60(b)(6) to preserve the delicate balance between the sanctity of final judgments ... and the incessant command of the court's conscience that justice be done in light of *all* the facts. ... Although [r]elief under rule 60(b)(6) requires compelling or extraordinary circumstances, ... courts should keep in mind the purpose of the rule to accomplish substantial justice.

Rezendes v. Rezendes, 46 Mass. App. Ct. 438, 440–41 (1999) (internal citations and quotations omitted; emphasis in original). "Another prerequisite to obtaining relief under rule 60(b)(6) is that the relief sought cannot fall under any of the grounds enumerated in subsections (1) through (5)" of Rule 60(b). Id. at 441 n.2. "A judge considering a rule 60(b)(6) motion may consider whether the moving party has a meritorious claim or defense ... whether extraordinary circumstances warrant relief ... and whether the substantial rights of the parties in the matter in

controversy will be affected by granting the motion." Owens v. Mukendi, 448 Mass. 66, 72 (2006) (internal quotations omitted).

"[O]nce filed, a stipulation of dismissal is treated as a judgment under Mass. R. Civ. P. 58(a)." Tuite & Sons, Inc. v. Shawmut Bank, N.A., 43 Mass. App. Ct. 751, 755 (1997); see also Boyd v. Jamaica Plain Co-op. Bank, 7 Mass. App. Ct. 153, 158 n.8 (1979) ("A dismissal 'with prejudice' constitutes an adjudication on the merits as fully and completely as if the order had been entered after trial.").

ARGUMENT

I. Vacating the Stipulation of Dismissal is Necessary to Enable the Town of Hopedale to Pursue its Statutory Right to Purchase the Chapter 61 Land and thereby Accomplish Justice.

Without question, the Board validly exercised the Chapter 61 Option on November 2, 2020, by recording the Notice of Exercise and sending written notice to the landowner with a proposed purchase and sale agreement, as required under G.L. c. 61, § 8.[2] Thereafter, following two mediation sessions conducted at the Court's suggestion, the Board entered into the Settlement Agreement in order to resolve the litigation between the Town and the Trust and the Railroad in the Land Court and before the STB. A condition of the Settlement Agreement was the dismissal of both actions. Accordingly, Hopedale agreed to the filing of the Stipulation of Dismissal solely pursuant to its obligations under the Settlement Agreement.

[2] The option was triggered either on: (1) July 9, 2020, by the Town's receipt of the Notice of Intent, see Town of Sudbury v. Scott, 439 Mass. 288, 297 & 297 n.12 (2003); cf. Nov. 23 Docket Entry (raising issue of whether NOI was defective); or (2) October 12, 2020, by the Railroad's acquisition of the controlling beneficial interest of the Trust. See Goodwill Enterprises, Inc. v. Garland, No. MC15MISC000317RBF, 2017 WL 4801104, at *9-10 (Mass. Land Ct. Oct. 20, 2017) (holding that sale of controlling interest in nominee trust is equivalent to transfer of title sufficient to trigger right of first refusal in lease agreement). Hopedale satisfied the statutory prerequisites for exercising the option well within the 120-day period for either trigger date.

Public sentiment was always in favor of acquiring the full Chapter 61 Land, however. This was evident by the unanimous Town Meeting vote (attended by over 400 voters) and also by the filing of the Citizens Suit. Crucial here is that the Citizens Suit materially changed Hopedale's circumstances vis-à-vis the land at 364 West Street.

In the Nov. 4 Decision in the Citizens Suit, the Superior Court determined that the acquisition contemplated in the Settlement Agreement "was a substantial deviation from the acquisition authorized by the Town Meeting," Ex. 5, at 7, and therefore "the Board exceeded its authority when it entered into the Settlement Agreement without Town Meeting authorization" to purchase less than the full Chapter 61 Land. Id. at 8. In the Dec. 14 Decision, the Superior Court clarified that in its prior decision it had enjoined the Town from purchasing the land as contemplated in the Settlement Agreement unless the Town obtained authorization from Town Meeting. The Superior Court also clarified that the Settlement Agreement was not effective until the Town obtained that authorization:

> [A]lthough the terms of the Settlement Agreement are legal (including the Board's agreement to waive the [Chapter 61] Option), the Board exceeded its authority when it unilaterally entered into that agreement without Town Meeting approval of the reduced acquisition. **Therefore, the Settlement Agreement is not effective.** The Board might hold the required Town Meeting or might fail to obtain enough votes to approve the acquisition. In either case, the Settlement Agreement would fail to take effect, meaning that the Railroad would retain the land and **the Town would retain** its money and **the right to continue attempting to enforce the Option.**[] Until the reduced acquisition is approved by Town Meeting, **the agreement is not effective**, and the Town may (but is not required to) attempt to enforce the Option.

Ex. 7, at 2 (emphasis added; footnote omitted). The Town is now faced with the prospect of getting nothing from its effort to compromise and resolve its dispute with the Railroad, and the Railroad getting everything—a result which the Superior Court called "unjust, to say the least." Id. at 2 n.3.

Public sentiment remains in favor of acquiring the full Chapter 61 Land. The Board has received petition signatures from hundreds of Hopedale residents in favor of exercising the Chapter 61 Option. Ex. 6. Based on this overwhelming public support, the Board anticipates that a Town Meeting vote would almost certainly fail to obtain enough votes to approve the acquisition contemplated in the Settlement Agreement. Pursuant to G.L. c. 40, § 14, a two-thirds vote in favor of the Settlement Agreement is required to authorize its terms, and aside from the Trust and the Railroad, no other party has lodged an opposition to the acquisition of the full Chapter 61 Land. Moreover, the public health risk in convening an indoor Town Meeting in January 2022 during the rapid spread of the new variant of the Coronavirus is too great to justify holding a futile vote. Where the choice is between an "unjust" result and an appeal to "the [C]ourt's conscience that justice be done in light of *all* the facts," Rezendes, supra., the Board has determined that proceeding with enforcing the Chapter 61 Option is in the best interests of the Town. In order to do so, this Court must vacate the Stipulation of Dismissal.

The circumstances here warrant relief from the Stipulation of Dismissal under Rule 60(b).[3] Under Rule 60(b)(5), relief is warranted where "it is no longer equitable that the judgment should have prospective application," particularly "because of changed conditions." Atlanticare, supra. The Superior Court's determination in the Citizens Suit that the Settlement Agreement is not effective is a material change in conditions. Because the Settlement Agreement was not effective, everything downstream of it—including the condition to file the Stipulation of

[3] The classification of a Rule 60(b) motion under a particular subdivision of the rule is not dispositive. See Bowers v. Bd. of Appeals of Marshfield, 16 Mass. App. Ct. 29, 33 (1983), citing King v. Allen, 9 Mass. App. Ct. 821, 821-22 (1980). Where "[t]he resolution of motions for relief from judgment rests in the discretion of the trial judge," Atlanticare, 485 Mass. at 247 (internal quotation omitted), the Court should enter relief under the applicable subdivision of Rule 60(b) for which such relief is warranted.

Dismissal—was also not effective. The Court should find no obstacle in vacating a stipulation that no longer has any effect.

Alternatively, Rule 60(b)(6) is a catch-all provision for "instances when the vacating of judgment is justified by some reason other than those stated in subdivisions (1) through (5) ... that presents 'extraordinary circumstances.'" Owens, 448 Mass. at 71 (internal citations omitted). The Appeals Court has ruled that relief under Rule 60(b)(6) is proper where a board of selectmen has exceeded its authority in entering into an agreement for judgment to settle litigation. See Bowers, 16 Mass. App. Ct. at 33 (vacating part of agreement for judgment encumbering six lots such that town would cease using them as public parking area in exchange for property owner's abandonment of challenge to site plan approval for sewage pumping station as beyond authority of selectmen). The Superior Court determined that "the Board exceeded its authority when it entered into the Settlement Agreement without Town Meeting authorization." Ex. 5, at 8. Under Bowers, vacating the Stipulation of Dismissal (which the Town filed solely because it was a condition of the Settlement Agreement) is therefore warranted here.

Another Massachusetts court has found that "the failure of the defendant to abide by the terms of [a] settlement agreement is reason for th[e] court to vacate the stipulation of dismissal and reopen the ... case" under Rule 60(b)(6). Reading Dev. Co. II, L.L.P. v. First Nat. Stores, Inc., No. 981187, 2001 WL 1174190, at *1 (Mass. Super. July 30, 2001). Here, the Nov. 4 Decision of the Superior Court renders the Town incapable of acquiring the land contemplated under the Settlement Agreement. As the Superior Court noted in the Dec. 14 Decision, "where a particular term was the 'essence and foundation of a Land Court settlement agreement[,] the failure of that consideration due to a judgment in a subsequent ten-taxpayer action warranted rescission of the settlement agreement." Ex. 7, at 2 n.3 (quote modifications omitted), quoting

Abrams v. Bd. of Selectmen of Sudbury, No. 09-P-1226, 76 Mass. App. Ct. 1128, 2010 WL 1740435, at *2 (May 3, 2010) (Rule 1:28 decision); see also Abrams, 2010 WL 1740435, at *2 n.7 ("[F]ailure of consideration voids the settlement agreement.").[4]

The acquisition of some land under the Settlement Agreement (even if it was not the full Chapter 61 Land) was the material inducement for the Board's decision to enter into the Settlement Agreement in the first place. The inability of either party to perform this material obligation prevents them from abiding by the terms of the Settlement Agreement. See Reading Dev. Co., supra. Thus, it is reason for the Court to vacate the Stipulation of Dismissal under Rule 60(b)(6) and reopen this action.

Finally, a Massachusetts court has entered relief under Rule 60(b)(6) in order to enable a party to enforce a statutory right to which it is entitled. See Greater Bos. Legal Servs. v. Haddad, No. 935961, 2000 WL 1474516, at *27 (Mass. Super. June 28, 2000) (finding extraordinary circumstances existed to justify relief from stipulation of dismissal where defendant purposefully set out to deprive plaintiff's attorneys from collecting an award of fees under attorney lien statute). See also Owens, 448 Mass at 72 ("A judge considering a rule 60(b)(6) motion may consider ... whether the substantial rights of the parties in the matter in controversy will be affected by granting the motion.") (internal quotations omitted).

Reopening this action would be the most efficient avenue for enabling Hopedale to pursue its claim to enforce the Chapter 61 Option. Indeed, it may be the only one. See Dec. 14

[4] Even though the relief sought in the lower court in Abrams was a declaratory action for rescission of a contract and not a request for relief from judgment under Rule 60(b), the Appeals Court agreed with the lower court that the case presented "the sort of extraordinary circumstance that would warrant relief from judgment" under Rule 60(b) because the relief gained "as a result of the taxpayer action resulted in a failure of the consideration" under the original settlement agreement. Abrams, 2010 WL 1740435, at *2, citing Mass. R. Civ. P. 60(b) and Owens, 448 Mass. at 71-73.

Decision, at 2 n.3 ("[C]laim preclusion might bar the Town from filing a *new* suit to enforce the Option...") (emphasis in original); Jarosz v. Palmer, 436 Mass. 526, 531 n.3 (2002) ("Claim preclusion 'makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been litigated in the action.'"), quoting Heacock v. Heacock, 402 Mass. 21, 23 (1988). In addition, reopening this action would enable the Town to assert its eminent domain right to acquire the Wetlands parcel which was also authorized by Town Meeting.

II. Continuing the Superior Court's Injunction is Necessary to Maintain the Status Quo and Prevent the Railroad from Further Tree Cutting Activities.

The Trust and the Railroad have repeatedly demonstrated that they will seize upon any opportunity to clear the Forestland and cut trees unless enjoined by court order. They did so in October 2020 upon acquiring the controlling interest in the Trust and taking legal title to the Forestland, which prompted the filing of this action. See Factual and Procedural Background, supra., at ¶¶ 8-9. They did so again in September 2021 in order to take advantage of a narrow reading of the Appeals Court's injunction in an appeal of the Citizen Suit. See Ex. 4, Sept. 24 Decision, at 4 ("The Railway argues that the injunction entered by the appeals court does not restrain its actions on the Forestland because the order only prevents the town from spending money to acquire a just portion of the Forestland. In the court's view, the Railway reads the injunction too narrowly."); **Exhibit 8**, Notice of Docket Entry dated Apr. 8, 2021, in No. 2021-J-0111, at 3 (Mass. App. Ct.) (entering injunction).

The Superior Court has twice enjoined the Trust and the Railroad from altering the Forestland. See Ex. 4, Sept. 24 Decision, at 5 (temporarily enjoining the Railroad and the Trust "from any further alteration or destruction of the 130.18 acres of Forestland that is the subject of this lawsuit pending further order of the court"); Ex. 5, Nov. 4 Decision, at 12-13 (enjoining the

Railroad and the Trust "from carrying out any clearing or other site work on the Property for a period of 60 days following the issuance of this decision"). On November 30, 2021, the Superior Court extended the injunction through January 31, 2022. See **Exhibit 9**.

In light of the history of the Railroad's and the Trust's site clearing activities, the immense public interest in protecting the Forestland, and the fact that "[o]nce trees are removed, they are gone for the foreseeable future," Ex. 4, Sept. 24 Decision, at 4-5, this Court is warranted in continuing the Superior Court's injunction preventing any tree clearing or other site work on the Chapter 61 Land until the issues in this litigation are fully adjudicated.

CONCLUSION

Compelling and extraordinary circumstances justify relief from the Stipulation of Dismissal in this matter. The Board engaged in good faith negotiations with the Trust and the Railroad to settle litigation between them; however, the subsequent Citizens Suit prevented the Town from receiving the essential consideration for which it bargained. This material change in circumstances renders the prospective application of the Stipulation of Dismissal inequitable, or otherwise justifies relief from its operation in order to accomplish substantial justice for the Town in the vindication of its statutory rights under Chapter 61.

WHEREFORE, based on the foregoing, the Town of Hopedale respectfully requests that the Court grants this Motion to Vacate and enters the following relief:

1. Vacate the Stipulation of Dismissal with Prejudice filed on February 10, 2021;

2. Reinstate this action to its status as of November 24, 2020, when the Court issued the Docket Entry after the Hearing on Preliminary Injunction and Lis Pendens and Initial Case Management Conference;

3. Continue the injunction entered by the Worcester Superior Court on September 24, 2021, enjoining the Trust and the Railroad and each of their agents and representatives from any "further alteration or destruction of the 130.18 acres of forest land" pending further order of the Court; and

4. Enter such other relief as the Court deems just and proper.

Respectfully submitted,

TOWN OF HOPEDALE

By its attorneys,

Peter F. Durning (BBO# 658660)
Peter M. Vetere (BBO# 681661)
MACKIE SHEA DURNING, P.C.
20 Park Plaza, Suite 1001
Boston, MA 02116
(t) (617) 266-5104
pdurning@mackieshea.com
pvetere@mackieshea.com

Dated: December 30, 2021

CERTIFICATE OF SERVICE

I certify that on December 30, 2021, I served this Motion to Vacate Stipulation of Dismissal on the Defendants by emailing a copy thereof to their attorney, Donald C. Keavany, Jr., Esq., of Christopher Hays, Wojcik & Mavricos, LLP, 370 Main Street, Suite 970, Worcester, Massachusetts.

Signed under the penalties of perjury.

Peter M. Vetere

EXHIBIT 1

MACKIE SHEA DURNING PC
COUNSELORS AT LAW
20 Park Plaza, Suite 1001, Boston, MA 02116 • p 617 266 5700 f 617 266 5237
www.mackieshea.com

November 2, 2020

VIA CERTIFIED MAIL

Charles E. Morneau, Trustee (fmr.)
One Hundred Forty Realty Trust
31 Conant Road
Lincoln, MA 01773

Re: Notice of Exercise of First Refusal Option to Purchase Forest Land Subject to M.G.L. c. 61
364 West Street, Hopedale, MA (Assessors Map 2, Block 5)

Dear Mr. Morneau:

As the landowner specified in the Notice of Intent to Sell Forest Land Subject to Chapter 61 Tax Lien for the above-referenced property, dated July 9, 2020, you are entitled to notice, pursuant to M.G.L. c. 61, § 8, ¶ 14, that the Town of Hopedale Board of Selectmen voted to exercise the first refusal option to purchase the Chapter 61 land at the above-stated property on behalf of the Town of Hopedale. A copy of the Notice of Exercise which the town recorded in the Worcester South Registry of Deeds on this date is enclosed with this letter. Also enclosed is a proposed purchase and sale agreement which the Town is required to provide with the Notice of Exercise pursuant to M.G.L. c. 61, § 8, ¶ 16.

The Town of Hopedale is aware that you are no longer a trustee of the One Hundred Forty Realty Trust and that said trust's controlling beneficial interest has been assigned to the Grafton & Upton Railroad Company. Please be advised that this letter is being sent in strict compliance with the provisions of M.G.L. c. 61, § 8, and that a similar notice letter is also being sent to the current trustees of the One Hundred Forty Realty Trust.

Thank you for your attention to this matter. Please contact me with any questions.

Sincerely,

Peter F. Durning

encl.
cc: *(Via Electronic and First Class Mail)*
Mark L. Donahue, Esq.
Sandra R. Austin, Esq.
Brian Keyes, Hopedale Board of Selectmen, Chair
Diana Schindler, Hopedale Town Administrator
Commissioner of the Department of Conservation and Recreation (via certified mail)
Hopedale Board of Assessors
Hopedale Planning Board
Hopedale Conservation Commission

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Page: 1 of 3 11/02/2020 01:49 PM WD

NOTICE OF EXERCISE OF FIRST REFUSAL OPTION
PURSUANT TO M.G.L. c. 61, § 8

The TOWN OF HOPEDALE, acting by and through its Board of Selectmen, after a public hearing held on October 30, 2020, duly noticed, and pursuant to M.G.L. c. 61, § 8, hereby exercises the option to purchase the real property located at 364 West Street in Hopedale, Worcester County, Massachusetts, shown as Block 5, Lot 0, on Assessors Map 2 in said Town, owned as of the date of the notice of intent required by said Chapter 61, § 8, by the ONE HUNDRED FORTY REALTY TRUST, and as of said date consisting of 155.24 acres, of which 130.18 acres is classified as forest land pursuant to M.G.L. c. 61, § 2, as indicated by the Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien dated September 3, 2014, recorded in said registry in Book 52875, Page 355, said option applying only to the portion of said property classified as such. For said owner's title, see the certificate recorded in said registry in Book 61533, Page 78.

364 West Street, Hopedale, MA

Subsequent to the notice of intent sent pursuant to Chapter 61, § 8, the above-named Trust: sold the non-classified portion of said property, consisting of 25 +/- acres, to the Grafton & Upton Railroad Company by quitclaim deed dated October 12, 2020, recorded in said registry in Book 63493, Page 34; had 100% of its beneficial interest assigned to the Grafton & Upton Railroad Company by assignment dated October 12, 2020, recorded in said registry in Book 63493, Page 39; resigned its trustees by notices dated October 12, 2020, recorded in said registry in Book 63493, Pages 43 and 45; and appointed successor trustees by notices dated October 14, 2020, recorded in said registry in Book 63508, Pages 8 and 11. Said Trust continues to hold record title to the classified Chapter 61 land over which the Town of Hopedale exercises its option to purchase.

Executed as a sealed instrument this 2nd day of November, 2020.

TOWN OF HOPEDALE

By and through its Board of Selectmen,

Brian R. Keyes, Chair

Louis J. Arcudi III

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. November 2, 2020

Then personally appeared the above named, Brian R. Keyes and Louis J. Arcudi III, and acknowledged the foregoing document to be their free acts and deeds before me.

Lisa Marie Pedroli
Notary Public
My commission expires: March 15, 2024

Lisa Marie Pedroli
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires Mar. 15, 2024

Louis J. Arcudi III

COMMONWEALTH OF MASSACHUSETTS

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Notary Public
My commission expires: March 15, 2024

Lisa Marie Pedroli
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires Mar. 15, 2024

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made as of this ____ day of November, 2020 ("**Effective Date**") by and between Jon Mark Delli Priscoli, and Michael Milanoski, Trustees of the One Hundred Forty Realty Trust u/d/t September 16, 1981, recorded at the Worcester District Registry of Deeds in Book 7322 Page 177, with an address of 7 Eda Avenue, Carver, Massachusetts 02230 ("**Seller**"), and the Town of Hopedale a Massachusetts municipality with offices at 78 Hopedale Street, Hopedale, Massachusetts 01747 ("**Buyer**").

1. *Purchase and Sale*. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, transfer and convey to Buyer, and Buyer agrees to purchase and accept from Seller, the following real (the "**Property**"):

1.1. The portion of 364 West Street, Hopedale, Massachusetts subject to the Forest Land Tax Lien pursuant to MGL c. 61 recorded in the Registry in Book 52875 Page 355 consisting of 130.18 acres of forest land out of the 155.24 acres of land, more particularly described in Exhibit A hereto, together with all privileges, rights, easements and appurtenances belonging to such land, and all right, title and interest (if any) of Seller in and to any streets, alleys, passages, and other rights-of-way or appurtenances included in, adjacent to or used in connection with such land, and all right, title and interest (if any) of Seller in all mineral and development rights appurtenant to such land;

1.2. All of Seller's right, title and interest, if any, in all intangible assets of any nature relating to the Property, including without limitation all of Seller's right, title and interest in all (i) warranties all licenses, permits, and approvals and (ii) all plans and specifications, in each case to the extent that Seller may legally transfer the same (the "**Intangible Personalty**").

2. *Purchase Price*. The purchase price for the Property (the "**Purchase Price**") shall be One Million One Hundred Seventy Five Thousand and 00/100 Dollars ($1,175,000.00), which, subject to the terms and conditions hereinafter set forth, shall be paid to Seller by Buyer as follows:

2.1. *Deposit*. Concurrently with the execution and delivery of this Agreement by Buyer, Buyer shall deliver to the Law Office of Sandra Rennie Austin, 24 Bolton Street, Marlborough, MA 01752 ("**Escrow Agent**"), in immediately available funds, to be held in escrow and delivered in accordance with this Agreement, a cash deposit in the amount of Fifty-Eight Thousand Seven Hundred Fifty and 00/100 Dollars ($58,750.00) (the "**Initial Deposit**"). Within two (2) business days following the expiration of the Inspection Period as defined in Section 4.3 herein. Buyer shall deposit with Escrow Agent an additional deposit of Forty One Thousand Two Hundred Fifty and 00/100 ($41,250.00) (the "**Additional Deposit**"). The Initial Deposit and Additional Deposit are hereinafter referred to collectively as the "**Deposit.**" The Deposit shall be held and distributed as follows:

2.1.1. The Deposit shall be held by the Escrow Agent in a non-interest bearing account.

2.1.2. If the Closing takes place in accordance with the terms and conditions of this Agreement, the Escrow Agent shall deliver and pay the Deposit to Seller on the Closing Date, and the amount

so delivered shall be credited to Buyer against the Purchase Price due Seller in accordance with the terms and conditions of this Agreement.

2.1.3. If this Agreement is terminated by Buyer in accordance with the terms and conditions of this Agreement prior to the expiration of the Inspection Period (defined below), then the Escrow Agent shall promptly deliver the Initial Deposit to Buyer.

2.1.4. If this Agreement is terminated by Buyer in accordance with the terms and conditions of Paragraph 7 of this Agreement, then the Escrow Agent shall deliver the Deposit to Buyer promptly in accordance with the provisions of this Agreement.

2.1.5. If the Closing does not take place under this Agreement by reason of the failure of either party to comply with its obligations hereunder, the Escrow Agent shall promptly deliver the Deposit to the party entitled thereto in accordance with the provisions of this Agreement.

2.1.6. Except for a demand made by Buyer pursuant to a termination of this Agreement by Buyer prior to the expiration of the Inspection Period, upon receipt of a written demand from Seller or Buyer claiming the Deposit, the Escrow Agent shall promptly forward written notice of Escrow Agent's receipt of such demand together with a copy thereof to the other party hereto. Unless such other party, within seven (7) days after actual receipt of such notice, notifies the Escrow Agent in writing of any objection to such requested delivery of the Deposit, the Escrow Agent shall deliver the Deposit to the party demanding the same and thereupon shall be released and discharged from any further duty or obligation hereunder by all parties hereto. Notwithstanding anything to the contrary contained herein, the Escrow Agent shall not deliver the Deposit pursuant to any such demand for the same unless and until the Escrow Agent has received confirmation that the party not making the demand for the Deposit has actually received notice of said demand and that the time for responding to said demand has passed.

2.2. *Payment at Closing*. At the consummation of the transaction contemplated hereby (the "**Closing**"), Buyer shall deliver to the Escrow Agent by federal wire transfer in an amount equal to the Purchase Price less the Deposit. The Purchase Price, subject to adjustments and apportionments as set forth herein, shall be paid at Closing by wire transfer of immediately available federal funds, transferred to the order or account of Seller or such other person as Seller may designate in writing, for receipt by the bank designated by Seller not later than I P.M., Eastern Daylight or Standard (as applicable) Time.

3. *Escrow Agent*. The Escrow Agent shall hold the Deposit as escrow agent in accordance with the terms and provisions of this Agreement, subject to the following:

3.1. *Obligations*. The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties or obligations shall be read into this Agreement against the Escrow Agent.

3.2. *Reliance*. The Escrow Agent may act in reliance upon any writing or instrument or

signature which it, in good faith, believes to be genuine, and any statement or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice, or instrument in connection with the provisions of this Agreement has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing the same.

3.3. *Indemnification*. Unless the Escrow Agent discharges any of its duties under this Agreement in a grossly negligent manner or is guilty of willful misconduct with regard to its duties under this Agreement, Seller and Buyer shall indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as escrow agent under this Agreement; and in such connection Seller and Buyer shall indemnify the Escrow Agent against any and all expenses including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim in such capacity.

3.4. *Disputes*. If the parties (including the Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or the propriety of any action contemplated by the Escrow Agent, or the application of the Deposit, the Escrow Agent shall have the right to hold the Deposit until the receipt of written instructions from both Buyer and Seller or a final order of a court of competent jurisdiction. In addition, in any such event, the Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement. The Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees in its capacity as escrow agent hereunder in connection with any such interpleader action and shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

3.5. *Counsel*. The Escrow Agent may consult with counsel of its own choice and have full and complete authorization and protection in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind, unless caused by its negligence or willful misconduct.

4. *Buyer's Due Diligence Inspection and Termination Rights; "As Is " Sale*

4.1. *Inspection of Property*. Buyer and its appointed agents or independent contractors shall, at all reasonable times prior to the Closing Date, have the privilege of going upon the Property to, at Buyer's sole cost and expense, inspect, examine, test, appraise, and survey the Property, including, but not limited to, investigations of the physical condition thereof provided, however, that no intrusive testing, drilling or similar testing to determine the status of the land with respect to geotechnical matters and/or hazardous materials and oils shall be performed without Seller's consent which may be withheld at Seller's sole discretion- Before entering upon the Property, Buyer shall obtain and maintain for itself and on behalf of each of its contractors and agents (and shall deliver to Seller evidence thereof), at Buyer's sole cost and expense, general liability insurance,

from an insurer reasonably acceptable to Seller, in the amount of One Million Dollars and 00/00 ($1,000,000.00) combined single limit for personal injury and property damage per occurrence, such policies to name Seller and Seller's trustees additional insured parties, which insurance shall provide coverage against any claim for personal liability or property damage caused by Buyer or Buyer's contractors or agents in connection in with Buyer entry, tests and inspections upon the Property. Buyer shall, and does hereby covenant and agree to, repair any and all damage caused by the activities of Buyer or its agents on the Property and to indemnify, defend and hold Seller harmless from any actions, suits, liens, claims, damages, expenses, losses and liability arising out of any such entry by Buyer or its appointed agents or independent contractors or any acts performed in exercising Buyer's rights under this Paragraph 4.1 (including without limitation, any rights or claims of materialmen or mechanics to liens on the Property, but excluding matters merely discovered by, and not caused by, Buyer, its agents or contractors).

4.2. *Inspection of Documents*. Without any representation or warranty as to the completeness of any deliveries or the accuracy of any information provided in said documents as may be delivered. Seller shall deliver to Buyer within five (5) days after the Effective Date copies of the following documents, that it has readily in his possession if any (the documents described below herein referred to as the "Due Diligence Documents"):

4.2.1. Existing building permits, if any;

4.2.2. The most recent existing survey of the Property;

4.2.3. A copy of Seller's policy of title insurance on the Property and all title exception documents that are listed therein;

4.2.4. Maintenance agreements, and other agreements relating to the operation of the Property, if any;

4.2.5. Real estate tax bills with respect to the Property for the immediately prior and current tax fiscal years;

4.2.6. Existing reports and correspondence in Seller's possession relating to the environmental status of the Property;

4.3. *Termination*. The term "Inspection Period," as used herein, shall mean the period ending at 5:00 P.M. Eastern Daylight or Standard (as applicable) Time Sixty (60) days from the Effective Date. Buyer may terminate this Agreement in its sole discretion by giving written notice of such election to Seller prior to the end of the Inspection Period, in which event (i) the Initial Deposit shall be returned promptly to Buyer; subject to Buyer's right to terminate and receive the return of the entire Deposit under Section 4.4 (Title) and 6.2 (Condemnation) of this Agreement and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. In the absence of timely delivery by Buyer to Seller of such written notice, Buyer shall be deemed to have waived its right to terminate this Agreement under this Paragraph

4.3, and this Agreement shall continue in full force and effect.

4.4. *Title and Survey Matters*.

4.4.1. Buyer shall promptly at its sole cost and expense obtain a title commitment ("Title Commitment") from a nationally recognized title insurance company and a survey ("Survey") of the Property. Buyer shall have until the end of the Inspection Period to give written notice to Seller of any objections with respect thereto ("Buyer's Title Objection Notice"), indicating in reasonable detail the nature and reasons for Buyer's objections and including with such notice a copy of the Title Commitment and Survey, together with copies of any documents containing matters objected to in such notice. Failure to give such notice shall constitute Buyer's approval of (i) all title and survey matters as a matter of record title and/or physically existing upon the Property as of the expiration of the Inspection Period, and (ii) all matters set forth in the Title Commitment and the Survey.

4.4.2. Seller shall have the right, but not the obligation, to attempt to cure any objections set forth in Buyer's Title Objection Notice. Seller shall notify Buyer within five (5) business days after receipt of Buyer's Title Objection Notice ("**Seller's Title Objection Response Period**") whether Seller agrees to attempt to cure any objections set forth in Buyer's Title Objection Notice. If Seller so agrees to attempt to cure any objections, then Seller shall have a period of up to thirty (30) days after the end of the Inspection Period ("**Title Cure Period**") in order to effectuate such cure. If the Closing Date is scheduled to occur prior to the end of the Title Cure Period, then, upon written notice from Seller to Buyer delivered not less than three (3) business days prior to the then scheduled Closing Date, the Closing Date shall be extended until a date not later than three (3) business days after the end of the Title Cure Period in order for Seller to continue to effectuate such cure.

4.4.3. If Seller fails to give notice to Buyer prior to the expiration of Seller's Title Objection Response Period that Seller will attempt to cure all objections set forth in Buyer's Title Objection Notice, Buyer may, within five (5) business days after the expiration of Seller's Title Objection Response Period, terminate this Agreement by written notice to Seller, in which event (i) the Deposit shall be returned promptly to Buyer, and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. If Buyer does not so terminate this Agreement within said five (5) business days after the expiration of Seller's Title Objection Response Period, Buyer shall be deemed to have waived its objections set forth in Buyer's Title Objection Notice that Seller has not agreed in writing to attempt to cure, and to have agreed to accept title to the Property subject thereto, without reduction in the Purchase Price.

4.4.4. In the event Seller gives timely notice to Buyer that Seller will attempt to cure any objections set forth in Buyer's Title Objection Notice, and if this Agreement is not terminated pursuant to Paragraph 4.4.3 above, Seller shall use commercially reasonable efforts to cure such objections and deliver evidence of such cure satisfactory to the Escrow Agent and Buyer within the Title Cure Period, but in no event shall Seller be required to expend more than a maximum amount of One Hundred Thousand and 00/100 Dollars ($100,000.00) Dollars in the aggregate to

effectuate the cure of all such objections (excluding Monetary Liens (defined below), as to which such maximum amount shall not apply). If despite Seller's commercially reasonable efforts Seller fails to cure all such matters within the Title Cure Period, Buyer's sole right with respect thereto shall be to terminate this Agreement within two (2) business days after the expiration of the Title Cure Period, in which event (i) the Deposit shall be returned promptly to Buyer; and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. If Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived its objections and to have agreed to accept title to the Property subject thereto, without reduction in the Purchase Price.

4.4.5. Notwithstanding the foregoing, Seller agrees to cure at or prior to the Closing all "Monetary Liens" at Seller's sole cost and expense. As used herein, "Monetary Lien" means any security deed, mortgage, lien, security interest, monetary judgment, past due taxes or assessments or similar monetary encumbrance upon the Property created by Seller or placed on the Property by Seller's actions or inaction except as provided in Section 4.4.6.3. A Monetary Lien shall be deemed cured by Seller if such Monetary Lien is released, satisfied or canceled of record at or prior to the Closing at no additional cost to Buyer, provided, however, that as to any institutional mortgage, the lien of such mortgage shall be deemed satisfactorily released if written confirmation is received from the mortgagee stating the amount to be delivered at the Closing to discharge such mortgage, in form and substance satisfactory to the Escrow Agent to remove such mortgage from the list of encumbrances in Buyer's title insurance policy upon payment of such amount to said mortgagee out of Seller's proceeds at the Closing.

4.4.6. If Buyer does not terminate this Agreement pursuant to this Paragraph 4.4, the following matters shall be deemed accepted by Buyer and shall be referred to herein as "**Permitted Encumbrances**."

4.4.6.1. All matters disclosed in the Title Commitment and the Survey, or which exist as of record title and/or are physically existing upon the Property as of the expiration of the Inspection Period to which Buyer does not object or which Buyer is deemed to have accepted pursuant to the terms and conditions of this Paragraph 4.4, other than Monetary Liens;

4.4.6.2. Except as provided in Section 4.4.6.3, any liens for such taxes for the then current year as are not due and payable on the Closing Date, and any liens for municipal betterments assessed after the Effective Date; and the provisions of any building, zoning, subdivision, and similar laws applicable to the Property.

4.4.6.3. The tax taking and all obligations for any real estate taxes of any kind or nature and any rollback, reassessed taxes or similar changes resulting from the conversion of that portion of the Property known as 364 West Street, Hopedale, Massachusetts pursuant to the Forest Lien.

4.5. "*As Is" Sale*. Except as expressly set forth in this Agreement, it is understood and agreed that Seller is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to,

any warranties or representations as to habitability, merchantability or fitness for a particular purpose or environmental matters of any kind. Buyer acknowledges and agrees that upon closing Seller shall sell and convey to Buyer and Buyer shall accept the Property "as is, where is, with all faults," except to the extent expressly provided otherwise in this Agreement. Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, representations, or information pertaining to the Property or relating thereto (including specifically, without limitation, any prospectus distributed with respect to the Property) made or furnished by Seller, the managers of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this Agreement. Buyer also acknowledges that the purchase price reflects and takes into account that the Property is being sold "as-is." Buyer represents to Seller that Buyer has conducted, or will conduct prior to closing, such investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, as Buyer deems necessary or desirable to satisfy itself as to the condition of the Property and the existence or nonexistence or curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties, and covenants of Seller as are expressly set forth in this Agreement. Upon closing, Buyer shall assume the risk that adverse matters, including, but not limited to adverse physical and environmental conditions, may not have been revealed by Buyer's investigations, and Buyer, upon closing, shall be deemed to have waived, relinquished and released Seller (and Seller's trustees, employees and agents) from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Seller (and Seller's trustees, employees and agents) at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws and any and all other acts, omissions, events, circumstances or matters regarding the Property. The provisions of this paragraph shall survive closing or any termination of this agreement.

4.6. *Buyer's Waiver and Release of Seller as to Certain Actions after Closing*. Buyer agrees that, if at any time after the Closing, any third party or any governmental agency seeks to hold Buyer responsible for the presence of, or any loss, cost or damage associated with, Hazardous Materials (as hereinafter defined) in, on, above or beneath the Property or emanating therefrom, Buyer waives any rights it may have against Seller in connection therewith including, without limitation, under CERCLA (defined below), and Buyer agrees that it shall not (i) implead the Seller, (ii) bring a contribution action or similar action against the Seller or (iii) attempt in any way to hold the Seller responsible with respect to any such matter. The provisions of this Paragraph 4.6 shall survive the Closing. As used herein, "Hazardous Materials" shall mean and include, but shall not be limited to, any petroleum product and all hazardous or toxic substances, wastes or substances, any substances which because of their quantitated concentration, chemical, or active, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any hazardous or toxic waste or substances which are included under

or regulated by law, governmental rules or regulations (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("CERCLA"), the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., similar state laws and regulations adopted thereunder.

5. *Seller's Covenants Regarding Operation of Property*. From and after the Effective Date until the Closing or earlier termination of this Agreement, Seller agrees as follows:

5.1. *Notice of Defaults*. Seller will promptly deliver to Buyer any written notice received by Seller relating to the occurrence of any default or alleged default by Seller.

5.2. *Leases*. During the term of this Agreement, Seller will not enter into any lease for any portion of the Property without the prior written approval of Buyer.

5.3. *Encumbrances*. Seller will not grant or purport to create in favor of any third party any interest in the Property or any part thereof without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed prior to the end of the Inspection Period but which may be withheld in Buyer's sole and absolute discretion after the end of the Inspection Period.

5.4. *Other Agreements; Property Contracts*. Seller will not enter into any maintenance, management, or other service contracts relating to the Property without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed prior to the end of the Inspection Period but which may be withheld in Buyer's sole and absolute discretion after the end of the Inspection Period.

5.5. *Insurance*. Seller will continue to maintain in full force and effect all insurance as presently carried by Seller.

5.6. *Violations of Law*. Seller will promptly notify Buyer in writing of any violation of any law, regulation, ordinance, order, or other requirement of any governmental authority having jurisdiction over or affecting the Property, or any part thereof, of which Seller receives written notice.

5.7. *Structural Modifications*. Seller will not permit any structural erections to the Property without the prior written consent of Buyer which may be withheld in Buyer's sole and absolute discretion.

5.8. *Operation of Property*. Seller shall continue to maintain, operate and manage the Property in the same manner that Seller has heretofore maintained and operated the Property.

6. *Casualty and Condemnation*.

6.1. *Casualty*. Intentionally Omitted.

6.2. *Condemnation*. If prior to the Closing any portion of the Property is actually condemned by means of a recordation of an order at the Worcester District Registry of Deeds prior to the Closing Date by a body having the power of eminent domain or condemnation, or sale in lieu thereof, which either (A) in Buyer's reasonable judgment adversely affects access to the Property, or (B) is reasonably estimated to cost in excess of $200,000.00 for restoration and repair of the remaining Property then Buyer shall have the right, by giving Seller notice within ten (10) days after receipt of notice from Seller of such occurrence (with the Closing Date to be postponed, if necessary, to give the Buyer the benefit of the full ten (10) day period) to elect to: (i) terminate this Agreement, in which case the Deposit shall be returned promptly to Buyer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder; or (ii) close the sale contemplated herein. If Buyer does not have the right to terminate this Agreement or having such right elects or is deemed to have elected not to terminate this Agreement, then this Agreement shall remain in full force and effect and the purchase contemplated herein, less any portion of the Property taken by eminent domain or condemnation, shall be effected without reduction in the Purchase Price. In such event, Seller shall at the Closing assign, transfer and set over unto Buyer all of Seller's right, title and interest in and to any awards paid or payable in connection with such taking. The pendency of the condemnation proceedings referred to in Section 15. I .4 shall not constitute a condemnation pursuant to this Section unless an actual order of taking is recorded at the Worcester District Registry of Deeds prior to the Closing Date.

7. *Conditions Precedent to Buyer's Obligations*.

7.1. Buyer's obligation to purchase the Property at the Closing hereunder is expressly conditioned on the satisfaction at or before the time of Closing hereunder, or at or before such earlier time as may be expressly stated below, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Buyer, at Buyer's option):

7.1.1. *Accuracy of Representations*. All of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the date of Closing with the same effect as if made on and as of such date.

7.1.2. *Performance*. Seller shall have performed, observed and complied with all material covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of Closing hereunder.

7.1.3. *No Material Adverse Change*. Seller shall not cause to be removed any trees, clear the property, or otherwise cause a material adverse change to the Property between the Effective Date and the Closing.

7.1.4. *Condition of Title*. No new encumbrances or exceptions to title have been recorded for the first time pertaining to the Property between the date of the Title Commitment and the Closing that

have not been approved by Buyer or that are not removed by Seller or agreed to be removed by Seller prior to or contemporaneously with the Closing, and the Escrow Agent is prepared to issue at the Closing an owner's policy of title insurance at commercially customary rates, subject only to the Permitted Encumbrances.

7.2. *Failure of Conditions*. In the event Seller shall not be able to convey the Property on the Closing Date in accordance with the provisions of this Agreement, then Buyer shall have the option, exercisable by written notice to Seller at or prior to Closing, of (i) accepting at Closing the Property in such condition as Seller is able, waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price, (ii) extending the Closing Date one time only for an additional five (5) business days, or (iii) terminating this Agreement, in which event the Deposit shall be returned promptly to Buyer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder.

8. *Closing; Deliveries*.

8.1. *Time of Closing*. The Closing shall take place at 10 a.m. on _____, 2020 (the "**Closing Date**") (subject to extension as expressly set forth herein) at the Law Office of Sandra Rennie Austin, 24 Bolton Street, Marlborough, MA 01752, unless otherwise agreed to in writing by both Seller and Buyer. If any date on which the Closing would occur by operation of this Agreement is not a business day in the Commonwealth of Massachusetts or Boston, Massachusetts, the Closing shall occur on the next business day. The Closing shall be conducted through an escrow agreement by means of document delivery of Seller's Deliveries (as herein defined) and Buyer's Deliveries (as herein defined). Buyer and Seller may execute supplemental escrow instructions as may be appropriate to enable compliance with the terms of this Agreement so long as such instructions are not in conflict with this Agreement.

8.2. *Seller Deliveries*. At Closing, Seller shall deliver to Buyer the following, and it shall be a condition to Buyer's obligation to close that Seller shall have delivered the same to Buyer:

8.2.1. A Massachusetts Quitclaim Deed ("**Deed**") to the Property from Seller, duly executed and acknowledged by Seller in the form of Exhibit B subject to the Permitted Encumbrances which shall be listed in Exhibit B of the Deed.

8.2.2. A certification by Seller that all representations and warranties made by Seller in Paragraph 15 of this Agreement are true and correct in all material respects on the date of Closing, except as may be set forth in such certificate.

8.2.3. Such affidavits or letters of indemnity as the title insurer shall require in a usual and customary format in order to issue, without extra charge, an owner's policy of title insurance free of any exceptions for unfiled mechanics' or materialmen's liens, or for rights of parties in possession.

8.2.4. A Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act

("**FIRPTA**"), as amended, in the form of Exhibit C duly executed by Seller.

8.2.5. All utilities layout plans, topographical plans and the like in Seller's possession and owned by Seller used in the construction, improvement, alteration or repair of the Property.

8.2.6. Originals or copies certified by Seller of all books, records and files maintained by Seller and Seller's property manager, if any, relating to the operation and maintenance of the Property.

8.2.7. All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

8.3. *Buyer Deliveries*. At Closing, Buyer shall deliver to Seller the following, and it shall be a condition to Seller's obligation to close that Buyer shall have delivered the same to Seller:

8.3.1. Funds by wire transfer in the amount required under Paragraph 2.2 hereof (subject to the adjustments provided for in this Agreement).

8.3.2. A certification by Buyer that all representations and warranties made by Buyer in Paragraph 16 of this Agreement are true and correct in all material respects on the date of Closing, except as may be set forth in such certificate.

8.3.3. All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

9. *Apportionments; Taxes; Expenses*.

9.1. *Apportionments*.

9.1.1. *Taxes and Operating Expenses*. All real estate taxes, charges and assessments affecting the Property relating to the 364 West Street, Hopedale, Massachusetts portion of the Property shall be prorated on a per diem basis as of the Closing Date, with the exception of the Forest Lien. All roll back taxes or other charges resulting from the conversion of the property subject to the Forest Lien shall be the obligation of the Buyer. All unpaid taxes and charges relating to that portion of the Property at 363 West Street, Hopedale, Massachusetts shall be paid by the Buyers including tax taking on 363 West Street. If any Taxes have not been finally assessed as of the Closing Date for the current fiscal year of the taxing authority, then the same shall be adjusted at Closing based upon the most recently issued bills therefor, and shall be readjusted when final bills are issued. Buyer hereby agrees to assume all nondelinquent assessments affecting the Property, whether special or general.

9.2. *Expenses*. Each party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (l) all costs and expenses stated herein to be borne by a party, and (2) all of their respective accounting, legal and appraisal fees. Buyer, in addition to its other expenses, shall pay at Closing (l) all recording

charges incident to the recording of the deed for the Property; (2) the premium for Buyer's title insurance policy; and (3) one-half of the escrow fee of the Escrow Agent. Seller, in addition to its other expenses, shall pay at Closing (l) all documentary stamps, excise taxes and real estate transfer taxes, (2) all recording charges incident to the recording of any instruments to discharge or remove encumbrances not approved (or deemed approved) by Buyer, and (3) one-half of the escrow fee of the Escrow Agent.

10. *Remedies*.

10.1. *Buyer Default*. In the event Buyer breaches or fails, without legal excuse, to complete the purchase of the Property or to perform its obligations under this Agreement, then, except as otherwise expressly set forth in this Agreement, Seller shall, as its sole remedy therefor, be entitled to receive the Deposit as liquidated damages (and not as a penalty) in lieu of, and as full compensation for, all other rights or claims of Seller against Buyer by reason of such default, upon receipt of which this Agreement shall terminate and the parties shall be relieved of all further obligations and liabilities hereunder, except as expressly set forth herein. Buyer and Seller acknowledge that the damages to Seller resulting from Buyer's breach would be difficult, if not impossible, to ascertain with any accuracy, and that the liquidated damage amount set forth in this Paragraph represents both parties' best efforts to approximate such potential damages.

10.2. *Seller Default*. If Seller fails to perform any of its obligations under this Agreement, then Buyer, as its sole remedy for such failure, may either: (i) terminate this Agreement by written notice to Seller and Escrow Agent given prior to or on the Closing Date whereupon (x) Escrow Agent shall pay the Deposit to Buyer, and (y) if, but only if, the closing of the purchase of the Property does not occur as a result of Seller's intentional and willful failure to close, then Buyer the Seller shall pay to Buyer an amount equal to the out-of-pocket expenses (not to exceed Twenty Thousand and 00/100 Dollars ($20,000.00) in the aggregate) incurred by Buyer in finalizing this Agreement and in performing Buyer's due diligence with respect to the Property, said amount to be paid within thirty (30) days after Buyer delivers to Seller written demand therefor accompanied by commercially customary third party receipts therefor; or (ii) enforce specific performance of Seller's obligations under this Agreement; provided, however, that if Seller willfully and intentionally conveys the Property to a bona fide third-party buyer or encumbers the Property in favor of a bona fide third party in a manner the result of which is that specific performance is not an available remedy, then Buyer may seek to recover Buyer's actual damages arising therefrom. The exercise by the Town of the right of first refusal as referred to in Section 4.7 shall not be deemed a breach by Seller.

11. *Confidentiality*. Buyer agrees to keep confidential and not to use, other than in connection with its determination whether to proceed with the purchase of the Property in accordance with the terms and conditions of this Agreement, any of the documents, material or information regarding the Property supplied to Buyer by Seller or by any third party at Seller's request, including, without limitation, any environmental site assessment reports furnished to Buyer, except to Buyer's, attorneys, accountants, consultants, investors and lenders on a "need to know" basis, unless Buyer is compelled to disclose such documents, material or information by law or by subpoena. In the

event that the Closing does not occur in accordance with the terms of this Agreement, Buyer shall return to Seller all of the documents, material or information regarding the Property supplied to Buyer by Seller or at the request of Seller. The provisions of this Paragraph 1 1 shall survive the termination of this Agreement but shall no longer be applicable following Closing in accordance with the terms of this Agreement.

12. *Possession*. Possession of the Property shall be surrendered to Buyer at Closing.

13. *Notices*. All notices and other communications provided for herein shall be. in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

13.1. If to Seller:

One Hundred Forty Realty Trust
Jon Mark Delli Priscoli and Michael Milanoski, Trustees
7 Eda Avenue
Carver, Massachusetts 02230
E-mail: mmilanoski@graftonuptonrr.com

With a copy to:

Sandra R. Austin, Esquire
Law Office of Sandra Rennie Austin
24 Bolton Street
Marlborough, MA 01752
E-mail: sandra@attyaustin.com

13.2. If to Buyer:

Grafton & Upton Railroad Company
7 Eda Ave
Carver. MA 02330
E-mail: jcottert@firstcolonydev.com and
mmilanoski@graftonuptonrr.com

With a copy to:

Peter F. Durning, Esquire
Mackie Shea Durning, PC
20 Park Plaza Suite 1001
Boston, MA 02116
E-mail: pdurning@mackieshea.com

13.3. If to the Escrow Agent to:

Sandra R. Austin, Esquire
Law Office of Sandra Rennie Austin
24 Bolton Street
Marlborough, MA 01752
E-mail: sandra@attyaustin.com

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by email to the address indicated above with receipt confirmed and with an original by regular mail. Any such notice or communication shall be effective when delivery is received or refused.

14. *Brokers*. N/A.

15. *Representations and Warranties of Seller*.

15.1. Subject to all matters disclosed in any document delivered to Buyer by Seller or on any exhibit attached hereto, and subject to any information discovered by Buyer or other information disclosed to Buyer by Seller or any other person after the Effective Date and prior to the Closing, including, without limitation, any information contained in the Survey or the Title Commitment (all such matters being referred to herein as "Exception Matters"), Seller represents and warrants to Buyer as follows:

15.1.1. *Authority*. Seller is a nominee trust duly organized and validly existing under the laws of the Commonwealth of Massachusetts and has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement have been duly authorized pursuant to the terms and conditions of the Trust as recorded.

15.1.2. *No Conflict*. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the Property of the Seller by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller, which will not be discharged, assumed or released at Closing. No action by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Seller in accordance with its terms.

15.1.3. *Bankruptcy*. Seller has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or

(ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets.

15.1.4. To Seller's knowledge there are no there pending condemnation, eminent domain or similar proceedings other than the current Petition of Grafton & Upton Railroad Company which is currently before the Department of Public Utilities (case number: D.P-U. 19-39), with respect to all or any portion of the Property.

15.1.5. *Compliance*. Seller has not received written notice of any existing violations of any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements affecting the Property which have not been cured with the exception of Seller's refusal or failure to pay real estate taxes and municipal charges relating to 363 West Street, Hopedale, Massachusetts.

15.1.6. *Litigation*. With the exception of the potential taking of the Property which Seller has advised Buyer, there is no action, suit or proceeding pending or, to the best of Seller's actual knowledge, threatened against or affecting the Property, or arising out of the ownership, management or operation of the Property, this Agreement or the transactions contemplated hereby.

15.1.7. *Leases*. The Property is not leased nor subject to any occupancy agreements covering any portion of the Property and there are no written or oral promises, agreements, amendments, addenda, modifications, supplements, understandings, or commitments between Seller and any tenant of any nature whatsoever related to the Property and Seller agrees that it will not enter into any such agreements.

15.1.8. *Hazardous Materials*. INTENTIONALLY OMITTED. SELLER MAKES NO REPRESENTATION, WARRANTY OR STATEMENT OF ANY KIND RELATIVE TO HAZARDOUS MATERIALS.

15.1.9. *Other Agreements*. There are no written agreements affecting the Property to which Seller is party that will be binding on Buyer. Excepting the rights granted pursuant to the Forest Lien, Seller has not entered into and will not during the term of this Agreement enter into, any other agreement giving any other party a right to purchase the Property.

15.1.10. *FIRPTA*. Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code.

15.2. *Definition of Seller's Knowledge*. As used in this Agreement, or in any other agreement, document, certificate or instrument delivered by Seller to Buyer, the phrase "to the best of Seller's actual knowledge, to the best of Seller's knowledge" or any similar phrase shall mean the actual, not constructive or imputed, knowledge of Charles E. Morneau without any obligation on their part to make any independent investigation of the matters being represented and warranted, or to make any inquiry of any other persons, or to search or examine any files, records, books, correspondence and the like.

15.3. *Survival of Seller's Representations and Warranties*. The representations and warranties of Seller set forth in this Paragraph 15 shall survive Closing for a period of Ninety (90) days and shall not be merged with the execution and delivery of the Deed and other closing documents hereunder.

16. *Representations of Buyer*. Buyer represents and warrants that:

16.1. *Authority*. Buyer is a Massachusetts municipality, duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Buyer has been duly authorized.

16.2. *No Conflict*. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Buyer does not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of the Buyer by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Buyer is a party or which is or purports to be binding upon Buyer or which otherwise affects Buyer, which will not be discharged, assumed or released at Closing. No action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Buyer in accordance with its terms.

17. *Miscellaneous*.

17.1. *Assignability*. Buyer may assign or transfer all or any portion of its rights or obligations under this Agreement to any other individual or entity without the consent thereto by Seller. Further, Buyer may assign or transfer such rights and obligations to an entity controlling, controlled by or under common control with Buyer without Seller's consent, with prior notice to Seller. No assignment or transfer by Buyer will be permitted if such assignment or transfer would, in Seller's opinion, cause this transaction to violate any provision of applicable law.

17.2. *Governing Law; Bind and Inure*. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, assigns and personal representatives.

17.3. *Recording*. This Agreement or any notice or memorandum hereof shall not be recorded in any public record. A violation of this prohibition by Buyer shall constitute a material breach of this Agreement by Buyer, entitling Seller to terminate this Agreement and retain the Deposit.

17.4. *Time of the Essence*. Time is of the essence of this Agreement.

17.5. *Headings*. The headings preceding the text of the paragraphs and subparagraphs hereof are

inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

17.6. *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic means, such as a facsimile or email of .pdf signature pages, which shall have the same force and effect as the delivery of an original signature.

17.7. *Exhibits*. All Exhibits which are referred to herein and which are attached hereto constitute a part of this Agreement.

17.8. *Survival*. Unless otherwise expressly stated in this Agreement, each of the warranties and representations of Seller and Buyer shall not survive the Closing and delivery of the Deed and other closing documents by Seller to Buyer and shall be deemed to have merged therewith. Unless expressly made to survive, all obligations and covenants of Seller contained herein shall be deemed to have been merged into the Deed and shall not survive the Closing.

17.9. *Use of Proceeds to Clear Title*. To enable Seller to make conveyance as herein provided, Seller may, at the time of Closing, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests, provided that provision reasonably satisfactory to the Escrow Agent and Buyer's attorney is made for prompt recording of all instruments so procured in accordance with conveyancing practice in the jurisdiction in which the Property is located.

17.10. *Submission not an Offer or Option*. The submission of this Agreement or a summary of some or all of its provisions for examination or negotiation by Buyer or Seller does not constitute an offer by Seller or Buyer to enter into an agreement to sell or purchase the Property, and neither party shall be bound to the other with respect to any such purchase and sale until a definitive agreement satisfactory to the Buyer and Seller in their sole discretion is executed and delivered by both Seller and Buyer.

17.11. *Entire Agreement; Amendments*. This Agreement and the Exhibits hereto set forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

17.12. *Section 1031 Exchange*. Seller may consummate the sale of the Property as part of a so-called like kind exchange (the "**Exchange**") pursuant to §1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that: (i) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller's obligations under this Agreement; (ii) Seller shall affect the Exchange through an assignment of its rights under this Agreement to a qualified

intermediary; (iii) Buyer shall not be required to take an assignment of the purchase agreement for the replacement property or be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (iv) Seller will reimburse Buyer for any additional costs and fees (including, without limitation, attorneys' fees) incurred by the Buyer in connection with the Exchange. Buyer shall not by this Agreement or acquiescence to the Exchange (i) have its rights under this Agreement affected or diminished in any manner or (ii) be responsible for compliance with or be deemed to have warranted to Seller that the Exchange in fact complies with § 1031 of the Code.

17.13. *Compliance with Federal Laws; OFAC*. Each of Buyer and Seller each, a "**Representing Party**") represents and warrants to the other (i) that neither the Representing Party, nor any owner of a beneficial interest in it, nor any of its officers, directors, managers or managing members is a person or entity (each, a "**Prohibited Person**") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "**Executive Order**") signed on September 23, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action, (ii) that the Representing Party's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "**Money Laundering Act**"), and (iii) that throughout the term of this Agreement the Representing Party shall comply with the Executive Order and with the Money Laundering Act.

[The remainder of this page is intentionally left blank; signature page follows.]

[Signature page — Purchase and Sale Agreement]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SELLER: One Hundred Forty Realty Trust

By:_____

Name:_____

Title:_____

Date:_____

By:_____

Name:_____

Title:_____

Date:_____

BUYER: Town of Hopedale

By:_____

Name:_____

Title:_____

Date:_____

EXHIBIT A

Description of the Land

Certain property containing 130.18 acres of land out of approximately 155 acres located on and known as 364 West Street, Hopedale, Worcester County, Massachusetts; shown of the Town of Hopedale Assessors Map as Map 2 Parcel 5 and being part of the premises conveyed to the Seller, One Hundred Forty Realty Trust in a deed dated September 16, 1981 and recorded at the Worcester District Registry of Deeds in Book 7322 Page 181.

The property being conveyed is the land subject to the Forest Land Tax Lien pursuant to MGL c. 61 recorded in the Registry in Book 52875 Page 355 consisting of 130.18 acres of forest land out of the 155.24 acres of land, and expressly excluding 23.29 acres of unproductive wetlands and 1.67 acres of a gas line easement described in the June 27, 2012 Certificate for Chapter 61/61A Forest Lands as follows:

Unproductive Wetland: 23.39 acres of wetlands that were not included in the woodland classification being the land beginning at a stone bound along the south easterly boundary line S83.5W, 54' +/-; thence northerly along the swamp edge 300'+/-; thence westerly along the swamp edge 216'+/-' thence northerly 1,165+/- along the swamp edge; thence easterly 600'+/- along the swamp edge; thence northerly 480' along the swamp edge; thence south easterly 2000'+/- to a point on the south easterly boundary line' thence S59.5E, 81'+/- to a corner of the property; thence S83.5W, 329' along the property line t0 the point of beginning.

Gas Line Easement: Beginning at a drill hole on a stone wall on the gas line and the southerly mot corner of the property N18.5W, 124' +/- to a point; thence N6W, 675'+/- along the gas line to a point on the westerly side of the gas line and property line; thence due east, 85+/- to a point on the easterly side of the gas line and property line; thence S6E, 788'+/- along the gas line to a point on a stone wall; thence S74W, 54' +/- along the property line and stone wall to a point of beginning.

EXHIBIT B
Form of Deed

EXHIBIT C

Form of Non-Foreign Affidavit

NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person.

To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, a _____ ("Seller"), the undersigned hereby certifies the following:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Income Tax Regulations;

3. Seller's U.S. taxpayer identification number is [_____]; and

4. Seller's address is _____. The undersigned understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both. Under penalties of perjury, the undersigned declares that it has examined this certification and to the best of its knowledge and belief it is true, correct, and complete, and further declares that it has authority to sign this document.

Date: As of _____, 2020

EXHIBIT 2

MACKIE SHEA DURNING PC

COUNSELORS AT LAW

20 Park Plaza, Suite 1001, Boston, MA 02116 • p 617 266 5700 f 617 266 5237

www.mackieshea.com

November 2, 2020

VIA CERTIFIED MAIL

Michael R. Milanoski, Trustee
One Hundred Forty Realty Trust
7 Eda Avenue
Carver, MA 02230

Jon Delli Priscoli, Trustee
One Hundred Forty Realty Trust
7 Eda Avenue
Carver, MA 02230

Re: Notice of Exercise of First Refusal Option to Purchase Forest Land Subject to M.G.L. c. 61
364 West Street, Hopedale, MA (Assessors Map 2, Block 5)

Dear Mr. Milanoski and Mr. Delli Priscoli:

As the current trustees of the One Hundred Forty Realty Trust, the landowner specified in the Notice of Intent to Sell Forest Land Subject to Chapter 61 Tax Lien for the above-referenced property, dated July 9, 2020, which trust retains legal title to the forest land at issue, please be advised that, pursuant to M.G.L. c. 61, § 8, the Town of Hopedale Board of Selectmen voted to exercise the first refusal option to purchase the Chapter 61 land at the above-stated property on behalf of the Town of Hopedale. A copy of the Notice of Exercise which the town recorded in the Worcester South Registry of Deeds on this date is enclosed with this letter.

Also enclosed is a proposed purchase and sale agreement which the Town is required to provide with the Notice of Exercise pursuant to M.G.L. c. 61, § 8, ¶ 16. This proposed agreement contains substantially the same terms and conditions as the bona fide offer which was made in the original purchase and sale agreement to the One Hundred Forty Realty Trust as set forth in the above-stated Notice of Intent. As such, the Town of Hopedale believes that the parties can proceed without issue to execute the agreement and complete Hopedale's purchase of the property. If you or your counsel has any comments or revisions on the proposed agreement, please send them to my attention at your earliest convenience.

Thank you for your attention to this matter. Please contact me with any questions.

Sincerely,

Peter F. Durning

encl.
cc: *(Via Electronic and First Class Mail)*
Sandra R. Austin, Esq.
Brian Keyes, Hopedale Board of Selectmen, Chair
Diana Schindler, Hopedale Town Administrator
Commissioner of the Department of Conservation and Recreation (via certified mail)
Hopedale Board of Assessors
Hopedale Planning Board
Hopedale Conservation Commission

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Page: 1 of 3 11/02/2020 01:49 PM WD

NOTICE OF EXERCISE OF FIRST REFUSAL OPTION
PURSUANT TO M.G.L. c. 61, § 8

The TOWN OF HOPEDALE, acting by and through its Board of Selectmen, after a public hearing held on October 30, 2020, duly noticed, and pursuant to M.G.L. c. 61, § 8, hereby exercises the option to purchase the real property located at 364 West Street in Hopedale, Worcester County, Massachusetts, shown as Block 5, Lot 0, on Assessors Map 2 in said Town, owned as of the date of the notice of intent required by said Chapter 61, § 8, by the ONE HUNDRED FORTY REALTY TRUST, and as of said date consisting of 155.24 acres, of which 130.18 acres is classified as forest land pursuant to M.G.L. c. 61, § 2, as indicated by the Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien dated September 3, 2014, recorded in said registry in Book 52875, Page 355, said option applying only to the portion of said property classified as such. For said owner's title, see the certificate recorded in said registry in Book 61533, Page 78.

364 West Street, Hopedale, MA

Subsequent to the notice of intent sent pursuant to Chapter 61, § 8, the above-named Trust: sold the non-classified portion of said property, consisting of 25 +/- acres, to the Grafton & Upton Railroad Company by quitclaim deed dated October 12, 2020, recorded in said registry in Book 63493, Page 34; had 100% of its beneficial interest assigned to the Grafton & Upton Railroad Company by assignment dated October 12, 2020, recorded in said registry in Book 63493, Page 39; resigned its trustees by notices dated October 12, 2020, recorded in said registry in Book 63493, Pages 43 and 45; and appointed successor trustees by notices dated October 14, 2020, recorded in said registry in Book 63508, Pages 8 and 11. Said Trust continues to hold record title to the classified Chapter 61 land over which the Town of Hopedale exercises its option to purchase.

Executed as a sealed instrument this 2nd day of November, 2020.

TOWN OF HOPEDALE

By and through its Board of Selectmen,

Brian R. Keyes, Chair

Louis J. Arcudi III

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. November 2, 2020

Then personally appeared the above named, Brian R. Keyes and Louis J. Arcudi III, and acknowledged the foregoing document to be their free acts and deeds before me.

Lisa Marie Pedroli
Notary Public
My commission expires: March 15, 2024

Lisa Marie Pedroli
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires Mar. 15, 2024

Louis J. Arcudi III

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. November 2, 2020

Then personally appeared the above named, Brian R. Keyes and Louis J. Arcudi III, and acknowledged the foregoing document to be their free acts and deeds before me.

Lisa M. Pedroli
Notary Public
My commission expires: March 15, 2024

Lisa Marie Pedroli
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires Mar. 15, 2024

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made as of this ____ day of November, 2020 ("**Effective Date**") by and between Jon Mark Delli Priscoli, and Michael Milanoski, Trustees of the One Hundred Forty Realty Trust u/d/t September 16, 1981, recorded at the Worcester District Registry of Deeds in Book 7322 Page 177, with an address of 7 Eda Avenue, Carver, Massachusetts 02230 ("**Seller**"), and the Town of Hopedale a Massachusetts municipality with offices at 78 Hopedale Street, Hopedale, Massachusetts 01747 ("**Buyer**").

1. *Purchase and Sale*. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, transfer and convey to Buyer, and Buyer agrees to purchase and accept from Seller, the following real (the "**Property**"):

1.1. The portion of 364 West Street, Hopedale, Massachusetts subject to the Forest Land Tax Lien pursuant to MGL c. 61 recorded in the Registry in Book 52875 Page 355 consisting of 130.18 acres of forest land out of the 155.24 acres of land, more particularly described in Exhibit A hereto, together with all privileges, rights, easements and appurtenances belonging to such land, and all right, title and interest (if any) of Seller in and to any streets, alleys, passages, and other rights-of-way or appurtenances included in, adjacent to or used in connection with such land, and all right, title and interest (if any) of Seller in all mineral and development rights appurtenant to such land;

1.2. All of Seller's right, title and interest, if any, in all intangible assets of any nature relating to the Property, including without limitation all of Seller's right, title and interest in all (i) warranties all licenses, permits, and approvals and (ii) all plans and specifications, in each case to the extent that Seller may legally transfer the same (the "**Intangible Personalty**").

2. *Purchase Price*. The purchase price for the Property (the "**Purchase Price**") shall be One Million One Hundred Seventy Five Thousand and 00/100 Dollars ($1,175,000.00), which, subject to the terms and conditions hereinafter set forth, shall be paid to Seller by Buyer as follows:

2.1. *Deposit*. Concurrently with the execution and delivery of this Agreement by Buyer, Buyer shall deliver to the Law Office of Sandra Rennie Austin, 24 Bolton Street, Marlborough, MA 01752 ("**Escrow Agent**"), in immediately available funds, to be held in escrow and delivered in accordance with this Agreement, a cash deposit in the amount of Fifty-Eight Thousand Seven Hundred Fifty and 00/100 Dollars ($58,750.00) (the "**Initial Deposit**"). Within two (2) business days following the expiration of the Inspection Period as defined in Section 4.3 herein. Buyer shall deposit with Escrow Agent an additional deposit of Forty One Thousand Two Hundred Fifty and 00/100 ($41,250.00) (the "**Additional Deposit**"). The Initial Deposit and Additional Deposit are hereinafter referred to collectively as the "**Deposit.**" The Deposit shall be held and distributed as follows:

2.1.1. The Deposit shall be held by the Escrow Agent in a non-interest bearing account.

2.1.2. If the Closing takes place in accordance with the terms and conditions of this Agreement, the Escrow Agent shall deliver and pay the Deposit to Seller on the Closing Date, and the amount

so delivered shall be credited to Buyer against the Purchase Price due Seller in accordance with the terms and conditions of this Agreement.

2.1.3. If this Agreement is terminated by Buyer in accordance with the terms and conditions of this Agreement prior to the expiration of the Inspection Period (defined below), then the Escrow Agent shall promptly deliver the Initial Deposit to Buyer.

2.1.4. If this Agreement is terminated by Buyer in accordance with the terms and conditions of Paragraph 7 of this Agreement, then the Escrow Agent shall deliver the Deposit to Buyer promptly in accordance with the provisions of this Agreement.

2.1.5. If the Closing does not take place under this Agreement by reason of the failure of either party to comply with its obligations hereunder, the Escrow Agent shall promptly deliver the Deposit to the party entitled thereto in accordance with the provisions of this Agreement.

2.1.6. Except for a demand made by Buyer pursuant to a termination of this Agreement by Buyer prior to the expiration of the Inspection Period, upon receipt of a written demand from Seller or Buyer claiming the Deposit, the Escrow Agent shall promptly forward written notice of Escrow Agent's receipt of such demand together with a copy thereof to the other party hereto. Unless such other party, within seven (7) days after actual receipt of such notice, notifies the Escrow Agent in writing of any objection to such requested delivery of the Deposit, the Escrow Agent shall deliver the Deposit to the party demanding the same and thereupon shall be released and discharged from any further duty or obligation hereunder by all parties hereto. Notwithstanding anything to the contrary contained herein, the Escrow Agent shall not deliver the Deposit pursuant to any such demand for the same unless and until the Escrow Agent has received confirmation that the party not making the demand for the Deposit has actually received notice of said demand and that the time for responding to said demand has passed.

2.2. *Payment at Closing*. At the consummation of the transaction contemplated hereby (the "**Closing**"), Buyer shall deliver to the Escrow Agent by federal wire transfer in an amount equal to the Purchase Price less the Deposit. The Purchase Price, subject to adjustments and apportionments as set forth herein, shall be paid at Closing by wire transfer of immediately available federal funds, transferred to the order or account of Seller or such other person as Seller may designate in writing, for receipt by the bank designated by Seller not later than I P.M., Eastern Daylight or Standard (as applicable) Time.

3. *Escrow Agent*. The Escrow Agent shall hold the Deposit as escrow agent in accordance with the terms and provisions of this Agreement, subject to the following:

3.1. *Obligations*. The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties or obligations shall be read into this Agreement against the Escrow Agent.

3.2. *Reliance*. The Escrow Agent may act in reliance upon any writing or instrument or

signature which it, in good faith, believes to be genuine, and any statement or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice, or instrument in connection with the provisions of this Agreement has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing the same.

3.3. *Indemnification*. Unless the Escrow Agent discharges any of its duties under this Agreement in a grossly negligent manner or is guilty of willful misconduct with regard to its duties under this Agreement, Seller and Buyer shall indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as escrow agent under this Agreement; and in such connection Seller and Buyer shall indemnify the Escrow Agent against any and all expenses including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim in such capacity.

3.4. *Disputes*. If the parties (including the Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or the propriety of any action contemplated by the Escrow Agent, or the application of the Deposit, the Escrow Agent shall have the right to hold the Deposit until the receipt of written instructions from both Buyer and Seller or a final order of a court of competent jurisdiction. In addition, in any such event, the Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement. The Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees in its capacity as escrow agent hereunder in connection with any such interpleader action and shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

3.5. *Counsel*. The Escrow Agent may consult with counsel of its own choice and have full and complete authorization and protection in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind, unless caused by its negligence or willful misconduct.

4. *Buyer's Due Diligence Inspection and Termination Rights; "As Is " Sale*

4.1. *Inspection of Property*. Buyer and its appointed agents or independent contractors shall, at all reasonable times prior to the Closing Date, have the privilege of going upon the Property to, at Buyer's sole cost and expense, inspect, examine, test, appraise, and survey the Property, including, but not limited to, investigations of the physical condition thereof provided, however, that no intrusive testing, drilling or similar testing to determine the status of the land with respect to geotechnical matters and/or hazardous materials and oils shall be performed without Seller's consent which may be withheld at Seller's sole discretion- Before entering upon the Property, Buyer shall obtain and maintain for itself and on behalf of each of its contractors and agents (and shall deliver to Seller evidence thereof), at Buyer's sole cost and expense, general liability insurance,

from an insurer reasonably acceptable to Seller, in the amount of One Million Dollars and 00/00 ($1,000,000.00) combined single limit for personal injury and property damage per occurrence, such policies to name Seller and Seller's trustees additional insured parties, which insurance shall provide coverage against any claim for personal liability or property damage caused by Buyer or Buyer's contractors or agents in connection in with Buyer entry, tests and inspections upon the Property. Buyer shall, and does hereby covenant and agree to, repair any and all damage caused by the activities of Buyer or its agents on the Property and to indemnify, defend and hold Seller harmless from any actions, suits, liens, claims, damages, expenses, losses and liability arising out of any such entry by Buyer or its appointed agents or independent contractors or any acts performed in exercising Buyer's rights under this Paragraph 4.1 (including without limitation, any rights or claims of materialmen or mechanics to liens on the Property, but excluding matters merely discovered by, and not caused by, Buyer, its agents or contractors).

4.2. *Inspection of Documents*. Without any representation or warranty as to the completeness of any deliveries or the accuracy of any information provided in said documents as may be delivered. Seller shall deliver to Buyer within five (5) days after the Effective Date copies of the following documents, that it has readily in his possession if any (the documents described below herein referred to as the "Due Diligence Documents"):

4.2.1. Existing building permits, if any;

4.2.2. The most recent existing survey of the Property;

4.2.3. A copy of Seller's policy of title insurance on the Property and all title exception documents that are listed therein;

4.2.4. Maintenance agreements, and other agreements relating to the operation of the Property, if any;

4.2.5. Real estate tax bills with respect to the Property for the immediately prior and current tax fiscal years;

4.2.6. Existing reports and correspondence in Seller's possession relating to the environmental status of the Property;

4.3. *Termination*. The term "Inspection Period," as used herein, shall mean the period ending at 5:00 P.M. Eastern Daylight or Standard (as applicable) Time Sixty (60) days from the Effective Date. Buyer may terminate this Agreement in its sole discretion by giving written notice of such election to Seller prior to the end of the Inspection Period, in which event (i) the Initial Deposit shall be returned promptly to Buyer; subject to Buyer's right to terminate and receive the return of the entire Deposit under Section 4.4 (Title) and 6.2 (Condemnation) of this Agreement and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. In the absence of timely delivery by Buyer to Seller of such written notice, Buyer shall be deemed to have waived its right to terminate this Agreement under this Paragraph

4.3, and this Agreement shall continue in full force and effect.

4.4. *Title and Survey Matters*.

4.4.1. Buyer shall promptly at its sole cost and expense obtain a title commitment ("Title Commitment") from a nationally recognized title insurance company and a survey ("Survey") of the Property. Buyer shall have until the end of the Inspection Period to give written notice to Seller of any objections with respect thereto ("Buyer's Title Objection Notice"), indicating in reasonable detail the nature and reasons for Buyer's objections and including with such notice a copy of the Title Commitment and Survey, together with copies of any documents containing matters objected to in such notice. Failure to give such notice shall constitute Buyer's approval of (i) all title and survey matters as a matter of record title and/or physically existing upon the Property as of the expiration of the Inspection Period, and (ii) all matters set forth in the Title Commitment and the Survey.

4.4.2. Seller shall have the right, but not the obligation, to attempt to cure any objections set forth in Buyer's Title Objection Notice. Seller shall notify Buyer within five (5) business days after receipt of Buyer's Title Objection Notice ("**Seller's Title Objection Response Period**") whether Seller agrees to attempt to cure any objections set forth in Buyer's Title Objection Notice. If Seller so agrees to attempt to cure any objections, then Seller shall have a period of up to thirty (30) days after the end of the Inspection Period ("**Title Cure Period**") in order to effectuate such cure. If the Closing Date is scheduled to occur prior to the end of the Title Cure Period, then, upon written notice from Seller to Buyer delivered not less than three (3) business days prior to the then scheduled Closing Date, the Closing Date shall be extended until a date not later than three (3) business days after the end of the Title Cure Period in order for Seller to continue to effectuate such cure.

4.4.3. If Seller fails to give notice to Buyer prior to the expiration of Seller's Title Objection Response Period that Seller will attempt to cure all objections set forth in Buyer's Title Objection Notice, Buyer may, within five (5) business days after the expiration of Seller's Title Objection Response Period, terminate this Agreement by written notice to Seller, in which event (i) the Deposit shall be returned promptly to Buyer, and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. If Buyer does not so terminate this Agreement within said five (5) business days after the expiration of Seller's Title Objection Response Period, Buyer shall be deemed to have waived its objections set forth in Buyer's Title Objection Notice that Seller has not agreed in writing to attempt to cure, and to have agreed to accept title to the Property subject thereto, without reduction in the Purchase Price.

4.4.4. In the event Seller gives timely notice to Buyer that Seller will attempt to cure any objections set forth in Buyer's Title Objection Notice, and if this Agreement is not terminated pursuant to Paragraph 4.4.3 above, Seller shall use commercially reasonable efforts to cure such objections and deliver evidence of such cure satisfactory to the Escrow Agent and Buyer within the Title Cure Period, but in no event shall Seller be required to expend more than a maximum amount of One Hundred Thousand and 00/100 Dollars ($100,000.00) Dollars in the aggregate to

effectuate the cure of all such objections (excluding Monetary Liens (defined below), as to which such maximum amount shall not apply). If despite Seller's commercially reasonable efforts Seller fails to cure all such matters within the Title Cure Period, Buyer's sole right with respect thereto shall be to terminate this Agreement within two (2) business days after the expiration of the Title Cure Period, in which event (i) the Deposit shall be returned promptly to Buyer; and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. If Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived its objections and to have agreed to accept title to the Property subject thereto, without reduction in the Purchase Price.

4.4.5. Notwithstanding the foregoing, Seller agrees to cure at or prior to the Closing all "Monetary Liens" at Seller's sole cost and expense. As used herein, "Monetary Lien" means any security deed, mortgage, lien, security interest, monetary judgment, past due taxes or assessments or similar monetary encumbrance upon the Property created by Seller or placed on the Property by Seller's actions or inaction except as provided in Section 4.4.6.3. A Monetary Lien shall be deemed cured by Seller if such Monetary Lien is released, satisfied or canceled of record at or prior to the Closing at no additional cost to Buyer, provided, however, that as to any institutional mortgage, the lien of such mortgage shall be deemed satisfactorily released if written confirmation is received from the mortgagee stating the amount to be delivered at the Closing to discharge such mortgage, in form and substance satisfactory to the Escrow Agent to remove such mortgage from the list of encumbrances in Buyer's title insurance policy upon payment of such amount to said mortgagee out of Seller's proceeds at the Closing.

4.4.6. If Buyer does not terminate this Agreement pursuant to this Paragraph 4.4, the following matters shall be deemed accepted by Buyer and shall be referred to herein as "**Permitted Encumbrances**."

4.4.6.1. All matters disclosed in the Title Commitment and the Survey, or which exist as of record title and/or are physically existing upon the Property as of the expiration of the Inspection Period to which Buyer does not object or which Buyer is deemed to have accepted pursuant to the terms and conditions of this Paragraph 4.4, other than Monetary Liens;

4.4.6.2. Except as provided in Section 4.4.6.3, any liens for such taxes for the then current year as are not due and payable on the Closing Date, and any liens for municipal betterments assessed after the Effective Date; and the provisions of any building, zoning, subdivision, and similar laws applicable to the Property.

4.4.6.3. The tax taking and all obligations for any real estate taxes of any kind or nature and any rollback, reassessed taxes or similar changes resulting from the conversion of that portion of the Property known as 364 West Street, Hopedale, Massachusetts pursuant to the Forest Lien.

4.5. "*As Is" Sale*. Except as expressly set forth in this Agreement, it is understood and agreed that Seller is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to,

any warranties or representations as to habitability, merchantability or fitness for a particular purpose or environmental matters of any kind. Buyer acknowledges and agrees that upon closing Seller shall sell and convey to Buyer and Buyer shall accept the Property "as is, where is, with all faults," except to the extent expressly provided otherwise in this Agreement. Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, representations, or information pertaining to the Property or relating thereto (including specifically, without limitation, any prospectus distributed with respect to the Property) made or furnished by Seller, the managers of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this Agreement. Buyer also acknowledges that the purchase price reflects and takes into account that the Property is being sold "as-is." Buyer represents to Seller that Buyer has conducted, or will conduct prior to closing, such investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, as Buyer deems necessary or desirable to satisfy itself as to the condition of the Property and the existence or nonexistence or curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties, and covenants of Seller as are expressly set forth in this Agreement. Upon closing, Buyer shall assume the risk that adverse matters, including, but not limited to adverse physical and environmental conditions, may not have been revealed by Buyer's investigations, and Buyer, upon closing, shall be deemed to have waived, relinquished and released Seller (and Seller's trustees, employees and agents) from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Seller (and Seller's trustees, employees and agents) at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws and any and all other acts, omissions, events, circumstances or matters regarding the Property. The provisions of this paragraph shall survive closing or any termination of this agreement.

4.6. *Buyer's Waiver and Release of Seller as to Certain Actions after Closing*. Buyer agrees that, if at any time after the Closing, any third party or any governmental agency seeks to hold Buyer responsible for the presence of, or any loss, cost or damage associated with, Hazardous Materials (as hereinafter defined) in, on, above or beneath the Property or emanating therefrom, Buyer waives any rights it may have against Seller in connection therewith including, without limitation, under CERCLA (defined below), and Buyer agrees that it shall not (i) implead the Seller, (ii) bring a contribution action or similar action against the Seller or (iii) attempt in any way to hold the Seller responsible with respect to any such matter. The provisions of this Paragraph 4.6 shall survive the Closing. As used herein, "Hazardous Materials" shall mean and include, but shall not be limited to, any petroleum product and all hazardous or toxic substances, wastes or substances, any substances which because of their quantitated concentration, chemical, or active, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any hazardous or toxic waste or substances which are included under

or regulated by law, governmental rules or regulations (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("CERCLA"), the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., similar state laws and regulations adopted thereunder.

5. *Seller's Covenants Regarding Operation of Property*. From and after the Effective Date until the Closing or earlier termination of this Agreement, Seller agrees as follows:

5.1. *Notice of Defaults*. Seller will promptly deliver to Buyer any written notice received by Seller relating to the occurrence of any default or alleged default by Seller.

5.2. *Leases*. During the term of this Agreement, Seller will not enter into any lease for any portion of the Property without the prior written approval of Buyer.

5.3. *Encumbrances*. Seller will not grant or purport to create in favor of any third party any interest in the Property or any part thereof without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed prior to the end of the Inspection Period but which may be withheld in Buyer's sole and absolute discretion after the end of the Inspection Period.

5.4. *Other Agreements; Property Contracts*. Seller will not enter into any maintenance, management, or other service contracts relating to the Property without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed prior to the end of the Inspection Period but which may be withheld in Buyer's sole and absolute discretion after the end of the Inspection Period.

5.5. *Insurance*. Seller will continue to maintain in full force and effect all insurance as presently carried by Seller.

5.6. *Violations of Law*. Seller will promptly notify Buyer in writing of any violation of any law, regulation, ordinance, order, or other requirement of any governmental authority having jurisdiction over or affecting the Property, or any part thereof, of which Seller receives written notice.

5.7. *Structural Modifications*. Seller will not permit any structural erections to the Property without the prior written consent of Buyer which may be withheld in Buyer's sole and absolute discretion.

5.8. *Operation of Property*. Seller shall continue to maintain, operate and manage the Property in the same manner that Seller has heretofore maintained and operated the Property.

6. *Casualty and Condemnation*.

6.1. *Casualty*. Intentionally Omitted.

6.2. *Condemnation*. If prior to the Closing any portion of the Property is actually condemned by means of a recordation of an order at the Worcester District Registry of Deeds prior to the Closing Date by a body having the power of eminent domain or condemnation, or sale in lieu thereof, which either (A) in Buyer's reasonable judgment adversely affects access to the Property, or (B) is reasonably estimated to cost in excess of $200,000.00 for restoration and repair of the remaining Property then Buyer shall have the right, by giving Seller notice within ten (10) days after receipt of notice from Seller of such occurrence (with the Closing Date to be postponed, if necessary, to give the Buyer the benefit of the full ten (10) day period) to elect to: (i) terminate this Agreement, in which case the Deposit shall be returned promptly to Buyer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder; or (ii) close the sale contemplated herein. If Buyer does not have the right to terminate this Agreement or having such right elects or is deemed to have elected not to terminate this Agreement, then this Agreement shall remain in full force and effect and the purchase contemplated herein, less any portion of the Property taken by eminent domain or condemnation, shall be effected without reduction in the Purchase Price. In such event, Seller shall at the Closing assign, transfer and set over unto Buyer all of Seller's right, title and interest in and to any awards paid or payable in connection with such taking. The pendency of the condemnation proceedings referred to in Section 15. I .4 shall not constitute a condemnation pursuant to this Section unless an actual order of taking is recorded at the Worcester District Registry of Deeds prior to the Closing Date.

7. *Conditions Precedent to Buyer's Obligations*.

7.1. Buyer's obligation to purchase the Property at the Closing hereunder is expressly conditioned on the satisfaction at or before the time of Closing hereunder, or at or before such earlier time as may be expressly stated below, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Buyer, at Buyer's option):

7.1.1. *Accuracy of Representations*. All of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the date of Closing with the same effect as if made on and as of such date.

7.1.2. *Performance*. Seller shall have performed, observed and complied with all material covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of Closing hereunder.

7.1.3. *No Material Adverse Change*. Seller shall not cause to be removed any trees, clear the property, or otherwise cause a material adverse change to the Property between the Effective Date and the Closing.

7.1.4. *Condition of Title*. No new encumbrances or exceptions to title have been recorded for the first time pertaining to the Property between the date of the Title Commitment and the Closing that

have not been approved by Buyer or that are not removed by Seller or agreed to be removed by Seller prior to or contemporaneously with the Closing, and the Escrow Agent is prepared to issue at the Closing an owner's policy of title insurance at commercially customary rates, subject only to the Permitted Encumbrances.

7.2. *Failure of Conditions*. In the event Seller shall not be able to convey the Property on the Closing Date in accordance with the provisions of this Agreement, then Buyer shall have the option, exercisable by written notice to Seller at or prior to Closing, of (i) accepting at Closing the Property in such condition as Seller is able, waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price, (ii) extending the Closing Date one time only for an additional five (5) business days, or (iii) terminating this Agreement, in which event the Deposit shall be returned promptly to Buyer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder.

8. *Closing; Deliveries*.

8.1. *Time of Closing*. The Closing shall take place at 10 a.m. on _____, 2020 (the "**Closing Date**") (subject to extension as expressly set forth herein) at the Law Office of Sandra Rennie Austin, 24 Bolton Street, Marlborough, MA 01752, unless otherwise agreed to in writing by both Seller and Buyer. If any date on which the Closing would occur by operation of this Agreement is not a business day in the Commonwealth of Massachusetts or Boston, Massachusetts, the Closing shall occur on the next business day. The Closing shall be conducted through an escrow agreement by means of document delivery of Seller's Deliveries (as herein defined) and Buyer's Deliveries (as herein defined). Buyer and Seller may execute supplemental escrow instructions as may be appropriate to enable compliance with the terms of this Agreement so long as such instructions are not in conflict with this Agreement.

8.2. *Seller Deliveries*. At Closing, Seller shall deliver to Buyer the following, and it shall be a condition to Buyer's obligation to close that Seller shall have delivered the same to Buyer:

8.2.1. A Massachusetts Quitclaim Deed ("**Deed**") to the Property from Seller, duly executed and acknowledged by Seller in the form of Exhibit B subject to the Permitted Encumbrances which shall be listed in Exhibit B of the Deed.

8.2.2. A certification by Seller that all representations and warranties made by Seller in Paragraph 15 of this Agreement are true and correct in all material respects on the date of Closing, except as may be set forth in such certificate.

8.2.3. Such affidavits or letters of indemnity as the title insurer shall require in a usual and customary format in order to issue, without extra charge, an owner's policy of title insurance free of any exceptions for unfiled mechanics' or materialmen's liens, or for rights of parties in possession.

8.2.4. A Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act

("**FIRPTA**"), as amended, in the form of Exhibit C duly executed by Seller.

8.2.5. All utilities layout plans, topographical plans and the like in Seller's possession and owned by Seller used in the construction, improvement, alteration or repair of the Property.

8.2.6. Originals or copies certified by Seller of all books, records and files maintained by Seller and Seller's property manager, if any, relating to the operation and maintenance of the Property.

8.2.7. All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

8.3. *Buyer Deliveries*. At Closing, Buyer shall deliver to Seller the following, and it shall be a condition to Seller's obligation to close that Buyer shall have delivered the same to Seller:

8.3.1. Funds by wire transfer in the amount required under Paragraph 2.2 hereof (subject to the adjustments provided for in this Agreement).

8.3.2. A certification by Buyer that all representations and warranties made by Buyer in Paragraph 16 of this Agreement are true and correct in all material respects on the date of Closing, except as may be set forth in such certificate.

8.3.3. All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

9. *Apportionments; Taxes; Expenses*.

9.1. *Apportionments*.

9.1.1. *Taxes and Operating Expenses*. All real estate taxes, charges and assessments affecting the Property relating to the 364 West Street, Hopedale, Massachusetts portion of the Property shall be prorated on a per diem basis as of the Closing Date, with the exception of the Forest Lien. All roll back taxes or other charges resulting from the conversion of the property subject to the Forest Lien shall be the obligation of the Buyer. All unpaid taxes and charges relating to that portion of the Property at 363 West Street, Hopedale, Massachusetts shall be paid by the Buyers including tax taking on 363 West Street. If any Taxes have not been finally assessed as of the Closing Date for the current fiscal year of the taxing authority, then the same shall be adjusted at Closing based upon the most recently issued bills therefor, and shall be readjusted when final bills are issued. Buyer hereby agrees to assume all nondelinquent assessments affecting the Property, whether special or general.

9.2. *Expenses*. Each party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (l) all costs and expenses stated herein to be borne by a party, and (2) all of their respective accounting, legal and appraisal fees. Buyer, in addition to its other expenses, shall pay at Closing (l) all recording

charges incident to the recording of the deed for the Property; (2) the premium for Buyer's title insurance policy; and (3) one-half of the escrow fee of the Escrow Agent. Seller, in addition to its other expenses, shall pay at Closing (l) all documentary stamps, excise taxes and real estate transfer taxes, (2) all recording charges incident to the recording of any instruments to discharge or remove encumbrances not approved (or deemed approved) by Buyer, and (3) one-half of the escrow fee of the Escrow Agent.

10. *Remedies*.

10.1. *Buyer Default*. In the event Buyer breaches or fails, without legal excuse, to complete the purchase of the Property or to perform its obligations under this Agreement, then, except as otherwise expressly set forth in this Agreement, Seller shall, as its sole remedy therefor, be entitled to receive the Deposit as liquidated damages (and not as a penalty) in lieu of, and as full compensation for, all other rights or claims of Seller against Buyer by reason of such default, upon receipt of which this Agreement shall terminate and the parties shall be relieved of all further obligations and liabilities hereunder, except as expressly set forth herein. Buyer and Seller acknowledge that the damages to Seller resulting from Buyer's breach would be difficult, if not impossible, to ascertain with any accuracy, and that the liquidated damage amount set forth in this Paragraph represents both parties' best efforts to approximate such potential damages.

10.2. *Seller Default*. If Seller fails to perform any of its obligations under this Agreement, then Buyer, as its sole remedy for such failure, may either: (i) terminate this Agreement by written notice to Seller and Escrow Agent given prior to or on the Closing Date whereupon (x) Escrow Agent shall pay the Deposit to Buyer, and (y) if, but only if, the closing of the purchase of the Property does not occur as a result of Seller's intentional and willful failure to close, then Buyer the Seller shall pay to Buyer an amount equal to the out-of-pocket expenses (not to exceed Twenty Thousand and 00/100 Dollars ($20,000.00) in the aggregate) incurred by Buyer in finalizing this Agreement and in performing Buyer's due diligence with respect to the Property, said amount to be paid within thirty (30) days after Buyer delivers to Seller written demand therefor accompanied by commercially customary third party receipts therefor; or (ii) enforce specific performance of Seller's obligations under this Agreement; provided, however, that if Seller willfully and intentionally conveys the Property to a bona fide third-party buyer or encumbers the Property in favor of a bona fide third party in a manner the result of which is that specific performance is not an available remedy, then Buyer may seek to recover Buyer's actual damages arising therefrom. The exercise by the Town of the right of first refusal as referred to in Section 4.7 shall not be deemed a breach by Seller.

11. *Confidentiality*. Buyer agrees to keep confidential and not to use, other than in connection with its determination whether to proceed with the purchase of the Property in accordance with the terms and conditions of this Agreement, any of the documents, material or information regarding the Property supplied to Buyer by Seller or by any third party at Seller's request, including, without limitation, any environmental site assessment reports furnished to Buyer, except to Buyer's, attorneys, accountants, consultants, investors and lenders on a "need to know" basis, unless Buyer is compelled to disclose such documents, material or information by law or by subpoena. In the

event that the Closing does not occur in accordance with the terms of this Agreement, Buyer shall return to Seller all of the documents, material or information regarding the Property supplied to Buyer by Seller or at the request of Seller. The provisions of this Paragraph 1 1 shall survive the termination of this Agreement but shall no longer be applicable following Closing in accordance with the terms of this Agreement.

12. *Possession*. Possession of the Property shall be surrendered to Buyer at Closing.

13. *Notices*. All notices and other communications provided for herein shall be. in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

13.1. If to Seller:

One Hundred Forty Realty Trust
Jon Mark Delli Priscoli and Michael Milanoski, Trustees
7 Eda Avenue
Carver, Massachusetts 02230
E-mail: mmilanoski@graftonuptonrr.com

With a copy to:

Sandra R. Austin, Esquire
Law Office of Sandra Rennie Austin
24 Bolton Street
Marlborough, MA 01752
E-mail: sandra@attyaustin.com

13.2. If to Buyer:

Grafton & Upton Railroad Company
7 Eda Ave
Carver. MA 02330
E-mail: jcottert@firstcolonydev.com and
mmilanoski@graftonuptonrr.com

With a copy to:

Peter F. Durning, Esquire
Mackie Shea Durning, PC
20 Park Plaza Suite 1001
Boston, MA 02116
E-mail: pdurning@mackieshea.com

13.3. If to the Escrow Agent to:

Sandra R. Austin, Esquire
Law Office of Sandra Rennie Austin
24 Bolton Street
Marlborough, MA 01752
E-mail: sandra@attyaustin.com

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by email to the address indicated above with receipt confirmed and with an original by regular mail. Any such notice or communication shall be effective when delivery is received or refused.

14. *Brokers*. N/A.

15. *Representations and Warranties of Seller*.

15.1. Subject to all matters disclosed in any document delivered to Buyer by Seller or on any exhibit attached hereto, and subject to any information discovered by Buyer or other information disclosed to Buyer by Seller or any other person after the Effective Date and prior to the Closing, including, without limitation, any information contained in the Survey or the Title Commitment (all such matters being referred to herein as "Exception Matters"), Seller represents and warrants to Buyer as follows:

15.1.1. *Authority*. Seller is a nominee trust duly organized and validly existing under the laws of the Commonwealth of Massachusetts and has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement have been duly authorized pursuant to the terms and conditions of the Trust as recorded.

15.1.2. *No Conflict*. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the Property of the Seller by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller, which will not be discharged, assumed or released at Closing. No action by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Seller in accordance with its terms.

15.1.3. *Bankruptcy*. Seller has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or

(ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets.

15.1.4. To Seller's knowledge there are no there pending condemnation, eminent domain or similar proceedings other than the current Petition of Grafton & Upton Railroad Company which is currently before the Department of Public Utilities (case number: D.P-U. 19-39), with respect to all or any portion of the Property.

15.1.5. *Compliance*. Seller has not received written notice of any existing violations of any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements affecting the Property which have not been cured with the exception of Seller's refusal or failure to pay real estate taxes and municipal charges relating to 363 West Street, Hopedale, Massachusetts.

15.1.6. *Litigation*. With the exception of the potential taking of the Property which Seller has advised Buyer, there is no action, suit or proceeding pending or, to the best of Seller's actual knowledge, threatened against or affecting the Property, or arising out of the ownership, management or operation of the Property, this Agreement or the transactions contemplated hereby.

15.1.7. *Leases*. The Property is not leased nor subject to any occupancy agreements covering any portion of the Property and there are no written or oral promises, agreements, amendments, addenda, modifications, supplements, understandings, or commitments between Seller and any tenant of any nature whatsoever related to the Property and Seller agrees that it will not enter into any such agreements.

15.1.8. *Hazardous Materials*. INTENTIONALLY OMITTED. SELLER MAKES NO REPRESENTATION, WARRANTY OR STATEMENT OF ANY KIND RELATIVE TO HAZARDOUS MATERIALS.

15.1.9. *Other Agreements*. There are no written agreements affecting the Property to which Seller is party that will be binding on Buyer. Excepting the rights granted pursuant to the Forest Lien, Seller has not entered into and will not during the term of this Agreement enter into, any other agreement giving any other party a right to purchase the Property.

15.1.10. *FIRPTA*. Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code.

15.2. *Definition of Seller's Knowledge*. As used in this Agreement, or in any other agreement, document, certificate or instrument delivered by Seller to Buyer, the phrase "to the best of Seller's actual knowledge, to the best of Seller's knowledge" or any similar phrase shall mean the actual, not constructive or imputed, knowledge of Charles E. Morneau without any obligation on their part to make any independent investigation of the matters being represented and warranted, or to make any inquiry of any other persons, or to search or examine any files, records, books, correspondence and the like.

15.3. *Survival of Seller's Representations and Warranties*. The representations and warranties of Seller set forth in this Paragraph 15 shall survive Closing for a period of Ninety (90) days and shall not be merged with the execution and delivery of the Deed and other closing documents hereunder.

16. *Representations of Buyer*. Buyer represents and warrants that:

16.1. *Authority*. Buyer is a Massachusetts municipality, duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Buyer has been duly authorized.

16.2. *No Conflict*. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Buyer does not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of the Buyer by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Buyer is a party or which is or purports to be binding upon Buyer or which otherwise affects Buyer, which will not be discharged, assumed or released at Closing. No action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Buyer in accordance with its terms.

17. *Miscellaneous*.

17.1. *Assignability*. Buyer may assign or transfer all or any portion of its rights or obligations under this Agreement to any other individual or entity without the consent thereto by Seller. Further, Buyer may assign or transfer such rights and obligations to an entity controlling, controlled by or under common control with Buyer without Seller's consent, with prior notice to Seller. No assignment or transfer by Buyer will be permitted if such assignment or transfer would, in Seller's opinion, cause this transaction to violate any provision of applicable law.

17.2. *Governing Law; Bind and Inure*. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, assigns and personal representatives.

17.3. *Recording*. This Agreement or any notice or memorandum hereof shall not be recorded in any public record. A violation of this prohibition by Buyer shall constitute a material breach of this Agreement by Buyer, entitling Seller to terminate this Agreement and retain the Deposit.

17.4. *Time of the Essence*. Time is of the essence of this Agreement.

17.5. *Headings*. The headings preceding the text of the paragraphs and subparagraphs hereof are

inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

17.6. *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic means, such as a facsimile or email of .pdf signature pages, which shall have the same force and effect as the delivery of an original signature.

17.7. *Exhibits*. All Exhibits which are referred to herein and which are attached hereto constitute a part of this Agreement.

17.8. *Survival*. Unless otherwise expressly stated in this Agreement, each of the warranties and representations of Seller and Buyer shall not survive the Closing and delivery of the Deed and other closing documents by Seller to Buyer and shall be deemed to have merged therewith. Unless expressly made to survive, all obligations and covenants of Seller contained herein shall be deemed to have been merged into the Deed and shall not survive the Closing.

17.9. *Use of Proceeds to Clear Title*. To enable Seller to make conveyance as herein provided, Seller may, at the time of Closing, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests, provided that provision reasonably satisfactory to the Escrow Agent and Buyer's attorney is made for prompt recording of all instruments so procured in accordance with conveyancing practice in the jurisdiction in which the Property is located.

17.10. *Submission not an Offer or Option*. The submission of this Agreement or a summary of some or all of its provisions for examination or negotiation by Buyer or Seller does not constitute an offer by Seller or Buyer to enter into an agreement to sell or purchase the Property, and neither party shall be bound to the other with respect to any such purchase and sale until a definitive agreement satisfactory to the Buyer and Seller in their sole discretion is executed and delivered by both Seller and Buyer.

17.11. *Entire Agreement; Amendments*. This Agreement and the Exhibits hereto set forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

17.12. *Section 1031 Exchange*. Seller may consummate the sale of the Property as part of a so-called like kind exchange (the "**Exchange**") pursuant to §1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that: (i) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller's obligations under this Agreement; (ii) Seller shall affect the Exchange through an assignment of its rights under this Agreement to a qualified

intermediary; (iii) Buyer shall not be required to take an assignment of the purchase agreement for the replacement property or be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (iv) Seller will reimburse Buyer for any additional costs and fees (including, without limitation, attorneys' fees) incurred by the Buyer in connection with the Exchange. Buyer shall not by this Agreement or acquiescence to the Exchange (i) have its rights under this Agreement affected or diminished in any manner or (ii) be responsible for compliance with or be deemed to have warranted to Seller that the Exchange in fact complies with § 1031 of the Code.

17.13. *Compliance with Federal Laws; OFAC*. Each of Buyer and Seller each, a "**Representing Party**") represents and warrants to the other (i) that neither the Representing Party, nor any owner of a beneficial interest in it, nor any of its officers, directors, managers or managing members is a person or entity (each, a "**Prohibited Person**") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "**Executive Order**") signed on September 23, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action, (ii) that the Representing Party's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "**Money Laundering Act**"), and (iii) that throughout the term of this Agreement the Representing Party shall comply with the Executive Order and with the Money Laundering Act.

[The remainder of this page is intentionally left blank; signature page follows.]

[Signature page — Purchase and Sale Agreement]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SELLER: One Hundred Forty Realty Trust

By:_____

Name:_____

Title:_____

Date:_____

By:_____

Name:_____

Title:_____

Date:_____

BUYER: Town of Hopedale

By:_____

Name:_____

Title:_____

Date:_____

EXHIBIT A

Description of the Land

Certain property containing 130.18 acres of land out of approximately 155 acres located on and known as 364 West Street, Hopedale, Worcester County, Massachusetts; shown of the Town of Hopedale Assessors Map as Map 2 Parcel 5 and being part of the premises conveyed to the Seller, One Hundred Forty Realty Trust in a deed dated September 16, 1981 and recorded at the Worcester District Registry of Deeds in Book 7322 Page 181.

The property being conveyed is the land subject to the Forest Land Tax Lien pursuant to MGL c. 61 recorded in the Registry in Book 52875 Page 355 consisting of 130.18 acres of forest land out of the 155.24 acres of land, and expressly excluding 23.29 acres of unproductive wetlands and 1.67 acres of a gas line easement described in the June 27, 2012 Certificate for Chapter 61/61A Forest Lands as follows:

Unproductive Wetland: 23.39 acres of wetlands that were not included in the woodland classification being the land beginning at a stone bound along the south easterly boundary line S83.5W, 54' +/-; thence northerly along the swamp edge 300'+/-; thence westerly along the swamp edge 216'+/-' thence northerly 1,165+/- along the swamp edge; thence easterly 600'+/- along the swamp edge; thence northerly 480' along the swamp edge; thence south easterly 2000'+/- to a point on the south easterly boundary line' thence S59.5E, 81'+/- to a corner of the property; thence S83.5W, 329' along the property line t0 the point of beginning.

Gas Line Easement: Beginning at a drill hole on a stone wall on the gas line and the southerly mot corner of the property N18.5W, 124' +/- to a point; thence N6W, 675'+/- along the gas line to a point on the westerly side of the gas line and property line; thence due east, 85+/- to a point on the easterly side of the gas line and property line; thence S6E, 788'+/- along the gas line to a point on a stone wall; thence S74W, 54' +/- along the property line and stone wall to a point of beginning.

EXHIBIT B
Form of Deed

EXHIBIT C

Form of Non-Foreign Affidavit

NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person.

To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, a _____ ("Seller"), the undersigned hereby certifies the following:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Income Tax Regulations;

3. Seller's U.S. taxpayer identification number is [_____]; and

4. Seller's address is _____. The undersigned understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both. Under penalties of perjury, the undersigned declares that it has examined this certification and to the best of its knowledge and belief it is true, correct, and complete, and further declares that it has authority to sign this document.

Date: As of _____, 2020

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ELIZABETH REILLY, CAROL J. HALL, DONALD HALL, HILARY SMITH, DAVID SMITH, MEGAN FLEMING, STEPHANIE A. MCCALLUM, JASON A. BEARD, AMY BEARD, SHANNON W. FLEMING, and JANICE DOYLE,	
Plaintiffs,	
v.	Civil Action No.
TOWN OF HOPEDALE, LOUIS J. ARCUDI, III, BRIAN R. KEYES, GRAFTON & UPTON RAILROAD COMPANY, JON DELLI PRISCOLI, MICHAEL MILANOSKI, and ONE HUNDRED FORTY REALTY TRUST,	
Defendants.	

VERIFIED COMPLAINT

This is an action by more than ten taxpaying citizens of the Town of Hopedale ("Town") against the Hopedale Board of Selectmen ("Board") and the Grafton & Upton Railroad Company ("Railroad")[1] to restrain the Board from making unauthorized expenditures as part of a settlement agreement between the Board and the Railroad ("Settlement Agreement"); to enforce the Town's statutory right to exercise its first refusal option to acquire 130 acres of forestland pursuant to M.G.L. c.61, which the Board illegally agreed to release and waive; and to protect

[1] Railroad parties includes the defendants Grafton & Upton Railroad, its owner, Jon Delli Priscoli and its president, Michael Milanoski, and the One Hundred Realty Trust, collectively, "Railroad".

from damage the forestland as parkland dedicated to the public use and protected by Article 97 of the Amendments to the Massachusetts Constitution.

The Town and the Railroad each sought to acquire 155 acres of undeveloped property at 364 West St., Hopedale (the "Property"). Of the 155 acres of the Property, 130 acres are classified as forestland (the "Forestland") under M.G.L. c. 61. Chapter 61 requires that a notice be sent to the Town of any intent to sell or convert the Forestland for another use and provides the Town a statutory right of first refusal to purchase the Property. The remaining 25 acres of the Property are wetlands that run through a portion of the Forestland (the "Wetlands"). The Town intended to preserve the Property, which is contiguous with the 279-acre Town-owned Hopedale Parklands, as parkland for conservation and recreation and as a potential location for a much-needed municipal water supply. The Railroad intended to raze the Forestland and construct an industrial railyard on the Property.

The Property owner entered into a Purchase and Sale Agreement with the Railroad and provided the Town with a Notice of Intent to sell the Property and the Town took all the necessary steps to exercise its statutory first refusal option. This included a Town Meeting vote to authorize the option's exercise and appropriation of $1,175,000, in substantial reliance on a $750,000 gift from the Hopedale Foundation. The Board then voted to exercise the Town's option and recorded the Town's exercise of its option at the Registry of Deeds.

During the process of the Town's exercise of its statutory option, the Railroad orchestrated an unlawful series of maneuvers designed to extinguish the Town's c. 61 rights and claim effective control of the Property, improperly invoking federal railroad preemption as a bar against the Town's exercise of its c. 61 first refusal option.

The Town sued the Railroad in Land Court to protect its c. 61 rights and prevent the Railroad from clearing the Property. As part of the litigation, the Railroad and the Town engaged in confidential mediation which culminated with two of the three members of the Board[2] entering into the Settlement Agreement without statutorily-required Town Meeting approval. The Settlement Agreement exceeds the Board's authority, expends unauthorized funds, wrongfully transfers the Town's ownership interests in the Property to the Railroad for non-Forestland, non-parkland use, violates the purpose of the c. 61 conveyance and violates laws designed to protect the environment. In contradiction with the Town Meeting vote, the Board agreed to give the Railroad approximately 90 of the 130 acres of Forestland, to which the Town is rightfully entitled, to be developed into an industrial railyard. The Board also improperly obligated, without authorization of a Town Meeting vote or Finance Committee review, the Town to pay the Railroad more than $587,500 to purchase from the Railroad approximately 40 acres, or less than one-third, of the Forestland.

Plaintiffs bring these claims to restrain the Board from making the illegal expenditures and to protect and reclaim the Property that rightfully belongs to the Town as public parkland and as a potential water supply source.

PARTIES

1. Plaintiffs are Elizabeth Reilly, Carol J. Hall, Donald Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle. Each Plaintiff is a taxpaying resident and citizen of Hopedale, Massachusetts.

2. Defendant Town of Hopedale is a body corporate and politic established under the

[2] A third member of the Board, Glenda Hazard, refused to sign the Settlement Agreement and has since resigned from the Board.

laws of the Commonwealth of Massachusetts.

3. Defendant Hopedale Board of Selectmen is a duly constituted board of Hopedale with its principal office at 78 Hopedale Street, Hopedale, Massachusetts.

4. Defendant Louis J. Arcudi, III is a member of the Hopedale Board of Selectmen and resides in Hopedale, Massachusetts. He is sued in his official capacity.

5. Defendant Brian R. Keyes is a member of the Hopedale Board of Selectmen and resides in Hopedale, Massachusetts. He is sued in his official capacity.

6. Defendant Grafton & Upton Railroad Company is a domestic profit corporation organized and existing under the laws of Massachusetts and with its principal place of business located in North Grafton, Massachusetts.

7. Defendant Jon Delli Priscoli is the principal owner of Grafton & Upton Railroad Company and resides in North Grafton, Massachusetts. Delli Priscoli is also a Trustee of the One Hundred Forty Realty Trust, which is a nominee trust established under a declaration of trust dated September 16, 1981 and recorded in the Worcester Registry of Deeds in Book 7322, Page 177. This action is brought against Delli Priscoli in his capacity as owner of the Railroad and as a trustee.

8. Defendant Michael R. Milanoski is the president of the Railroad and resides in Cohassett, Massachusetts. Milanoski is also a Trustee of the One Hundred Forty Realty Trust, which is a nominee trust established under a declaration of trust dated September 16, 1981 and recorded in the Worcester Registry of Deeds in Book 7322, Page 177. This action is brought against Milanoski in his capacity as president of the Railroad and as a trustee.

9. One Hundred Forty Realty Trust is a nominee trust established under a declaration of trust dated September 16, 1981 and recorded in the Worcester Registry of Deeds in Book 7322, Page 177.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the parties and the subject matter of this action pursuant to M.G.L. c. 40, § 53; c. 40A, § 3; c. 44, §§ 31, 53, 59 c. 45, § 7; c. 212, § 4; and c. 214, and 7A.

11. This Court has personal jurisdiction over Defendants pursuant to M.G.L. c. 223A because each Defendant is (1) a body corporate and politic established under the laws of the Commonwealth of Massachusetts, (2) is a duly constituted board ort committee thereto, (3) transacted business in Massachusetts, and/or (4) resides in Massachusetts.

12. Venue is proper in this Court because the municipal entity Defendant's location is in Worcester County, Massachusetts, it affects land in Worcester County, Massachusetts and all Defendants conduct business in Worcester County, Massachusetts.

FACTS

13. Charles E. Morneau was the prior Trustee ("Prior Trustee") of the One Hundred Forty Realty Trust (the "Trust"), which owns 155.24 acres of undeveloped land at 364 West Street in the northern tip of Hopedale, Massachusetts (the "Property").

14. Of the 155.24 acres, 130.18 acres are, and have been since 1992, classified as forestland subject to M.G.L. c. 61 (the "Forestland").

15. The Forestland surrounds and has running through it 25.06 acres of wetlands that are excluded from the Forestland c. 61 classification (the "Wetlands").

16. The Property is depicted on the map attached hereto as **Exhibit 1**. The Property is indicated on Exhibit 1 as the orange area in the center of the map. The dark shaded area in the southeast portion of the Property is the Wetlands, the non-shaded portion is the Forestland.

17. The Property abuts and is contiguous with the Town-owned 279-acre public forested park, the Hopedale Parklands, depicted by the yellow area on Ex. 1.

18. The Property is also one of the few remaining sites available to the Town to potentially locate a much-needed Town water supply. See Environmental Partners Group, Inc. Report on the Property as new water supply, attached hereto as **Exhibit 2**. The report notes that the Property is within the watershed for all of Hopedale's public water supply wells and that the Property provides an important buffer to protect the Town's water supply.

19. The Grafton & Upton Railroad crosses the Forestland running, roughly, north to south. See Ex. 1.

20. The Railroad has also long coveted the Property to expand its rail system in Hopedale and construct a transloading facility.

21. The Railroad had, since March 15, 2019, tried to obtain the Property by eminent domain by filing a petition with the Massachusetts Department of Public Utilities. The Railroad's attempt to take the Property through the eminent domain process was stymied after opposition by the Town, Conservation Commission, and Water & Sewer Commission, among others.

22. The Railroad also failed to secure a public private partnership with the Town to obtain some portion of the Property.

23. On or about June 27, 2020, the Prior Trustee of the Property entered into a Purchase and Sale Agreement with Defendant Jon Delli Priscoli, owner of the Railroad and

trustee of New Hopping Book Realty Trust, for the Railroad to purchase the Property from the Trust for $1,175,000.

24. The 130.18 acres of Forestland on the Property are subject to the protections of M.G.L. c. 61, including § 8, which prohibits sale for or conversion to industrial or commercial use unless the Town has been properly notified of the intent to sell for or to convert to that other use and given 120 days to exercise a right of first refusal to purchase the land pursuant to the same terms set forth in the purchase and sale agreement.

25. On or about July 9, 2020, Defendant Michael Milanoski, President of the Railroad, on behalf of the Prior Trustee, provided the Town with a Notice of Intent to Sell Forest Land Subject to Chapter 61 ("Notice") to be used for railroad transloading uses. The Notice is attached hereto as **Exhibit 3**.

26. The Notice included the entire 155.24 acres of the Property in the $1,175,000 purchase price, including the 130.18 acres of Forestland and the 25.06 acres of Wetlands, without providing the purchase price of the 130.18 acres Forestland separately.

27. The Town informed the Prior Trustee and the Railroad that the Town was considering exercise of its statutory first refusal option to purchase the Property from the Prior Trustee. The Town also informed the Trust and the Railroad that the Notice was insufficient because it included non-Forestland in the total purchase price. See August 19, 2020 letter, attached hereto as **Exhibit 4**.

28. On or about August 26, 2020, the Hopedale Foundation informed the Town by letter that "[i]f the Town of Hopedale decides to exercise its option to purchase property at 364 West Street, Hopedale, MA . . . [t]he Hopedale Foundation would be willing to assist the Town of Hopedale in reducing its financial burden as a result of the purchase." See **Exhibit 5**.

29. By letter on or about October 7, 2020, a month before the Town's 120-day option period would expire on the Notice, the Prior Trustee claimed that its own prior Notice was not defective due to its inclusion of the Wetlands in the purchase price. See **Exhibit 6**.

30. The Prior Trustee by the same letter purported to also withdraw its Notice, claiming it "specifically withdraws its Notice of Intent to sell or convert the land that is currently in Forest Land subject to Chapter 61. Any further notice to sell or convert the land will be subject to a new notice of Intent." Ex. 6,

31. The Town responded by letter dated October 8, 2020 that the first refusal option had ripened and, therefore, is irrevocable. See **Exhibit 7**. The Town continued its process towards exercising its first refusal option to purchase the Forestland.

32. On September 10, 2020, the Hopedale Finance Committee voted to approve its Due Diligence Report on the financial impact of the Town's exercise of its first refusal option to purchase the Forestland. See **Exhibit 8**. The Finance Committee strongly recommended that the Town purchase the Forestland. In its report, the Finance Committee noted that the Hopedale Foundation had indicated interest in assisting acquiring the property under the Town's first refusal option. The Finance Committee did not have any further details of the gift from the Hopedale Foundation but did include a hypothetical net debt service estimate based on an assumed donation from the Hopedale Foundation of $750,000 over time, or approximately half of the cost of the purchase of the Property, including debt service. Id., Exhibit C.

33. Just two days after the Finance Committee Report and four days after the Town informed the Railroad it was moving forward to exercise its first refusal option, the Railroad orchestrated a series of conveyances designed to illegally seize control of the Property before the

Town could finalize the exercise its first refusal option and attempted to squelch the Town's first refusal right.

34. On October 12, 2020, the owner of the beneficial interest of the Trust assigned the entire beneficial interest in the Forestland of the Property, protected under c. 61, to the Railroad for $1,175,000.

35. On the same day, the Prior Trustees resigned and named defendants Delli Priscoli and Milanoski as the new trustees.

36. On the same day, the Prior Trustee sold to the Railroad the Property's 25.06 acres of Wetlands that are surrounded by the Forestland plus an additional 20-acre parcel on the opposite side of West Street, at 363 West Street, for $1.00.

37. On or about October 15, 2020, the Railroad informed the Town by letter of its bait and switch land deal but did not provide a further formal notice pursuant to c. 61 or recognize the Town's right of first refusal. See **Exhibit 9**.

38. The Prior Trustee and the Railroad never provided the Town with a formal Notice of its intent to sell the Forestland to the Railroad for Railroad use through sale of 100% beneficial interest and appointment of the Railroad as Trustee, in violation of the requirements of c. 61.

39. The Trust's assignment of 100% of its beneficial interest to the Railroad was equivalent to a transfer of title to the c. 61 Forestland and therefore constituted a sale of land taxed under c. 61 for non-forest purposes giving rise to a separate and independent first refusal option in the Town.

40. On or about October 17, 2020, the Hopedale Foundation reaffirmed its gift offer, "to assist the Town of Hopedale in reducing its financial burden as a result of the Town of

Hopedale exercising its option to purchase the [Property], as represented in the Notice of Intent to Sell . . . [t]he Trustees voted that after the purchase of the land The Hopedale Foundation would grant to the Town of Hopedale the amount of seven hundred and fifty thousand dollars ($750,000) to be paid in increments of fifty thousand dollars ($50,000) per year for a period of fifteen years." See **Exhibit 10**.

41. On October 21, 2020, the Town informed the Trust and the Railroad that the Town holds an irrevocable option to purchase the Forestland based on the July 9, 2020 Notice that cannot be withdrawn, but in addition, that the Town has a separate and independent opportunity to exercise its statutory first refusal option to the Forestland based on the sale of the 100% of the beneficial interest in the Trust to the Railroad. See October 21, 2020 letter attached hereto as **Exhibit 11**.

42. On October 22, 2020, the Environmental Partners Group, Inc. provided its Report to the Town, reporting that conservation of the Property is critical to protection of the Town's water supply and that the Town would need to control of the Property in order for the Town to develop a new water supply. Ex. 2.

43. On October 24, 2020, the Town held a Special Town Meeting, attended in person (despite Covid-19) by over 400 citizens of Hopedale.

44. Article 3 of the Town Meeting Warrant was:

> To see if the Town will vote to acquire, by purchase or eminent domain, certain property, **containing 130.18 acres**, more or less, located at 364 West Street . . . and in order to fund said acquisition, raise and appropriate, transfer from available funds, or borrow pursuant to G.L. c. 44, §7, or any other enabling authority, a sum of money **in the amount of One Million One Hundred and Seventy-Five Thousand Dollars ($1,175,000.00)**, and to apply any discretionary grants, gifts, awards, or donations of money given to the Town for the purpose of land conservation, said property **being acquired pursuant to a right of first refusal in G.L. c. 61, §8**, which right is subject to exercise by a vote of the Board of Selectmen, **such acquisition to be made to maintain and preserve said**

> **property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes** to be managed under the control of the Hopedale Parks Commission, and further authorize the Board of Selectmen to take any and all actions and execute any and all documents to carry out the purposes of this article; or take any action related thereto.

See Special Town Meeting Minutes, attached hereto as **Exhibit 12** (emphasis added).

45. The members of the Town spoke overwhelmingly in favor of acquiring 130.18 acres of Forestland for the use of the public for conservation and recreation purposes. The Finance Committee recommended approval of Article 3 and informed the Town Meeting of the Hopedale Foundation's gift offer. Chairs of the Conservation Commission and Water and Sewer Commissions all spoke in favor of the Article.

46. Board Chairman Brian Keyes moved to appropriate $1,175,000, less amounts received by gift, to acquire the 130.18-acre Forestland and the motion passed unanimously.

47. Article 5 asked the Town to consider whether "to take by eminent domain pursuant to Chapter 79 of the General Laws, for the purpose of public park land" the 25.06 Wetlands and to appropriate funds for the taking.

48. The Town approved the motion to purchase or take by eminent domain the Wetlands and to appropriate $25,000 to fund the acquisition.

49. The Board, on October 30, 2020, voted to exercise its first refusal option to acquire the Forestland and to take by eminent domain the Wetlands, each vote consistent with the Town Meeting warrant votes. The October 30, 2020 Board meeting minutes reflect that when the Board voted, it thanked the Hopedale Foundation for its donation, and confirmed "that this warrant article is for the acquisition of the land [ ] for public conservation and is consistent with Article 97 [. . .] [and] that once this land is moved into Article 97, the town would need a

2/3rds vote from Massachusetts Legislature to change this." October 30, 2020 Board minutes attached hereto as **Exhibit 13**.

50. Despite the Town's ongoing process of exercising its first refusal option through Town Meeting votes and the Board's votes, the Railroad began clearing the Forestland, prompting the Town, on October 28, 2020, to sue the Railroad in Land Court, styled Town of Hopedale v. Jon Delli Priscoli Trustee of the One Hundred Forty Realty Trust, et al., 20 MISC 000467, to seek a judicial order that the Notice was effective. The Town also moved to enjoin the Railroad's Forestland clearing.

51. On November 2, 2020, the Town recorded notice of the decision to exercise the first refusal option in the Worcester South District Registry of Deeds, attached hereto as **Exhibit 14**. The Notice of Exercise references the dubious steps taken by the Railroad in its attempt to squelch the Town's c. 61 rights.

52. The Town sent the Notice of Exercise with the purchase and sale agreement to the Trust, perfecting its exercise of the first refusal option as required under c. 61, § 8.

53. The Board validly exercised the first refusal option to purchase the c. 61 Forestland on behalf of the Town.

54. The Railroad refused to agree to sell the c. 61 Forestland to the Town despite the Town's valid exercise of its first refusal option.

55. Also on November 2, 2020, the Town formally recorded its taking by eminent domain of the 25.06 acres of Wetlands. See **Exhibit 15**.

56. The Railroad, just before hearing on the Town's motion for preliminary injunction, filed a Petition for a Declaratory Order with the Surface Transportation Board that the Town's rights under c. 61 were preempted by federal railroad law.

57. Following a hearing on November 23, 2020, the Land Court denied the Town's request for a preliminary injunction in a brief and narrow decision finding expressly that the Town is entitled to a right of first refusal but that it was unclear whether or when that right had triggered or ripened:

> While **the Town is entitled to a right of first refusal under Chapter 61**, it is not clear whether an option period has been triggered and if so, when that occurred. The July 9, 2020 NOI appears to be defective because it encompassed both Chapter 61 forest land and another parcel of land without Chapter 61 protections, but did not include segregated valuations for each parcel. The NOI was defective because it did not provide adequate statutory notice to the Town of the cost to purchase the Chapter 61 land as required and therefore did not constitute a bona fide offer.

See Land Court Docket, Order dated 11/23/2020 attached as **Exhibit 16**

(emphasis added).

58. The Land Court further found that because the Railroad represented that it would work with the Town to maintain the status quo and not clear any more of the Forestland, there was no risk of irreparable harm.

59. Thus, the Land Court held preliminarily that the only formal Notice of Intent sent to the Town was defective, as the Town had initially advised, because it included non-Forestland with the Forestland in the Notice's purchase price. The Court did not reach any of the other issues raised in the litigation by the Town or the Railroad, including whether federal railroad preemption trumped the Town's c. 61 rights.

60. In January 2021, the Town and the Railroad engaged in two sessions of mediation, culminating in a Term Sheet that was revealed to the Town at a January 25, 2021 Board meeting. Despite ongoing community opposition, the Board voted 2-1 to approve the Term Sheet. The Term Sheet called for a Settlement Agreement to be prepared and executed no later than February 9, 2021.

61. On February 5, 2021, the Hopedale Board of Water and Sewer Commissioners requested, by letter, that the Board cease and desist from any further negotiations or agreement with the Railroad with respect to water rights for the Town. See **Exhibit 17**. The Water and Sewer Commissioners informed the Board that the Term Sheet abrogates and impairs the authority and sole jurisdiction of the Commission and that the Board lacks the authority to speak on behalf of the Commission or limit its powers.

62. By a letter dated February 7, 2021, the Citizen Plaintiffs expressed their strong objections to the Term Sheet, including that it was illegal because, *inter alia*, the Railroad is not the rightful property owner, it is in violation of the Town's right of first refusal pursuant to M.G.L. c. 61, is an agreement to which the Board has not been authorized to enter and would be in violation of Article 97. See Demand Letter attached hereto as **Exhibit 18**.

63. Despite the Demand Letter and other objections voiced by Town residents, the Board voted 2-1 to in executive session to approve a Settlement Agreement with the Railroad.

64. The Settlement Agreement was executed between the Board and the Railroad on February 9, 2021 and is attached hereto as **Exhibit 19**.

65. The Agreement is in direct conflict with what the Town appropriated at Town Meeting and is in excess of the Board's authority.

66. In the Agreement, the Board agreed that the Town would pay $587,500 to the Railroad in exchange for only approximately 40 acres of the 130.18 acres of Forestland.

67. The Town Meeting vote, however, approved purchase of the entire 130.18 acres of Forestland for $1,175,000, not 40 +/- acres for $587,500.

68. It is less than a third of the land and the cost is higher. The approximate cost per acre of Forestland that was authorized was $9,026; the Settlement requires that the Town pay $14,687.50 per acre of Forestland.

69. The Board is not authorized to pay $587,500 for 40 acres of Forestland.

70. The purpose of the Town Meeting vote on Article 3 was to acquire all 130.18 acres of Forestland and preserve it as parkland and prevent industrial development by the Railroad on that land.

71. The Settlement Agreement is starkly inconsistent with this expressed purpose as it allows the Railroad to acquire and develop 90 of the 130 acres of Forestland, and to build industrial buildings on that land.

72. The Town Meeting vote authorized the appropriation only in the event that the first refusal right was exercised. The gift from the Hopedale Foundation, accepted by the Town through the Town Meeting vote, was also conditioned on the exercise of the first refusal right for the entire c. 61 Forestland.

73. In the Agreement, the Board frustrated and acted contrary to the purpose of the Hopedale Foundation's gift by agreeing to purchase only a third of the Forestland and allow the Railroad to clear two-thirds of the Forestland for an industrial railyard.

74. On February 24, 2021, the Hopedale Foundation restated its offer because the Board had so vastly changed the terms of the deal the Foundation had agreed to assist in funding. By letter, the Hopedale Foundation told the Board that because "the original facts and circumstances have been or are in the process of being reworked" the Foundation was only willing to contribute the gift "to exercise an option to purchase 155.24 acres of land for a certain price". See Hopedale Foundation February 24, 2021 letter, attached hereto as **Exhibit 20**.

75. In the Agreement, the Board agrees to waive the Town's c. 61 first refusal rights in the Agreement.

76. The Board was not authorized to and cannot, as a matter of law, waive the Town's c. 61 first refusal rights.

77. Moreover, the Town Meeting voted to exercise its first refusal option, the Board ratified that vote and executed the recordation of the exercise of its first refusal option.

78. In the Agreement, the Board agrees to waive the Town's right to acquire any of the Property by eminent domain under Chapter 79.

79. The Board was not authorized to and cannot, as a matter of law, waive the Town's Chapter 79 eminent domain authority.

80. Moreover, the Town Meeting voted to take the Wetlands by eminent domain under Chapter 79.

81. In the Agreement, the Board also agrees to cover the rollback taxes owed by the Property owner in the event of a conversion of use from Forestland along with half of the costs of surveying the Property. There was no Town Meeting authorization for that expenditure.

82. In the Agreement, the Board agrees to additional encumbrances on the c. 61 Forestland that the Town would acquire, including several easements, not authorized by Town Meeting vote.

83. The Town Meeting vote authorized taking the 25.06 acres of the Wetlands by eminent domain for $25,000.

84. In the Settlement, however, the Board agreed to include the Wetlands, for which the Railroad paid less than $1.00, as part of the $587,500 purchase price.

85. The Town Meeting vote discussed that the acquisition of the Property was for conservation and recreations of parkland.

86. The Town Meeting authorization of the acquisition of the Property, the Board's vote and the Town's recordation of the exercise of its first refusal option and the eminent domain taking established the Property as parkland, dedicated to the public use and protected under Article 97 against any change from parkland without a two-thirds vote of the Massachusetts Legislature.

87. The Board's purported agreement to transfer any portion of the Town's parkland Property to the Railroad is in violation of the prior public use doctrine and Article 97, which requires a two-thirds vote of the Legislature before converting parklands to a different use.

88. Plaintiffs were not aware of the Board's illegal actions until it released a Term Sheet on or about January 25, 2021. The Term Sheet called for the execution of a Settlement Agreement by February 9, 2021.

89. On February 7, 2021, the Plaintiffs sent the Board a Notice of Intent to Sue pursuant to c. 214, § 7A if it moved forward with executing the Settlement Agreement. The Attorney General was copied on the letter but has not responded.

90. On or about February 9, 2021, the Board executed the Settlement Agreement.

91. The Settlement Agreement requires the Board to make best efforts to close the contemplated transactions within 60 days of February 9, 2021, or April 10, 2021.

92. Accordingly, preliminary relief is required to prevent the illegal expenditures and property transfers contemplated by the Settlement Agreement.

COUNT I – AGAINST THE BOARD: PRELIMINARY INJUNCTION TO ENJOIN AND RESTRAIN THE BOARD (M.G.L. c. 40, § 53; c. 44 § 59; c. 214, § 3(10)) FROM ILLEGAL EXPENDITURES AND OBLIGATIONS UNDER THE SETTLEMENT AGREEMENT

93. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

A. The Board Illegally Agreed to the Town's Payment of more than $587,500.

94. The Board agreed to and will soon spend more than $587,500, an amount not specifically appropriated by Town Meeting.

95. The expenditure of more than $587,500 for only 40 acres of the Forestland is a substantial change from the Town Meeting votes.

96. The expenditure is for a different amount, different acreage, higher price per acre, and for a different purpose than authorized and voted at Town Meeting.

97. The expenditure of $587,500 is unauthorized by Town Meeting vote because the Town Meeting vote relied on the $750,000 Hopedale Foundation gift, whose purpose was acquisition of 155.24 acres via the Town's first refusal option, and which was to fund half of the $1,175,000 for the full acquisition.

98. On information and belief, the Board caused the Hopedale Foundation to rescind its offer of assistance because the Board entered into an unauthorized, starkly different Agreement.

99. On information and belief, the Board will imminently issue municipal bonds to make the payment of $587,500 and the additional expenditures.

100. The Board had no discretion to substantially change the terms or purpose of the land acquisition as authorized at Town Meeting.

101. The expenditure of more than $587,500 further violates Town of Hopedale Bylaw, § 79-3, pursuant to which the Finance Committee recommended purchase of the 155 acres for $1,175,000 in its report at Town Meeting.

102. The Finance Committee approved a very different deal and does not even know how the Board intends to fund the more than $587,500 acquisition.

103. Taxpaying Plaintiffs will be harmed by the Board's unauthorized expenditure of more than $587,500.

104. The Board must be enjoined from spending more than $587,500 as set forth in the Settlement Agreement.

B. <u>The Board Illegally Agreed to Payments of Rollback Taxes, Survey Costs, and Hydrogeological Analysis</u>.

105. The Board agreed to and will soon pay the rollback taxes that are owed to the Town by the Property owner pursuant to c. 61 upon a change in use from Forestland.

106. The Board agreed to and will soon pay half of the survey costs to divide the Property as set forth in the Concept Plan attached to the Settlement Agreement.

107. The Board agreed to and will soon pay half of the hydrogeological analysis costs to assess the viability of a well or wells on both the land to be owned by the Town and land to be owned by the Railroad under the Settlement Agreement.

108. These expenditures were not appropriated or authorized by Town Meeting vote and must enjoined.

109. These expenditures by the Town are a very substantial change from the Town Meeting vote as none were discussed or considered at Town Meeting.

110. These expenditures are in further violation of Town Bylaw §§ 79-3; 79-8; and 49-7. because the Finance Committee has never reviewed these items.

111. On information and belief, the Board will imminently issue bonds to make these expenditures.

112. Taxpaying Plaintiffs will be harmed by the Board's unauthorized expenditures.

113. The Board must be enjoined from making these expenditures.

COUNT II – AGAINST THE BOARD AND THE RAILROAD: DECLARATORY JUDGMENT AND ENFORCEMENT OF TOWN'S c. 61 RIGHTS (M.G.L. c. 40, §§ 3 and 53; c. 214, § 3(10); c. 231A, §1)

114. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

115. An actual controversy exists between the Plaintiffs and the Town and the Railroad over the Town's statutory first refusal option.

116. The Town effectively and fully exercised its c. 61 first refusal option and can purchase the Forestland subject to the July 9, 2020 notice of intent.

117. Even if the option is not effective because the Property owner's July 9, 2020 notice of intent was defective, the Town's c. 61 right of first refusal remained intact and was effectively exercised upon constructive notice of the Railroad's control of the Property.

118. The Railroad is estopped from denying the effectiveness of the Notice because it drafted the Notice and, in any event, the Town agrees to pay the $1,175,000 price, rendering moot any issue as to any allocation of the price between the Forestland and the Wetlands.

119. Even if the option is not effective because there has been no notice, constructive or otherwise, of an intent to sell or convert the Forestland for another use, the Town's c. 61 rights remain enforceable against the Railroad.

120. Federal Railroad Preemption does not apply since state law property rights must first be determined.

121. The Board's purported release and waiver of the Town's c. 61 rights in the Settlement Agreement is not effective since those rights cannot be waived as a matter of law and there was no approval by Town Meeting to not exercise or waive those rights.

122. Therefore the c. 61 option deed recorded by Town can be enforced as to the 130.18 acres of c. 61 Forestland.

123. Similarly, easements in c. 61 Forestland granted under the Settlement but never approved by Town Meeting are void for the same reason.

124. The Board's purported waiver of the Town's c. 61 rights and interests in the land is an unlawful consideration, together with the payment of $587,500 and other expenditures, under the Settlement Agreement.

125. Plaintiffs request a declaratory judgment that the Town's c. 61 rights remain enforceable against the Railroad and an order transferring title of all c. 61 Forestland to the Town without any easements.

126. Plaintiffs seek a further binding declaration that the Railroad is prohibited from taking any action or conducting any activities on or concerning the c. 61 Forestland which would result in any alienation of the c. 61 Forestland or any conversion of its current use as forest land until such time as this issue is fully and finally adjudicated.

127. Plaintiffs seek a further declaration that the Trust's assignment of 100% of its beneficial interest to the Railroad was equivalent to a transfer of title to the c. 61 Forestland and therefore constituted a sale of land taxed under c. 61 giving rise to a separate and independent first refusal option in the Town.

COUNT III – AGAINST THE BOARD:
USE OF c. 61 FORESTLAND FOR RAILROAD AND NON-PARKLAND PURPOSES IS ILLEGAL HARM TO THE ENVIRONMENT
(M.G.L. c. 214, §§ 3(10) and 7A; c. 40, § 53; c. 45, § 7 AND MANDAMUS)

128. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

129. The Settlement Agreement allows for unfettered Railroad use, buildings, and easements for non-forestland purposes on c. 61 Forestland.

130. These uses are also non-parkland uses.

131. This violates Article 3 as approved at Town Meeting that says the Forestland will be acquired for public parkland and placed under control of Parks Commission.

132. Town Meeting acceptance of the Property as public parkland creates parkland that is protected under Article 97 and that public use cannot now be changed without a 2/3 vote of Legislature under Article 97 and Town Meeting vote.

133. Failure to get 2/3 vote of the Legislature means sale and conversion of any portion of the Property to railroad use is harm to environment in violation of law intended to protect environment.

134. Construction of more than 600 feet of buildings on parkland as planned by the Railroad is in further violation of c. 45 § 7.

135. Plaintiffs seek a declaration that the Property has been dedicated to and accepted by the public as parkland and is protected under Article 97.

136. Plaintiffs also seek an order mandating that the Board comply with its affirmative obligation to treat and maintain the 130 acres as parkland.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court award the following relief:

a. Preliminarily and permanently enjoin the Board from obtaining any bonds, making any expenditures, paying any costs, or transferring any property interests pursuant to the Settlement Agreement;

b. Enter an order that the Town's c. 61 right of first refusal option as to the Forestland was effectively exercised, or in the alternative, that the first refusal option remains intact and has not been waived and is enforceable against the Railroad;

c. Enter an order to transfer title of the Forestland to the Town, free and clear of any new easements or burdens described in the Settlement Agreement;

d. Enter an order that the Town's eminent domain taking of the Wetlands is effective, is not preempted and order title to transfer to the Town, free and clear of any new easements or burdens described in the Settlement Agreement;

e. Preliminarily and permanently enjoin the Railroad from taking any action nor conducting any activities on or concerning the c. 61 Forestland which would result in any alienation of the c. 61 Forestland or any conversion of its current use as forest land;

f. Enter an order that the Property, including the Forestland and the Wetlands, is public parkland protected under Article 97 by public dedication and acceptance and prior public use and cannot, therefore, be converted to non-parkland use without a Town Meeting vote and the two-thirds votes of the Massachusetts Legislature;

g. Enter an order that the Board treat and maintain the 130 acres of c. 61 land as parkland;

h. Preliminarily and permanently enjoin the Railroad from constructing any buildings or conducting any activities on the Property that would harm the Article 97 parkland;

i. Enter a judgment on each Count for the Plaintiffs;

j. Award Plaintiffs their attorneys' fees and costs incurred in this action; and

k. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

ELIZABETH REILLY, CAROL J. HALL, HILARY SMITH, DAVID SMITH, DONALD HALL, MEGAN FLEMING, STEPHANIE A. MCCALLUM, JASON A. BEARD, AMY BEARD, SHANNON W. FLEMING, and JANICE DOYLE

By their attorneys,

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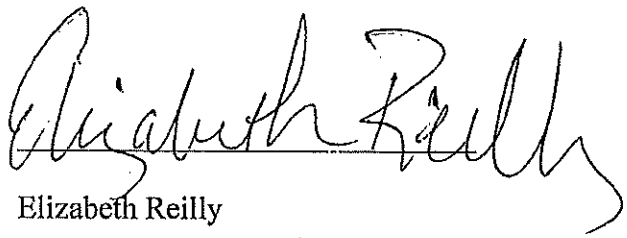
Dated: March 3, 2021

VERIFICATION

I, Elizabeth Reilly, have read the above Verified Complaint and now state, under the penalties of perjury, that the facts stated therein are true to the best of my personal knowledge and that no material facts have been omitted.



Elizabeth Reilly

Dated: 3/3/24

EXHIBIT 4

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION NO. 21CV00238

ELIZABETH REILLY and others,[1]

Plaintiff,

v.

TOWN OF HOPEDALE and others,[2]

Defendants.

MEMORANDUM AND ORDER ON MOTION FOR PRELIMINARY INJUNCTION

38

Before the court is the plaintiffs' motion to "preserve the status quo" and prevent the defendants, Grafton & Upton Railway ("Railway") and related persons and entities, from removing trees and otherwise interfering with property designated as protected forestland. Consider the motion as one for injunctive relief, the court **ALLOWS** the motion.

BACKGROUND[3]

The court briefly summarizes the factual and procedural background of this case. Approximately 30 years ago, the assessor of the Town of Hopedale ("Hopedale" or the "Town") approved the application of the owner of 130.18 acres of woodlands to designate the property as forestland (the "Forestland") under G. L. c. 61, §2 ("Chapter 61"). In return for preferential tax treatment under Chapter 61, the Forestland could not be sold for residential, industrial, or

[1] Carol J. Hall, Donald D. Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Shannon W. Fleming, and Janice Doyle.
[2] Louis J. Arcudi, III, Brian Keyes, Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and One Hundred Realty Trust.
[3] The facts are drawn form the verified complaint and exhibits as well as affidavits submitted in connection with the motion to preserve the status quo.

commercial purposes unless the Town received notice of the proposed sale and an opportunity to exercise its right of first refusal. G. L. c. 61, §8.

On July 9, 2020, Charles Morneau, as Trustee for One Hundred-Forty Realty Trust (the "Trust"), the owner of the Forestland, notified Hopedale of the Trust's intent to sell to the Railway 155.24 acres of land, which included the Forestland as well as 25.06 acres of wetlands (the "Wetlands"). On August 19, 2020, Hopedale asked the Trust to clarify its notice to specify the terms applicable specifically to the Forestland.

The Trust's response reflected a blurring of the lines between the Trust and the Railway. On October 7, 2021. that the law firm that now represents the Railway, notified the town on behalf of its client (which the firm did not identify) that rather it was withdrawing its Chapter 61 notice. Hopedale responded the following day,[4] stating that the Trust's purported withdrawal was of no effect, and that Hopedale would proceed to consider whether to exercise its right of first refusal. On October 15, 2020, the Railway notified the town that it had purchased "all of the beneficial interest" of the Trust in the Forestland. Around the same time, Railway officials replaced Morneau as Trustees of the Trust.

On October 21, 2020, Hopedale notified the Railway and the Trust that it was moving forward with its option to buy the Forestland. On October 24, 202, residents at the Hopedale town meeting voted to appropriate money $1,175,000 to acquire the Forestland under Chapter 61 and to fund the taking of the Wetlands by eminent domain. Six days later, the Board of Selectmen voted to buy the Forestland and take the Wetlands by eminent domain. On November 2, 2020, Hopedale recorded in the Worcester South District Registry of Deeds notice of its decision to exercise its right of First Refusal in the Forestland and eminent domain rights over the Wetlands.

[4] Hopedale's response was addressed to the Trust.

In the meantime, the Railway had begun to clear the Forestland. Hopedale filed a lawsuit in the Land Court seeking to stop the clearing and effectuate its acquisition of the Forestland and Wetlands. The Land Court litigation resulted in a Settlement Agreement executed on February 9, 2021, under which Hopedale would buy approximately 40 acres of the Forestland for $587,500. The plaintiffs filed the instant lawsuit on March 3, 2021, along with a motion for a preliminary injunction seeking to enjoin the Town from buying a portion of the Forestland.

On March 11, 2021, the court (Frison, J.) denied the motion for a preliminary injunction, The plaintiffs appealed and a single justice of the Appeals Court on April 8. 2021, enjoined Hopedale from making any expenditure, issuing an bonds, or transferring any property pursuant to the Settlement Agreement.

Thereafter, the parties filed cross motions for judgment on the pleadings which were heard by the court on September 9, 2021. On the day of the hearing, the plaintiffs filed an "Emergency Motion to Preserve the Status Quo." The motion and supporting affidavits stated that the Railway had resumed cutting trees on the Forestland. Following a September 9, 2021, hearing on the motions for judgment on the pleading and the motion for injunctive relief, the court entered a Temporary Restraining Order preventing any further alteration or destruction of the Forestland pending further order of the court. The court also invited the parties to supplement their filings relating to the requested injunction, which the parties did on September 13, 2021.

DISCUSSION

A court addressing a request for injunctive relief must balance the risk of irreparable harm to the parties in light of each party's likelihood of success on the merits. See *Planned Parenthood League of Massachusetts, Inc. v. Operation Rescue*, 406 Mass. 701, 710 (1990). See also *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 606, 616–17 (1980). "Since the

goal is to minimize the risk of irreparable harm, if the moving party can demonstrate both that the requested relief is necessary to prevent irreparable harm to it and that granting the injunction poses no substantial risk of such harm to the opposing party, a substantial possibility of success on the merits warrants issuing the injunction." *Packaging Industries*, 380 Mass. at 617, n.12. In addition, given the nature of this case, the court must also consider "the risk of harm to the public interest." *Brookline v. Goldstein*, 388 Mass. 443, 447, 447 N.E.2d 641 (1983).

Before the court turns to applying that standard here, it will address the impact of the appeals court injunction on the current request to "preserve the status quo." The Railway argues that the injunction entered by the appeals court does not restrain its actions on the Forestland because the order only prevents the town from spending money to acquire a just portion of the Forestland. In the court's view, the Railway reads the injunction too narrowly. The purpose of the injunction was to temporarily prevent the town from releasing the Chapter 61 limitations on a large portion of the Section 61 Forestland owned by the Trust. By clearing the Forestland, the Railway, in essence, is treating the Forestland as though it were released from Chapter 61 constraints, a result the appeals court injunction sought to prevent.

To the extent the appeals court order is not broad enough to constrain the Railway's actions, this court believes it appropriate to extend its reach to the Trust and the Railway.[5] If the plaintiffs are successful in this lawsuit, the Forestland would remain in its natural state. The Railway's continued clearing of the Forestland would make that result impossible.

Finally, the court's own analysis of the appropriateness of injunctive relief leads it to the same conclusion. The court agrees with the Appeals Court that the plaintiffs have at least a reasonable likelihood of success on the merits and adopts its analysis here. See *Reilly v. Hopedale*, Appeals Court No. 2021-J00111 (April 8, 2021). That the plaintiffs would suffer

[5] Although the Trust still appears to be the record owner, the Railway is treating the property as its own.

irreparable harm requires little discussion. Once trees are removed, they are gone for the foreseeable future. The Railway's claimed – delays in maintaining a construction schedule – pales in comparison. The question of harm to the public interest depends to a large degree on which side of the litigation is correct. In any event, the court see no obvious risk of harm to the public interest occasioned by issuing the preliminary injunction.

ORDER

For the above reasons, it is **ORDERED THAT**:

1. The plaintiff's Motion for a Preliminary Injunction is **ALLOWED**.

2. Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and One Hundred Realty Trust are **TEMPORARILY ENJOINED** from any further alteration or destruction of the 130.18 acres of Forestland that is the subject of this lawsuit pending further order of the court.

Dated: September 24, 2021

Karen Goodwin
Associate Justice, Superior Court

Entered and Copies Mailed 9/24/21

EXHIBIT 5

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2185CV00238

ELIZABETH REILLY and others[1]

vs.

TOWN OF HOPEDALE and others[2]

MEMORANDUM OF DECISION AND ORDER ON CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

45

The plaintiffs, eleven taxpayers residing in the Town of Hopedale ("Town"), have sued the Town and two members of its Board of Selectmen ("Board") (collectively "Town") as well as John Delli Priscoli, Michael Milanosky, One Hundred Forty Realty Trust ("Trust"), and Grafton & Upton Railroad Company ("G&U") (collectively, "Railroad Defendants"). The plaintiffs allege that the Board exceeded its authority when it approved a Settlement Agreement with the Railroad Defendants involving forestland protected under G. L. c. 61. The plaintiffs seek an injunction preventing the Board from purchasing land as set forth in the Settlement Agreement (Count I); a declaration of Town's rights pursuant under G. L. c. 61, § 8 and an order enforcing those rights against the Railroad Defendants (Count II); and a declaration that certain property at issue in the Settlement Agreement is protected parkland under to art. 97 of the Amendments to the Massachusetts Constitution (Count III).

The Railroad Defendants now move for judgment on the pleadings as to Count II (the only count against them), and the plaintiffs and the Town Defendants both move for judgment on

[1] Carol J. Hall, Donald Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle

[2] Louis J. Arcude III, Brian R. Keyes, Jon Delli Priscoli, and Michael R. Milanosky, One Hundred Forty Realty Trust, and Grafton & Upton Railroad Company

Entered and Copies Mailed 11/10/21

the pleadings. After a hearing and review of the parties' submissions, the plaintiffs' motion is **ALLOWED** as to Court I and **DENIED** as to Counts II and III. The Railroad Defendants' motion is **ALLOWED** as to Count II, the only count against them. The Town Defendants' motion is **DENIED** as to Count I and **ALLOWED** as to Counts II and III. In addition, as set forth below, the court enters a Preliminary Injunction preventing the Railroad Defendants from carrying out any work on the contested forest land for a period of 60 days from the date of this order.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are taken from the allegations of the Complaint and the exhibits attached thereto, with some facts reserved for later discussion. The Trust owns slightly more than 155 acres of property at 364 West Street in Hopedale ("Property") of which 130.18 acres are classified as forest land under to G.L. c. 61 and 25.06 acres are classified as wetlands. The Property is contiguous with the Hopedale Parklands, a 279-acre recreational and conservation park owned by the Town.

On June 27, 2020, the Trust and G&U entered into a purchase and sale agreement for the Property. On July 9, G&U (on behalf of the Trust) sent the Town a Notice of Intent to purchase the Property for $1,175,000, as required by G.L. c. 61, § 8.[3] The Town promptly informed the Trust and G&U of its intent to exercise its statutory right of first refusal ("Option") to buy the Property on the same terms as the proposed sale to G&U. October 24, 2020, residents voted at a timely held Town Meeting to appropriate the necessary funds to exercise the Option. The Board then voted to exercise the Option, recorded notice of its exercise at the Registry of Deeds, and

[3] As described in more detail below, municipalities have the right of first refusal when an owner of forest land protected under Chapter 61 plans to sell the land for residential, commercial, or industrial use.

sent the Trust and G&U notice that it had exercised the Option along with a proposed purchase and sale agreement.

On October 7, 2020, the lawyer now representing the Railroad Defendants notified the Town that the Trust was withdrawing its Notice of Intent. Around the same time, G&U purchased the "beneficial interest" in the 130.18 acres of forest land for the same price as contemplated in the purchase and sale agreement without giving the Town any Notice of Intent under G. L. c. 61, § 8.[4] G&U President Jon Delli Priscoli and G&U chief executive officer Michael Mr. Milanosky were appointed as the new trustees of the Trust. G&U then began clearing the Property of trees.

On October 28, 2020, the Town sued the Railroad Defendants in Massachusetts Land Court,[5] seeking (1) a declaratory judgment that the Town's Option remained valid, and (2) an injunction against further land clearing by G&U. The Land Court denied the Town's motion for a preliminary injunction, finding that on the limited facts before it the court could not conclude that the Option had ripened. The Land Court accepted the Railroad Defendants' representation that they would not continue to clear the land during the pendency of the case and ordered the Town and the Railroad Defendants to engage in mediation. In the meantime, G&U filed a declaratory petition with the Surface Transportation Board ("STB"), seeking federal preemption of the Town's Option to purchase the forest land and its statutory right to acquire the wetlands by eminent domain.

In February 2021, the Town and the Railroad Defendants entered into the Settlement Agreement ("Agreement") resolving Land Court action and G&U's STB petition. The Railroad Defendants agreed to sell the Town 40 acres of the Property's 130.18 acres of forest land and the

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[4] G&U also purchased the 25-acre wetlands for $1.00

[5] *Town of Hopedale* v. *John Delli Priscoli, Trustee of the One Hundred Forty Realty Trust*, 20-MISC-0467

full 25.06 acres of wetlands for $587,500. The Railroad Defendants also agreed to donate to the Town a separate parcel of 20 acres located at 363 West Street in Hopedale. The donation was subject to Town Meeting approval. In return, the Town agreed to waive its Option with respect to the remaining 90 acres of forest land. On February 10, 2021, the Town and the Railroad Defendants filed a Stipulation of Dismissal in the Land Court action.

On March 3, 2021, the plaintiffs filed the Verified Complaint in this action and sought a preliminary injunction preventing the Town from making any expenditures pursuant to the Settlement Agreement. On March 11, the court (Frison, J.) denied the plaintiffs' motion for preliminary injunction. The plaintiffs appealed. On April 8, the Single Justice of the Appeals Court (Meade, J.) issued an order allowing the plaintiffs' motion for preliminary injunction. Despite the injunction, G&U apparently resumed cutting trees on the forest land, prompting the plaintiffs to seeks an injunction preventing alteration of the forest land. By order dated September 24, 2021, the court enjoined the Railway Defendants from any "further alteration or destruction of the 130.18 acres of forest land" pending further order of the court. The Railway Defendants appealed that order to a single justice of the Massachusetts Court of Appeals, who has justice declined to intervene.

DISCUSSION

"A defendant's rule 12(c) motion [for judgment on the pleadings] is 'actually a motion to dismiss . . . [that] argues that the complaint fails to state a claim upon which relief can be granted.'" *Jarosz* v. *Palmer*, 436 Mass. 526, 529 (2002), quoting J.W. Smith & H.B. Zobel, Rules Practice § 12.16 (1974). "In deciding a rule 12(c) motion, all facts pleaded by the nonmoving party must be accepted as true." *Id.* at 529-30. The court "draws [its] facts from the well pleaded allegations of the complaint and the admissions or failures of denial presented by

the answer." *Ridgeley Mgmt. Corp.* v. *Planning Bd. of Gosnold*, 82 Mass. App. Ct. 793, 797 (2012). Judgment on the pleadings is appropriate when, as here, "there are no material facts in dispute on the face of the pleadings." *Clarke* v. *Metro. Dist. Comm'n*, 11 Mass. App. Ct. 955, 956 (1981).

A. Scope of the Board's Settlement Authority (Count I)

General Laws c. 61, § 8, provides that "[l]and taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use . . . unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use." Once notice is provided, "the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land." G.L. c. 61, § 8. In order to exercise this option, the Town must hold a public hearing, mail notice to the landowner (including a proposed purchase and sale agreement), and record the exercise of the option in the registry of deeds.

Separately, G.L. c. 40, § 14, allows the "selectmen of a town . . . [to] purchase . . . any land, easement or right therein within the city or town . . . ." However, "no land, easement or right therein shall be taken or purchased under this section unless the taking or purchase thereof has previously been authorized . . . by vote of the town . . . ." G.L. c. 40, § 14.

In this case, it is undisputed that the Town attempted to carry out the steps necessary to exercise its Option with respect to the 130.18 acres of forest land pursuant to Chapter 61. To that end, it held a Town Meeting on October 24, 2020, at which it placed before town residents several Articles for a vote. Article 3 stated in pertinent part:

> "To see if the Town will vote to acquire, by purchase or eminent domain, certain property, containing 130.18 acres, more or less, located at 364 West Street . . . and in order to fund such acquisition, raise and appropriate . . . [$1,175,000] . . . said property being acquired pursuant to a right of first refusal in G.L. c. 61, § 8."

The motion carried with a unanimous vote. Article 5 stated in pertinent part: "To see if the Town will vote to take by eminent domain . . . the land located at 364 West Street which is not classified as forest land under Chapter 61 of the General Laws, consisting of 25.06 acres, more or less" and to borrow up to $25,000 to fund the acquisition. That motion also carried unanimously.

The Town Defendants concede that G.L. c. 40, § 14, provides the sole basis for the Board's authority to acquire virtually any real property and to appropriate funding for such acquisition. They argue, however, that the Town Meeting's appropriation of funds represents an upper limit on spending: that is, that the Board had discretionary authority to acquire any portion of the Property up to the full 155 acres, for any price up to $1,175,000 for the 130.18 acres of forest land and up to $25,000 for the 25.06 acres of wetlands.

For this proposition, the Town Defendants rely on *Russell* v. *Town of Canton*, 361 Mass. 727 (1972). There, the town meeting was presented with an article pursuant to G.L. c. 40, § 14, to take by eminent domain "20 acres, more or less" of property owned by the plaintiff landowners. *Id.* at 728. The town meeting voted unanimously to take "approximately 18 acres" and to appropriate $36,000 for that purpose. The Canton board of selectmen ultimately took only 15.25 acres, paying the plaintiff landowners $30,500 and leaving them with a 1.5 acre lot. In setting forth the factual background if its decision, the court highlighted the town superintendent's testimony that the leftover 1.5-acre lot "was all rock," which "rose rapidly as solid ledge . . . to a point about 80 feet from the street, and some twenty feet higher than the street, and then sloped off to the rear of the property" and that creating roadway access across the lot to the rest of the property "would require the removal of 1,000 cubic yards of ledge," presumably at significant cost to the town. *Id.* at 729.

The court rejected the plaintiffs' argument that the town meeting authorized only the taking of their whole 16.75 acres, not the 15.25-acre subset, explaining: "[neither] the warrant or the vote of the town . . . expressly limits the power of the board to a taking of the entire parcel owned by the plaintiffs. Rather, each purports to estimate the area authorized to be taken, the warrant by the words '20 acres, more or less,' and the vote by the words 'approximately 18 acres.' Both estimates exceeded the area which the plaintiffs actually owned at the time, viz. 16.75 acres." *Id.* at 732. Because "the 15.25 acres covered by the board's taking [were] admittedly included in and a part of the parcel described by more general language in the warrant and the town vote," the board had discretion to take only that lesser portion. *Id.*

This case is different. Unlike the warrant and vote in *Russell*, here the area to be taken was precisely defined. Although the documents used the term of art "more or less," both set forth precise acreage: "130.18 acres more or less of forest land: and "25.06 acres, more or less" of other property. Together those portions constitute the exact recorded acreage of the Property. In addition, unlike in *Russell*, the Board's actions here represent a substantial departure from the original Town Meeting authorizations. In *Russell*, the Canton board of selectmen took nearly all of the land authorized by the town meeting. In contrast, here the Board settled for less half of the Property, which was a substantial deviation from the acquisition authorized by the Town Meeting.[6]

[6] Although the Town Defendants point out that they are acquiring 85 acres under the Settlement Agreement (slightly less than half the area of the Property) for $587,500 (half the contemplated purchase price for the 130-acre forest land area), only 65 acres of that is part of the Property and only 40 of those 64 acres are forest land. The remaining 20 acres was to be donated by the Railroad Defendants from a separate parcel – which donation, notably, the Settlement Agreement itself states is subject to Town Meeting approval because it represents an acquisition of land not previously authorized pursuant to G.L. c. 40, § 14. Correspondence about the original sale by the Trust to G&U reflects that G&U was to pay $1,175,000 for the entire 155 acres of the Property; under the terms of Article 3 and Article 5, the Town would have paid slightly more - $1.2 million in total ($1,175,000 for the forest land and $25,000 for the wetlands).

Moreover, the Chapter 71 Option referenced in Article 3 can only be exercised according to the terms of the triggering purchase and sale agreement between the Trust and G&U. The Town may not materially alter those terms by exercising the Option only as to part of the land. See *Town of Franklin* v. *Wylie*, 443 Mass. 187, 195-196 (2005) ("to meet the purchasers' bona fide offer, the town was required to purchase the land on substantially the same terms and conditions as presented in [that] agreement"). In contrast, *Russell* addressed a general taking under eminent domain. These distinctions preclude analogy to *Russell*'s narrow holding, in which the court took care to state that "*on the limited facts of this case*, we hold that the board's taking was authorized by the town vote and was in all respects valid" (emphasis added). *Russell*, 361 Mass. at 732.

In sum, while the Town Defendants are correct that the G.L. c. 61, § 8, does not permit the plaintiffs to force the Board to exercise the Town's Option in the first instance, the statute does not allow the Board to acquire land without Town Meeting approval. Once the Board elected to exercise the Option and obtained a precisely worded authorization to acquire specific land pursuant to specific rights, it was bound by the terms of that authorization. Therefore, the Board exceeded its authority when it entered into the Settlement Agreement without Town Meeting authorization.

This is not, however, to suggest that settlement of the Land Court case could never be proper. As a general rule, select boards empowered to act as a town's agents in litigation are likewise empowered to settle such claims. See *George A. Fuller Co.* v. *Com.*, 303 Mass. 216, 222 (1939), citing *Jones* v. *Inhabitants of Natick*, 267 Mass. 567, 569 (1929) ("It is in the power of towns to settle claims which may be made upon them arising out of their administration of their municipal affairs"); *Campbell* v. *Inhabitants of Upton*, 113 Mass. 67, 70 (1873) (municipal

capacity to sue or be sued includes "consequently [the capacity] to submit to arbitration"). Nothing in the language of G.L. c. 61, § 8, or related case law bars a town from settling a claim simply because that claim arises out of the town's attempt to invoke a first refusal option. Indeed, as Justice Meade pointed out in granting the plaintiffs' motion for a preliminary injunction in this very case, "a town vote authorizing the select board to purchase any or all of the land at issue . . . would render the transaction lawful." The sole impediment to execution of the Settlement Agreement is that the Board failed to obtain prior authorization from the Town Meeting as required by G.L. c. 40, § 14.

For these reasons, the plaintiffs' motion for judgment on the pleadings is allowed as to Count I and the Town Defendants' cross-motion is denied as to Count I.

B. Enforcement of the G.L. c. 61, § 8, Option (Count II)

In Count II, the plaintiffs go further by requesting a declaration that the Town validly exercised the Option. They ask the court to order the Railroad Defendants to sell the Property to the Town according to the terms of the Town's October 2020 proposed purchase and sale agreement. The plaintiffs lack standing to seek this relief. Although G.L. c. 40, § 53, gives any ten taxpayers a right of action to prevent a municipality from illegally spending or raising funds, as in Count I, it does not follow that they have a right of action to compel the Town to spend funds. Similarly, G.L. c. 214, § 3(10), creates a ten-taxpayer right of action to "enforce the purpose or purposes of any . . . conveyance which has been . . . made to and accepted by any . . . town . . . for a specific purpose or purposes." At issue here, however, is not whether the Town illegally altered the use of property conveyed to it for a specific purpose; rather the plaintiffs seek to compel the Town to carry out a conveyance in the first instance. This is plainly beyond the scope of § 3(10).

Moreover, as the Town Defendants correctly note, the power to exercise the Option rests solely with the Board and not with the Town Meeting. See G.L. c. 61, § 8. "Although G.L. c. 40, § 14, requires that . . . [a] taking be authorized by a vote of the town, it vests the power to make the taking in the selectmen of the town. ... If the selectmen, being authorized by the town to make a taking, do not make it, the decision is not judicially reviewable as to its wisdom." *Russell*, 361 Mass. at 731. Therefore, it lies within the Board's sole discretion to determine whether to seek Town Meeting approval for the Settlement Agreement, to renew its attempts to enforce the Option, or to do neither. For all of the foregoing reasons, the plaintiffs' motion for judgment on the pleadings is denied as to Count II; the Town Defendants' cross-motion for judgment on the pleadings is allowed as to Count II; and the Railroad Defendants' motion for judgment on the pleadings as to Count II is allowed.

C. Statutory Environmental Protections (Count III)

Finally, the plaintiffs seek a declaration that the 130.18 acres of forest land within the Property are protected parkland under art. 97 of the Amendments to the Massachusetts Constitution. Art. 97 provides that land dedicated as parkland "shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court." See *Smith* v. *City of Westfield*, 478 Mass. 49, 55 (2017). The basis for this declaration, the plaintiffs contend, is the language in Article 3 specifying that the Town would acquire the 130 acres, pursuant to the Option, for the purpose of "maintain[ing] and preserv[ing] said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes."

This argument, however, puts the cart before the horse: while Article 3 *authorized* the Town to expend funds to acquire the forest land for a particular purpose, that authorization did

not by itself complete the acquisition of the property at issue. Were it otherwise, G.L. c. 61, § 8, would not need to specify that a town exercising its statutory first refusal option must include with its notice of exercise "a proposed purchase and sale contract or other agreement between the city or town and the landowner" to be executed within 90 days. No such purchase and sale contract was executed in this case because the Railroad Defendants challenged whether the Town had validly exercised the Option. The notice of exercise of the Option recorded in the Registry of Deeds was signed only by the Board of Selectmen, on behalf of the Town, and not by the Trust. Accordingly, the Town never acquired the 130 acres of forest land in the first instance, much less dedicated it as parkland pursuant to art. 97. The plaintiffs' motion for judgment on the pleadings is therefore denied as to Count III and the Town Defendants' cross-motion is allowed as to Count III.

D. Injunction

The court acknowledges that there has been substantial litigation before the Land Court, this court, and the Appeals Court over whether the Railroad Defendants may continue clearing and other site work during the pendency of litigation related to the Property. Although this judgment on the pleadings, effectively ends this litigation, the court is mindful of the Railroad Defendants' attempt to circumvent the Chapter 61, § 8, process by purporting to acquire only the "beneficial interest" in the forest land while undertaking the same commercial operations that Chapter 61 allows municipalities to preclude. See *Goodwill Enters., Inc. v. Garland*, 2017 WL 4801104 at *8 (Mass. Land Ct., Oct. 20, 2017) (contractual right of first refusal triggered by alienation of beneficial interest in property). Moreover, the court cannot ignore (1) the Railroad Defendants' initiation of clearing operations after the Town issued a notice of intent but before it

could hold a Town Meeting to appropriate funds to exercise the Option; and (2) its resumption of clearing operations while the Appeals Court's injunction remained in place.

Therefore, the court finds it appropriate to issue continue the temporary injunction barring the Railroad Defendants from conducting clearing or other site work on the Property for a limited period of time sufficient to allow the Town to decide whether to seek the Town Meeting authorization necessary to validate the Settlement Agreement or to take the necessary steps to proceed with its initial decision to exercise the Option for the entire Property. While G.L. c. 40, § 14, does not provide any particular time period in which a town must hold a town meeting to authorize the acquisition of land, the Legislature has expressed a view on the appropriate time frame for such matters in G.L. c. 61, §8, which gives a town 120 days to exercise its first refusal option. Because the decision now before the Town is more limited in scope, however, a shorter period of 60 days is appropriate for this temporary injunction.

Therefore, the Railroad Defendants are enjoined from carrying out any clearing or other site work on the Property for a period of 60 days following the issuance of this decision.

ORDER

For the foregoing reasons:

1) Defendants, Jon Delli Priscoli, Michael R. Milanosky, One Hundred Forty Realty Trust, and Grafton & Upton Railroad Company Motion for Judgment on the Pleadings as to Count II of Plaintiffs' Verified Complaint is **ALLOWED.**

2) Plaintiffs' Motion for Judgment on the Pleadings is **ALLOWED** as to Count I and **DENIED** as to Counts II and III.

3) The Town of Hopedale and Hopedale Board of Selectmen's Cross-Motion for Judgment on the Pleadings is **DENIED** as to Count I and **ALLOWED** as to Counts II and III.

4) It is further **ORDERED** that Jon Delli Priscoli, Michael R. Milanosky, One Hundred Forty Realty Trust, and Grafton & Upton Railroad Company are enjoined from

carrying out any clearing or other site work on the Property for a period of 60 days following the issuance of this decision.

Karen L. Goodwin
Justice of the Superior Court

DATED: November 4, 2021

EXHIBIT 6

PETITION TO THE BOARD OF SELECTMEN, TOWN OF HOPEDALE

We, the undersigned Hopedale Residents, request that the Town of Hopedale continue to move forward to exercise its right to purchase the 130 acres, more or less, and to acquire the 25 acres of wetlands, more or less, located at 364 West St in Hopedale, MA as directed by the Special Town Meeting in October of 2020 and as provided by the Superior Court in its order issued November 10, 2021. Such action is sought to secure a designation for this area which will enable a protective classification of this vital forestland, wetlands, watershed, and critical habitat area.

NAME	ADDRESS	EMAIL	DATE
Wilma Manning	87 Hopedale St.	—	11/15/21
Gloria Lewis	87 Dutcher St		11/15/21
Mary Ann Carter	17 Hope St.		11/15/21
Shirley Greano	13 Daniels St		11/15/21
Pen [illegible]	3 CUTLER ST.		11/15/21
Ernest J Volpe	60 Hopedale St #1		11/15/21
Catherine Moffin	34 Mellen St		11-15-21
[illegible]	10 Mendon St		11-15-21
Susan Hurley	115, Laurelwood Dr		11-15-21
Sally Deceles	74 Bancroft Pk		11-15-21
Mary Ann Cataldo	310 S. Main St		11-15-21
Tony Cedrone	310 S. Main St		11-15-21
Ann Ruscetta	217 Laurelwood Dr.		11-15-21
Muriel Mitchell	1114 Hopedale St		11-15-21

(2)

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NAME	ADDRESS	EMAIL	DATE
Mary P. Boudreau	28 Laurelwood Dr.		11-15-2021
Ann England	25 Driftway St.		11-15-21
[illegible] Kelly	9 Heron Ln.		11-15-21
Susan Concatori	8 Tammie Rd		11/15/21
Cheryl Hanley	33 Hammond Rd		11/15/21
Catherine Gosselin	34 Prospect		11/16/21
Joyce Beard	61 Rockaway Pk		11/16/21
Joyce Dorman	136 Laurelwood Dr		11/16/21
Susan Seymour	42 Bancroft Pk.		11/16/21
Carol Hall	64 Westcott Rd		11/16/21
Yvonne [illegible]	16 Prospect St.		11/16/21
Marianne Watson	130 Mill St. Hopedale		11/16/21
Thomas R. D'Orso	10 Westcott Rd Hopedale		11/16/21
Lisa Dubois	94 Dutcher St Hopedale		11/16/21

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NAME	ADDRESS	EMAIL	DATE
Carla MacQuarrie	68 Greene St		11.16.2021
F. Donnelly	7 Crockett Cir.		11/16/21
Dan Bivins	37 Dutcher St. #6		11/16/21
Mary A Watson	12 Nelson St	twatsonb14@comcast.net	11/17/21
Tom Watson	12 Nelson St		11/17/21
Lorraine Vitali	100 Plain St		11/17/21
Peter & Ellen	142 Freedom St		11/17/21
Linda Norton	69 Mill St		11/17/21
Rita Gallagher	19 Nelson St		11/17/21
Elisabeth Hellmuth	105 Jones Rd		11/17/21
Elizabeth Turner	9 Moore Rd		11/17/21
Jeffrey Turner	9 Moore Rd		" "
Evan Kerner	"	"	" "
Janice McCausland	89 Mill St Hopedale		11-17-21

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NAME	ADDRESS	EMAIL	DATE
Jean Capello	104 Hopedale St #25		11/15/21
Alexander E. Baker	104 Hopedale St. #29		11-15-21
Jacqueline Hutchings	98 Hopedale St Apt 3		11-15-21
Sue Ann Dorsey	104 Hopedale St		11-16-21
Suzanne Edwards	104 Hopedale St Apt 31	suzzed22@yahoo.com	11-16-21
Linda Mountain	98 Hopedale St Apt 8		11-16-21
Nancy Graham	104 Hopedale St Hopedale MA		11/17/21
Nancy Rondeau	98 Hopedale st Hopedale Ma		
Karen Shepard	98 Hopedale St. Apt 7		11-17-21
Claire Daniel	98 Hopedale street apt #6		11/17/21
Mandy Talcott	98 Hopedale street apt #6		11/17/21
Janet Hamerian	110 Hopedale St #30		11/17/21
Sylvia Rocke	110 Hopedale St #31		11/17/21
Wayne Larson	98 Hopedale St.		11/17/21

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NAME	ADDRESS	EMAIL	DATE
Erin Iacovelli	9 Taft Circle Hopedale	deiacovelli@comcast.net	
David Iacovelli	9 Taft Cir Hopedale	IACOVELLIDAVE@yahoo.com	
Michele Crando	8 Heron Lane	micheleterando@yahoo.com	
Steve Goldstein	4 Liberty Cir Hopedale	goldstein.steve@gmail.com	
James Foley	8 Bens Way	jimvfoleyii@comcast.net	
Kathryn Foley	8 Bens Way	KDHF@comcast.net	
Russell Bogartz	8 Hope St.	russell.bogartz@gmail.com	
Bonnie Gaus	8 Gannett Way	bonnie_muir@yahoo.com	
Brian Terando	8 Heron Ln	gsh_dad@yahoo.com	

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NAME	ADDRESS	EMAIL	DATE
Donna McKee	112 Hopedale St. Apt. 19	—	Nov. 19, 2021
Wanda Sorlsky	112 Hopedale St. Apt 20		Nov 19, 2021
[illegible]	138 Freedom St.		Nov. 19, 2021
Pauline Wright	138 Freedom St		Nov 19 2021

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NAME	ADDRESS	EMAIL	DATE
Sophie Smith	32 Hammond Rd	sosmith@comcast.net	NOV 18
David Smith	32 Hammond Rd	dsmith32g50@comcast.net	NOV 18
Adele M Stock	3 Cutler St.	adelestock@gmail.com	11/18/21
Barbara Fuerstein	76 Jones Rd.	Babzeeann@gmail.com	11/18/21
Valerie A Sydeman	4 Home Park Dr	vbside@hotmail.com	11/18/21
William J Slater	4 Home Park Dr	brside48@gmail	11/18/21
Catherine E			

PETITION TO THE BOARD OF SELECTMEN, TOWN OF HOPEDALE

We, the undersigned Hopedale Residents, request that the Town of Hopedale continue to move forward to exercise its right to purchase the 130 acres, more or less, and to acquire the 25 acres of wetlands, more or less, located at 364 West St in Hopedale, MA as directed by the Special Town Meeting in October of 2020 and as provided by the Superior Court in its order issued November 10, 2021. Such action is sought to secure a designation for this area which will enable a protective classification of this vital forestland, wetlands, watershed, and critical habitat area.

NAME	ADDRESS	EMAIL	DATE
Marian Mostary	57 Laurelwood Dr.		11/17/21
Roberta Spivack	98 Laurelwood DR.		11/17/21
Constance Potter	17 Driftway st		11/17/21
[illegible]	65 Laurelwood DR		11/17/21
[illegible]	" " "		11/17/21
[illegible]	67 Laurelwood Dr		11/17/2021
DIXIE BRACK	85 LAURELWOOD Dr	dixbra@comcast.net	11/17/21
Jim Fisher	84 Laurelwood DR.		11/17/21
Robert [illegible]	94 Laurelwood Dr.		11/17/21
Susan Luciani	99 Laurelwood Dr		11/17/21
Nancy Attoratta	100 Hopedale St	APT 13	11/18/2021
Sara Attoratta	100 Hopedale st APT 13		11/18/2021
Ronica Talarico	100 Hopedale St. APT 15		11/18/21

Timestamp	e-Signature (first and la	Street Address	Email Address	Today's Date	Comments to Select Board:
11/12/2021 18:05:45	Elizabeth Reilly	68 Dutcher Street, Hoped	liz_shop@comcast.net	11/12/2021	
11/12/2021 19:13:41	Carole Mullen	11 Moore Rd.	mullencarole@verizon.net	11/12/2021	
11/13/2021 10:07:03	Renee DeWolf	14 Ballou Rd	dewolfreneemark@gmail	11/13/2021	
11/13/2021 10:07:34	Karen M Devine	57 Westcott Road	karendevine@gmail.com	11/13/2021	
11/13/2021 10:08:05	Deirdre Riley Thomson	49 Westcott Road, Hoped	deirdrethomson3@gmail.	11/13/2021	
11/13/2021 10:08:20	James Donohoe	49 Progress St.	jim.donohoe@gmail.com	11/13/2021	
11/13/2021 10:10:21	Carla McCall	31 Westcott Rd	Cmccall@aafcpa.com	11/13/0021	Exercise our ROFR as the residents have voted
11/13/2021 10:10:48	Adriane Reed	10 Forest Path	adriane100@gmail.com	11/13/2021	We have veen given another chance to acquire the land. Please do this for the future of Hopedale and its citizens. So grateful for it! Thank you!
11/13/2021 10:16:22	Greg Komara	10 Prospect Street	Komags67@gmail.com	11/13/2021	Get it right this time, please.
11/13/2021 10:16:23	Barbara Elfland	95 Greene Street	abcelf@comcast.net	11/13/2021	
11/13/2021 10:16:59	Nathan Martin	9 Westcott rd	Nathan01747@yahoo.cor	11/13/2021	Buy this land!!!!
11/13/2021 10:17:48	Ann Fahey	137 Dutcher Street Hopec	Afm@faheyfamily.com	11/13/2021	
11/13/2021 10:18:28	Michelle Smith	366 West Street	366msmith@gmail.com	11/13/2021	Please honor the will of the town as expressed in the unanimous vote at Town Meeting
11/13/2021 10:19:56	Celene Howard	15 Hammond Rd, Hopeda	celenehoward@gmail.cor	11/13/2021	Hopedale should complete the process to exercise our right to acquire Hopedale's watershed, our future depends upon it.
11/13/2021 10:21:06	Elizabeth Small	3 Haven Way	Lsmall7@comcast.net	11/13/2021	
11/13/2021 10:21:25	Melissa Mercon Smith	366 West Street, Hopeda	melissamerconsmith@gm	11/13/2021	Please do the right thing. The residents have spoken.
11/13/2021 10:22:01	Linda Cameron	32 Mellen Street	Lcameron3@comcast.net	11/13/2022	Protecting the wetlands is vitally important in the fight to save our environment. Please uphold the wishes of the town as evidenced by the vote taken October 2020.
11/13/2021 10:22:27	Shannon OBrien	10 Bancroft Park	sobrien1010@gmail.com	11/13/2021	
11/13/2021 10:23:39	Jennifer Newman	24 Adin Street	jcnewman68@yahoo.com	11/13/2021	As a town we have made our wishes clear. I would ask that you please act upon those wishes and take advantage of the beneficial RoFR. Thank you.
11/13/2021 10:24:54	Eric Newman	24 Adin Street	ejn52cpa@gmail.com	11/13/2021	The Right of First Refusal is an opportunity the town voted for. Please proceed accordingly.
11/13/2021 10:25:59	Johanna Fitzgerald	117 /119 Dutcher st	jpfitz963@yahoo.com	11/12/2021	Please purchase land
11/13/2021 10:27:03	Marylee Floyd	118 Adin Street, Hopedal	lcfloyd@verizon.net	11/13/2021	This is a must do, not a want to do.
11/13/2021 10:28:24	McKenzie Fahey	137 Dutcher St	mmf@faheyfamily.com	11/13/2021	
11/13/2021 10:28:36	Donna Jansky	12 Oak View Lane	djansky@comcast.net	11/13/2021	
11/13/2021 10:32:52	Sara Pellegrini	35 Larkin Ln Hopedale M	Advancedenergys@aol.c	11/13/2021	
11/13/2021 10:34:42	Shawn Ashby	61 Westcott Road, Hoped	spa747@gmail.com	11/13/2021	
11/13/2021 10:35:28	Margaret Carrigan	1 Crockett Circle, Hopeda	mcarrig2@comcast.net	11/13/2021	
11/13/2021 10:36:05	Heidi Finnegan	10 Spruce Circle	finneganh1984@gmail.co	11/13/2021	Acquiring this land is in the best interest of our community and the environment. Please do the right thing.
11/13/2021 10:36:28	William Carrigan	1 Crockett Circle, Hopeda	mcarrig2@comcast.net	11/13/2021	
11/13/2021 10:36:55	Adam Fumia	27 Cemetery St	Afumia@gmail.com	11/13/2021	Please follow the clear directives of the citizens of the town you represent. Thank you for your service to the town.
11/13/2021 10:37:44	Jamie Deppe	12 Gannett Way	jdeppe32@gmail.com	11/13/2021	Please exercise our Right of First Refusal of the 130 acres of Forestland and aquire this land as soon as possible!!!!!!
11/13/2021 10:37:48	Laurie Reynolds	209 Dutcher Street Hopec	mrlrtr@comcast.net	11/14/2021	
11/13/2021 10:38:07	Karen Wyspianski	9 Spruce circle	Karen@kw-cpa.com	11/13/2021	
11/13/2021 10:39:21	Phyllis Foley	17 Bancroft Park, Hopeda	pjfoley123@gmail.com	11/13/2021	Please honor the vote of the people
11/13/2021 10:40:30	Jessica Raddi	14 Hope St	Jessica.raddi@gmail.com	11/13/2021	Do the right thing by the citizens and purchase the land.
11/13/2021 10:41:04	Stephanie McCallum	107 Hopedale St	Stephanie_mccallum@ho	11/13/2021	
11/13/2021 10:41:34	Paul and Jennifer Bour	1 Heron Lane	Pbandiathome@gmail.co	11/13/2021	
11/13/2021 10:41:39	Shannon Fleming	56 Mendon St	shannon.fleming@gmail.c	11/13/2021	The people of this town UNANIMOUSLY agreed to this. Do your job and honor the will of the town.
11/13/2021 10:41:49	Grant Deppe	12 Gannett Way	Jdeppe32@hotmail.com	11/13/2021	
11/13/2021 10:42:33	Leeann DiPietropolo	90 Dutcher St	Dipietropolo@comcast.ne	11/12/2021	Please do the right thing.
11/13/2021 10:43:30	Gary Raddi	14 Hope St.	Gr.raddi@gmail.com	11/13/2021	
11/13/2021 10:48:22	Christopher Carron	90 Dutcher St	C.carron79@gmail.com	11/13/2021	
11/13/2021 10:49:45	Madhu Kaushik	32 Larkin lane Hopedale M	madhu_kaushik2@yahoo	11/13/2021	
11/13/2021 10:50:09	Mika Tapanainen	14 Rockridge road	Mikatapanainen@comcas	11/13/2021	Please, proceed to purchase the whole watershed property
11/13/2021 10:51:22	Lorraine A Olson	274 South Main Street	loro5171@gmail.com	11/13/2021	Please…Hopedale I has lost so much green space with an over abundance of development, adding to our tax burden with needed increased costs for schools, fire and safety, police, highway, etc. Don't allow our one remaining natural asset to be lost! The pond is polluted and unsafe for swimming, and fish caught there are inedible! The charm that we remember is rapidly disappearing.
11/13/2021 10:51:53	Yolanda Tapanainen	14Rockridge Road	Michelletapanainen@com	11/13/2021	Proceed to purchase the whole water shead property.
11/13/2021 10:54:09	Megan Smith	1 Gannett Way	msbsmith01@gmail.com	11/13/2001	
11/13/2021 10:54:58	Jessenia Sanchez	18 Ballou Road	Jessenia.Sanchez007@g	11/13/2021	I agree!!!
11/13/2021 10:55:08	keith smith	1 Gannett Way	keith.smith@cop-inc.com	11/13/2021	
11/13/2021 10:59:41	Suzanne Singson	18 Driftway St	susing65@gmail.com	11/13/2021	Please help protect this land, the watershed, and the people of Hopedale
11/13/2021 11:03:08	Alison Dressler	7 Pierce Street	alisonadressler@gmail.c	11/13/2021	
11/13/2021 11:03:23	Gerald Singson	18 Driftway St	Gerry.singson@gmail.con	11/13/2021	
11/13/2021 11:03:26	Debra A Hodgens	35 Adin Street	Debhodgens@gmail.com	11/13/2021	This is your chance to do the right thing. Your job is to represent the will of the people, not your own personal interests. The town's attorneys have misadvised and it is time to put ego aside and do your job. What will be your legacy?
11/13/2021 11:08:44	Maureen Hodgens	35 Adin Street Hopedale	maureenhodgens@gmail	11/13/2021	
11/13/2021 11:09:02	Tara Taglianetti-Cham	13 Hopedale St Hopedale	arat2662@comcast.net	11/13/2021	Please exercise our Right of First Refusal and purchase all of the land, the court has given you a second chance.
11/13/2021 11:09:12	Francis Hodgens	35 Adin St	franhodgens@live.com	11/13/2021	
11/13/2021 11:10:57	Christopher P. Hodgen	35 Adin Street	cphodgens@gmail.com	11/13/2021	The Superior Court has spoken. This misadventure is now over. No more handwringing. No more legal opinions.The Town must acquire this land with all deliberate speed. Failure to act will will not only result in judgment at the ballot box, but will sully the reputations of all involved. The time has come to do what the voters demand, not what the railroad wants.
11/13/2021 11:13:06	Christopher P. Hodgen	35 Adin Street	snegdoh7@gmail.com	11/13/2021	
11/13/2021 11:18:09	Leslie E Morris	15 Gannett Way	Nuttypatsfan@comcast.ne	11/13/2021	
11/13/2021 11:21:25	Jayme Solomon-Zissu	6 Larkin Ln	jaymes-z@verizon.net	11/13/2021	This needs to be completed as it was a unanimous vote. The railroad is a terrible partner for the town. We need to protect our water rights, parklands, and community. Most importantly. The settlement costs the town money and we get unusable land and first refusal costs us nothing.
11/13/2021 11:23:21	William Diorio	15 Haven Way Hopedale	Williamdiorio@gmail.com	11/13/2021	Do the right thing and buy the entire property
11/13/2021 11:28:59	Theresa Ehrlich	5 Gannett Way	Tehrlich8808@gmail.com	11/12/2021	
11/13/2021 11:30:33	Matthew Ruwe	24 mendon street	Mattruwe101@gmail.com	11/13/2021	Please execute the will of the people as your elected to do
11/13/2021 11:30:57	Paul Poisson	3 Moore Rd	paul.poisson@gmail.com	11/13/2021	I emplore you to buy this land. Please vote with your constituents not against please. No one in town wants this RR to bully us around. As they did by parking graffiti trains in the rail road trestle by the church in recent times. Remember the small things they did. That was a blight on the town and I hope you noticed that.
11/13/2021 11:31:12	Michele LaReau-Alves	164 Hopedale Street Hop	Tonyandmichele@comcas	11/13/2021	
11/13/2021 11:32:39	Rebecca Chan	37 Larkin Ln Hopedale	rwchan19@gmail.com	11/13/2021	Please exercise our RofFR and protect our resources.
11/13/2021 11:43:27	Beth Ruwe	24 Mendon St	mbruwe@yahoo.com	11/13/2021	Please move forward with completing the right of first refusal and preserve this land for the town.
11/13/2021 11:52:49	John D. Hall	13 Haven Way	Jehall4@verizon.net	11/13/2021	
11/13/2021 11:56:26	Michelle Leonard	65 Freedom St Hopedale	Micleonard32@gmail.con	11/13/2021	Right of Refusal
11/13/2021 11:56:54	Thomas Garofano	179 Freedom St	hopedale@garofano.com	11/13/2021	Please exercise our right to acquire Hopedale's watershed
11/13/2021 11:58:25	Ovila Dionne	134 Dutcher Street	sdionne1@comcast.net	11/13/2021	
11/13/2021 11:59:40	Elizabeth Savage	42 Adin Street	Elizabethcsavage@gmail	11/13/2021	
11/13/2021 12:00:53	Catherine Hodgens	35 Adin Street	hodgenscatherine@gmail	11/13/2021	Enact the will of the residents.
11/13/2021 12:01:16	David Farrer	208 Dutcher St Hopedale	Djfpaint@gmail.com	11/13/2021	
11/13/2021 12:01:34	Jonathan Zissu	6 Larkin Lane	jzissu0@hotmail.com	11/13/2021	We told you what we wanted the first time. Please don't go against the will of the town a second time...
11/13/2021 12:02:00	Greg Habel	80 Jones rd	Ghabel@verizon.net	11/13/2021	Please proceed with purchasing the land for Hopedale.
11/13/2021 12:03:19	Kristina Buckley	214 West Street	Buckleyki14@comcast.ne	11/13/2021	
11/13/2021 12:10:34	Kira Obrador	8 Larkin Lane	kira_remne@hotmail.com	11/13/2021	Please follow the wishes/vote of the towns people.
11/13/2021 12:15:06	Caroline Floyd	118 Adin Street	Ccwong028@hotmail.con	11/13/2021	
11/13/2021 12:16:59	Carol Hall	64 Westcott Rd.	tiredmom1999@gmail.co	11/13/2021	Please support the right decision and exercise the town's right of first refusal. Protect OUR town!
11/13/2021 12:17:20	Carlos Obrador Garrid	8 Larkin Lane	carlos_obrador@hotmail.	11/13/2021	
11/13/2021 12:24:59	Matthew T Madden	12 Tillotson Road, Hoped	Mmadden0605@gmail.co	11/13/2021	
11/13/2021 12:29:36	Kelly Santoro	14 Union St	kelly.santoro66@gmail.co	11/13/2021	Please do what's best. Thanks
11/13/2021 12:36:13	Cierra Meurant	54 Dutcher Street, Unit 9	meurant.cierra@gmail.co	11/13/2021	
11/13/2021 12:41:29	Jason Stock	11 Greene St	jaystock@gmail.com	11/13/2021	
11/13/2021 12:43:32	Heather Jacob	35 Inman Street	jacob.heather@gmail.com	11/13/2021	The choice should be clear here, to just do as we all asked at Town Meeting, at no additional cost to the town.
11/13/2021 12:47:01	Carolyn cyr	68 westcott road	carocyr@comcast.net	11/13/2021	
11/13/2021 12:49:18	Matthew Sughrue	68 Westcott road	cacyr@milrrg.org	11/13/2021	
11/13/2021 12:50:14	Denise Linder	5 Overdale Parkway	dlinderg4@gmail.com	11/13/0002	The town unanimously told you what we wanted regarding this land and how we wanted you to represent us. Please represent the will of the people.
11/13/2021 12:58:50	Sheri hobson	27 gannett way	Ghobsoniv@comcast.net	11/13/2021	
11/13/2021 13:01:48	Helene Carlin	79 Jones Rd.	Hcarlin9@gmail.com	11/13/2021	
11/13/2021 13:05:43	Marion Miller	15 Hope Street	1greengirl912@gmail.cor	11/13/2021	Make this right and abide by the votes of the Citizens of Hopedale, MA
11/13/2021 13:18:52	Alan Elfland	95 Greene Street Hopeda	abcelf@comcast.net	11/13/2021	
11/13/2021 13:22:35	Cathy Valentine	12 Soward St	cmv0112@verizon.net	11/12/2021	
11/13/2021 13:33:26	Alysia K Butler	3 Steel Road, Hopedale, I	alysiakbutler@gmail.com	11/13/2021	
11/13/2021 13:46:25	Emily Thompson	31 Hammond rd	Emilys_thompson@yahoo	11/13/2021	
11/13/2021 13:52:13	Lawrence Winroth	35 Tammie Road Hopeda	ltwinroth@verizon.net	11/13/2021	I fully support that the town purchase all of the land as approved at the 2020 town meeting
11/13/2021 13:54:01	Barbara Hagan	60 Jones Rd	BarbaraAHagan@gmail.c	11/13/2021	
11/13/2021 13:56:45	Meredith Elkins	30 Mendon Street	mereditheelkins@gmail.c	11/13/0021	Please!!
11/13/2021 14:15:09	Marie Scherer	16 Lake St	Marie.scherer13@gmail.c	11/13/2021	Please purchase and protect this land.
11/13/2021 14:27:41	Nancy Verdolino	22 Anthony Rd.	Nverdolino@hopedalesch	11/13/2021	
11/13/2021 14:38:08	Pauline Jackman	1 Hopedale Street	ppjackman@hotmail.com	11/13/2021	Greenlands project funds should assist with preservation of this area. Great proposal.
11/13/2021 14:40:31	Dan Iacovelli	27 Progress St	dan_iacovelli@yahoo.con	11/13/2021	
11/13/2021 14:43:34	Lisa Wilson	23 Hammond Road, Hope	wilsonlgfamily@gmail.con	11/13/2021	STOP THE RAILROAD! Select Board please act in accordance with the unanimous Town Meeting vote and acquire all of the Forestland. It is the right thing to do.
11/13/2021 14:45:40	Wanda Ashby	61 Westcott Road	wla747@gmail.com	11/13/2021	
11/13/2021 14:46:10	Heather Lee	6 Dana park	Heather7672@hotmail.co	11/13/2021	
11/13/2021 14:51:32	Christopher Ashby	61 westcott road, hopedal	Cja747@gmail.com	11/13/2021	
11/13/2021 14:58:46	Carolyn Grider	32 Tammie rd	Mcjoekry@verizon.net	11/13/2021	
11/13/2021 15:28:38	Susan Gaile	28 Tammie Road	sgaile@hinkeldesigngrou	11/13/2021	
11/13/2021 15:36:37	Grant Gosselin	35 Westcott Road	Grantmgosselin@gmail.c	11/13/2021	Please honor the will of the town who already voted in support of this. Your role is to represent the will of the people. Future voters will remember this decision.
11/13/2021 15:46:53	Lisa MacDonald	3 Sandy Hill Road	Lisa@bostonbroadband.c	11/13/2021	
11/13/2021 16:08:41	Scott Savage	42 Adin Street	Scottsavage24@hotmail.	11/13/2021	With the residents already been awarded a win doesn't that give us a better shot to successfully purchase and hold the land. Also if the resident attorneys is willing to cover the legal costs is there a significant risk to the town.
11/13/2021 16:18:20	Jason Beard	37 Freedom st Hopedale	Jabeard3@gmail.com	11/13/2021	Please complete the process the town previously voted for unanimously
11/13/2021 16:30:21	Tracey Philips	82 Hopedale Street	traceyphilips@yahoo.com	11/13/2021	
11/13/2021 16:31:09	Jedidiah Marshall	82 Hopedale Street	Jedidiah_m@yahoo.com	11/13/2021	
11/13/2021 16:32:22	Robin L. Pino	110 Plain Street	robinleepino@gmail.com`	11/13/2021	
11/13/2021 16:38:07	Kristen Poisson	3 Moore Road	Kristen.poisson@gmail.c	11/13/2021	
11/13/2021 16:43:22	Monica Cantwell	10 Francis rd	mcamtwell58@verizon.ne	11/13/2021	
11/13/2021 16:45:22	Jeanice Kangis	191 Dutcher Street	5083282428	11/13/2021	
11/13/2021 16:50:12	Gerald P Gallo	69 Mill Street	j.gallo_cpa@comcast.net	11/13/2021	I am in complete agreement that the Town should preserve its right to purchase the entire parcels of land, as voted on by the residents. Preservation of the watershed and wetlands is vital to the integrity and well being of this very important natural resource. If we squander this opportunity, it will only be the beginning of continuous ongoing head-butting and legal actions to hold the railroad to their promises.
11/13/2021 16:51:55	Robert J. Reed Jr.	10 Forest Path	rjreedjr@gmail.com	11/13/2021	
11/13/2021 16:55:28	Patrick Giles	12 Laurelwood Drive, Hor	GPat820400@aol.com	11/13/2021	This purchase is essential to the quality of life in this town. We have a limited supply as is. Questions have been raised in recent months regarding the likelihood of PFAS, the forever chemicals, in our water.. As an individual who suffers feom CKD, I have always been concerned the quality of our municipal water.. I do not drink or cook with town water, and seem to have stabilized my condition. I fear for the health of others. The Board needs to di the right thing, and follow the wishes expressed by Town Meeting. How can we hope to further develop areas of our community without a high quality sufficient water supply. We must protect out water resources!
11/13/2021 16:58:01	Telma Rizzo	8 Whitney Road	telrizzo@gmail.com	11/13/2021	No business with railroad. Please purchase land for town use.
11/13/2021 17:09:53	Frederick G. Oldfield III	30 Freedom Street Hopec	Fgo3rd@aol.com	11/13/2021	
11/13/2021 17:11:44	James M Morin	33 Harmony Trail Hopeda	jmorin33@comcast.net	11/13/2021	
11/13/2021 17:16:51	Megan Stewardson	17 Tammie Road	Megan.stewardson@gma	11/13/2021	Vote to protect our land
11/13/2021 17:23:01	Lori-Anne Cote	90 Greene St.	loricote2@gmail.com	11/13/2021	
11/13/2021 17:24:06	Daniel Mahon	4 Country Club Ln	mahondj@gmail.com	11/13/2021	
11/13/2021 17:27:37	Kelly Alley	3 Gannett Way	macdonka@aol.com	11/13/2021	
11/13/2021 17:33:31	Gail Brown	119 Mill St	adamiefferic@yahoo.com	11/13/2021	
11/13/2021 17:41:50	Evey Caron	120 Freedom St	Elcarroll1@yahoo.com	11/13/2020	
11/13/2021 17:47:46	Ann LaBrode	5 Tillotson Rd Hopwdale	ann.labrode@comcast.ne	11/13/2021	I attended the town meeting where the vote was unanimous and hope the board will act in accordance with the citizen's wishes
11/13/2021 17:49:19	Alan LaBrode	5 Tillotson Road	alabrode@comcast.net	11/13/2021	
11/13/2021 17:49:43	Christine Seaver	141 Dutcher St.	Christine_seaver@gmail.	11/13/2021	
11/13/2021 17:53:42	Carol Lessard	14 Greene Street	diablo720@gmail.com	11/13/2021	Please follow the residents' overwhelming unanimous vote and complete the Right of First Refusal process to acquire ALL the chapter 61 forestland as there will be no monetary expenses incurred by the town. Too much has been unnecessarily spent and wasted at the residents expense.
11/13/2021 17:56:30	Janice Doyle	178 Hopedale St	janice.doyle@comcast.ne	11/13/2021	
11/13/2021 17:56:30	imadeererider@gmail.	14 Greene Street	imadeererider@gmail.cor	11/13/2021	Complete the Right of First Refusal process and follow the unanimous vote pf the residents of Hopedale.
11/13/2021 18:13:30	Kathleen Cardinale	29 Dana Park	ktcardinalle@gmail.com	11/13/2021	
11/13/2021 18:53:43	Amy Beard	37 Freedom St Hopedale	aebeard3@gmail.com	11/13/2021	Please execute our ROFR on the entire parcel of land in question. As we voted unanimously as a town.
11/13/2021 18:55:37	Alyssa Garriga	206 south Main Street	Alyssaseveryn@gmail.cor	11/13/2021	
11/13/2021 19:39:38	Samuel P Whiting	12 Whitney Rd	Philwhiting2@gmail.com	11/13/2021	
11/13/2021 20:02:31	Lynne Curran	250 Dutcher St	contessa250@yahoo.com	11/13/2021	Protect the watershed, we have a well that may be in danger of pollution from the massive pollution from the RR
11/13/2021 20:03:01	Margaret Rothwell	79 Laurelwood Drive	M_rothwell@msn.com	11/13/2021	Please buy the property in question.
11/13/2021 20:07:21	Amanda Kimball	70 Adin St	Amandamoore04@yahoo	11/13/2021	
11/13/2021 20:19:34	Susan Iaciofano	8 Oak View Lane	Misty343@verizon net	11/13/2022	
11/13/2021 20:25:36	Edward Iaciofano	8 Oak View Lane	bchprty@verizon.net	11/13/2021	
11/13/2021 20:54:25	Leo Doran	10 Francis Rd	Leodoran@massgymnast	11/13/2021	
11/13/2021 21:17:44	Ryan Iaciofano	8 oak view ln	iaciofanor@gmail.com	11/13/2021	
11/13/2021 21:44:10	Christopher Embree	5 Westcott Road	Hombre1145@gmail.com	7/13/1995	
11/13/2021 21:55:08	Dona Neely	209 Laurelwood Drive	donaneely1@comcast.ne	11/13/2021	Please vote to protect and preserve our watershed and a critical environmental resource
11/13/2021 21:58:35	John bache	25 Dana Park	Jbache102469@gmail.cc	11/12/2021	
11/13/2021 22:12:40	Suzanne Buchanan	111 Dutcher Street Hopec	Suzybjakers@gmail.com	11/13/2021	
11/13/2021 22:27:36	Hayley Carron	90 Dutcher St	Hayleyecarron@gmail.cor	11/13/2021	
11/13/2021 23:48:29	Chance Leonard	65 Freedom St	Chanceleonard@verizon.i	11/13/2021	
11/14/2021 0:19:09	Samuel Hockenbury	15 Ballou Rd	Sam.hockenbury@gmail.	11/14/2021	
11/14/2021 7:11:54	Nicole lathrop	3 Malquinn Drive	Nicole.lathrop@yahoo.cor	11/13/2021	
11/14/2021 7:17:22	Donald chambers	13 Hopedale st	D13chambers@comcast	11/14/2021	Please exercise our ROFR in this matter
11/14/2021 7:33:03	Michael Apicella	228 Mendon Street	maps3377@gmail.com	11/17/2021	Please do what is clearly the right choice here
11/14/2021 8:44:14	Steve Guyon	4 Soward St	Srguy1@verizon.net	11/14/2021	
11/14/2021 8:44:25	Denise and Mark Sesc	11 Francis Road	dsesona@yahoo.com	11/14/2021	We urge the Board to complete the process to exercise our right to acquire Hopedale's watershed property as previously voted.
11/14/2021 9:23:56	colleen m. Strapponi	1 overdale parkway	cmsstrappa@gmail.com	11/14/0021	
11/14/2021 9:26:10	mark s. Strapponi	1 overdale parkway	strappa1957 @gmail. cor	11/14/2021	
11/14/2021 9:38:23	Laura Grady	211 Hopedale Street	lgradyma6@gmail.com	11/15/2021	Complete the right of first refusal
11/14/2021 9:46:45	Tracey Habel	80 Jones Rd	Thabel@verizon.net	11/14/2021	
11/14/2021 9:47:29	Gretchen Adamski	2 Gannett Way Hopedale	gmadamski93@gmail.cor	11/14/2021	Our parklands and water are important resources for our town. It is so important that we have control over them and protect them.
11/14/2021 9:57:49	Beverly Carver	63 Jones Road	Bevcp1@yahoo.com	11/13/1921	The residents of Hopedale overwhelmingly provided their wishes to the board to purchase the entire property in question in the largest voter turnout ever. I believe it is your obligation to honor the resident's directive.
11/14/2021 10:05:55	Rick Adamski	2 Gannett Way	radamski@icloud.com	11/14/2021	
11/14/2021 10:06:31	Dan Sullivan	180 Dutcher Street	Dsulls11@gmail.com	11/14/2021	Now the court has essentially hit the reset. Please use this second opportunity to protect Hopedale's limited but vital resources, specifically our watershed.
11/14/2021 10:15:50	Courtney Sullivan	180 Dutcher Street	Crsullivan17@gmail.com	11/14/2021	I'm very excited for this opportunity to protect Hopedale's resources. I hope that the town will move forward with the vote expressed in 2020.
11/14/2021 10:42:31	Stephanie Thomas	12 Overdale Parkway, Ho	Tril2582@gmail.com	11/14/2021	
11/14/2021 10:43:01	Stephen Foley	8 Bens Way	foley.stephenj@gmail.com	11/14/2021	
11/14/2021 10:43:55	Barbara A Thomas	12 Overdale Pkwy	nt42@msn.com	11/14/2021	
11/14/2021 10:49:18	Andre Pereira	8 Bancroft Pk	aapereira@gmail.com	11/14/2021	
11/14/2021 10:49:44	Lorene Hunt	10 Heron Lane, Hopedale	leppley@msn.com	11/14/2021	Please enforce vote from October 2020 made by the town to acquire all land.
11/14/2021 10:50:29	Christopher Hunt	157 Laurelwood Drive, Hc	cadhunt1968@gmail.com	11/14/2021	Enforce town vote from October 2020.
11/14/2021 10:53:27	Karen A.Daige	22 Prospect Street	molsam@comcast.net	11/14/2021	Please vote for the RoFR
11/14/2021 10:57:42	Arlene Williams	98 Hopedale Street	arli8191@aol.com	11/14/2021	Please follow through and exercise our right to Exercise our right to acquire Hopedale watershed.
11/14/2021 11:01:05	Mark Niziak	7 Cutler Street	mniziak@aol.com	11/14/2021	
11/14/2021 11:06:39	Eric Gaus	8 Gannett Way	Egsus72@gmail.com	11/14/2021	Please execute on the wishes of the town.
11/14/2021 12:09:44	Brittany Clark	102 Dutcher Street	Peaceluv1205@gmail.coi	11/14/2021	
11/14/2021 12:10:13	Branden Moyer	102 Dutcher Street	Bmoyer121986@gmail.co	11/14/2021	

11/14/2021 12:12:01	Melani Galante	21 Overdale Parkway	Melani.galante@gmail.co	11/14/2021	
11/14/2021 12:31:16	Jean Donohoe	49 Progress St.	jeandonohoe@comcast.n	11/14/2021	
11/14/2021 12:38:35	Robert Brodeur	65 Jones Rd	brodeur.r@gmail.com	11/14/2021	
11/14/2021 12:47:51	Chris Parker	8 Crockett Circle	Cparker@clarkeliving.con	11/14/2021	
11/14/2021 12:52:36	Debora Strick	5 Heron Lane	stricks4@comcast.net	11/14/2021	Please complete the Right of First Refusal process, exercising the Town's Option to acquire all of the c. 61 Forestland, as the Town unanimously approved at the October 2020 Town Meeting. Don't silence our voice.
11/14/2021 12:54:11	Gordon Strick	5 Heron Lane	gordonstrick@comcast.ne	11/14/2021	Please complete the Right of First Refusal process, exercising the Town's Option to acquire all of the c. 61 Forestland, as the Town unanimously approved at the October 2020 Town Meeting. Respect our vote.
11/14/2021 12:55:24	Owen Strick	5 Heron Lane	owenstrick@comcast.net	11/14/2021	Please complete the Right of First Refusal process, exercising the Town's Option to acquire all of the c. 61 Forestland, as the Town unanimously approved at the October 2020 Town Meeting. Don't silence our voice.
11/14/2021 13:40:10	Justine Taylor	8 Tillotson road	Jltaylor28@hotmail.com	7/28/1987	
11/14/2021 14:09:37	Tasha Griffin	198 A Dutcher	Tashas9983@yahoo.coM	11/14/2021	
11/14/2021 14:11:40	Christine Bache	25 Dana Park	Chris0513@verizon.net	11/14/2021	
11/14/2021 14:48:40	Ryan Maloney	143 Laurelwood Dr	rmm92301@gmail.com	11/14/2021	
11/14/2021 14:57:56	Kevin Chambers	13 Hopedale st	Kmchambers31@yahoo.c	7/31/1984	Pls follow the will of the vote already taken in October of 2020 to exercise our towns right of first refusal to purchase this land and keep it a woodland/wetland environment safe from pollution and environmental destruction that the railroad has already proven it will do by clear cutting land they have no right to be on.
11/14/2021 15:03:43	Christine Luccini	125 Hopedale Street	Cdluccini@hmail.com	11/14/2021	
11/14/2021 15:21:09	Kathy Riley	11 Forest Path, Hopedale	kathyriley31@comcast.ne	11/14/2021	
11/14/2021 15:30:57	Patricia Colcord	18 Northrop St., Hopedale	patcolcord@gmail.com	11/14/2021	
11/14/2021 15:37:00	Jodi Faath	7 Gannett Way	Faathfamilyma@comca	11/14/2021	
11/14/2021 16:33:29	Randy Carbo	146 Dutcher Street, Hope	Randy.M.Carbo@gmail.c	11/14/2021	Please re-consider filing ROFR and securing important watershed.
11/14/2021 16:51:21	Stacey Kracinovich	18 Gannett Way	kracinovich@hotmail.com	11/14/2021	
11/14/2021 17:04:50	Trevor Bache	25 Dana Park	Tbache67@gmail.com	11/14/2021	
11/14/2021 17:41:50	Lynn Tucker	85 Mill St. Hopedale, MA (	Lynn@thetuckerhouse.orc	3/26/1974	
11/14/2021 17:45:34	Hayley Carron	90 Dutcher street	Hayleyecarron@gmail.cor	11/14/2021	
11/14/2021 17:50:23	Linda Phillips	124 Greene Street	lphillips105@yahoo.com	11/14/2021	
11/14/2021 17:55:42	William Frongillo	10 Whitney Road	wfrongillo@gmail.com	11/14/2021	Proceed with the purchase of the land as previously approved at Town Meeting
11/14/2021 18:17:38	Susan Dykhoff	161 Dutcher St.	Sldykhoff@gmail.com	11/14/2021	
11/14/2021 18:34:00	Amy Parker	8 Crockett Circle	acsmwc@gmail.com	11/14/2021	
11/14/2021 18:40:29	Angela Kantor	11 Lake Street	Angelak668@gmail.com	11/14/2021	Thank you for pursuing this!
11/14/2021 18:53:38	Jennifer kelly	71 Bancroft park	Jennyakelly@comcast.net	5/21/1976	
11/14/2021 18:55:31	Teresa Arcudi	53 Bancroft Park	Tarcudi@hotmail.com	11/14/2021	
11/14/2021 19:10:11	Susan Frongillo	10 Whitney Road	snfrong63@gmail.com	11/14/2021	Proceed with purchasing land as approved at Town Meeting
11/14/2021 19:14:35	Patricia Ortla	17 Tillotson road	p_ortla18@yahoo.com	11/14/2021	
11/14/2021 20:01:18	David Allen Jr	22 Harmony Trl	dballenjr@yahoo.com	11/14/2021	Purchase the land
11/14/2021 20:05:08	Stacie Allen	22 Harmony Trail	Stremonteallen@gmail.co	11/13/2021	
11/14/2021 20:09:29	Anita Faath	7 Gannett Way	anitalynn2000@gmail.con	11/14/0021	
11/14/2021 20:14:06	Amy Dicken	237 Mendon St	Amydicken1@hotmail.cor	11/14/2021	
11/14/2021 20:15:18	Matthew Dicken	237 Mendon St	Mattdicken1@gmail.com	11/14/2021	
11/14/2021 20:18:20	Janice Levy	137 Laurelwood drive	Janice143@comcast.net	11/14/2021	
11/14/2021 20:19:30	Julia Manning	34 Larkin Lane	Juliamanning03@gmail.c	11/14/2021	
11/14/2021 20:19:36	Jake Kracinovich	18 Gannett Way	Jake.Kracinovich@uconn	11/14/2021	
11/14/2021 20:24:26	Caroline Manning	34 Larkin Lane Hopedale	cmmanning14@gmail.cor	11/14/2021	
11/14/2021 20:26:19	Elisabeth Minichiello	259 S. Main St.	rbminichiello@verizon.net	11/14/2021	
11/14/2021 20:26:57	Andrea Rutkowski	48 Bancroft Park	arutkowski9547@gmail.c	11/14/2021	
11/14/2021 20:33:06	Tyler Small	3 Haven Way	tbsmall1515@gmail.com	11/14/2021	Parklands gotta stay
11/14/2021 20:33:44	Tanner Kracinovich	18 Gannett Way	Kracinovicht@gmail.com	7/31/1997	
11/14/2021 20:36:35	George hobson	27 gannett way	Ghobsoniv@comcast.net	11/14/2021	
11/14/2021 20:39:55	Amy Paquette	9 Lapworth circle	aebcpaquette@comcast.i	11/12/2021	Please listen to the town and act in our wishes to buy the land. Thank you!
11/14/2021 20:40:07	Colleen McMahon	13 Gannett way	5mcmahons@comcast.ne	11/14/2021	
11/14/2021 20:41:37	Kyle hobson	37 gannett way	Kylehobby3@gmail.com	11/14/2021	
11/14/2021 20:45:31	Evan Jacob	35 Inman St Hopedale	squirrelforge@yahoo.com	11/14/2021	
11/14/2021 20:46:40	Michael Rutkowski	48 Bancroft Park	rutkowski01@verizon.net	11/14/2021	
11/14/2021 20:55:08	Heather S. Griffin	166 HOPEDALE Street	heathersgriffin@gmail.cor	11/14/2021	
11/14/2021 20:57:27	Cheryl Stewardson	17 Tammie Road	Cheryl.stewardson@veriz	11/15/2021	Please get this done and thank you for your service to the people of Hopedale.
11/14/2021 22:11:50	Colleen Whiting	12 Whitney Road	Whitingcolleen@gmail.co	11/14/2021	
11/14/2021 22:28:30	Kristyn Chevalier	10 Tillotson Rd	Kchevalier85@gmail.com	11/14/2021	
11/14/2021 22:28:38	Christopher MacDonal	3 SANDY HILL RD	chrismacd222@outlook.c	11/14/2021	Thank you for your service to our town. On behalf of my family, we appreciate your investment of time; approaching your roles with vigor and integrity, making tough decisions in the benefit of the citizens of our beloved town and representing the will of those citizens as voiced in aggregate through assembly and vote.
11/14/2021 22:32:39	Rayann MacDonald	16 Hammond Road	Rhowleymac@gmail.com	11/14/2021	So lucky someone stood up for the wrong that was done.
11/14/2021 22:36:44	Muhammad Kamara	18 ballou rd	Muhammadkamara0602@	11/13/2021	Please help save our lovely parklands.
11/14/2021 23:01:10	Katy Sanosi	10 Haven Way	ksanosi@yahoo.com	11/14/2021	Please listen to your constituents and Let the town buy the land.
11/14/2021 23:07:25	Emily King	10 Larkin Lane	emilyking2000@yahoo.cc	11/14/2021	Please listen to the town and do the right thing
11/14/2021 23:18:15	Katrina Casey	5 Rockridge road	Kmc2us@yahoo.com	11/14/2021	
11/15/2021 4:36:31	Andrea Brown	4 Moore rd	Andreaksmth@gmail.com	11/15/2021	
11/15/2021 5:33:45	DONNA Marchionni	19 Larkin Lane	Dlmarchionni@gmail.com	11/15/2021	
11/15/2021 6:02:08	Cathy Julian	2 Cook Street	catelijul@gmail.com	11/15/2021	
11/15/2021 6:19:00	Martha Gosselin	35 Westcott Rd	mgoss347@gmail.com	11/15/2021	
11/15/2021 6:20:55	Rachael Jackson	35 Hammond Rd	rdough1@icloud.com	11/15/2021	
11/15/2021 6:41:12	Laura Ramsay	22 Warfield Street, Hopec	Lrrdh28@gmail.com	11/15/2021	
11/15/2021 6:54:57	Kristen Casey	61 Jones Road	Jkjm4@verizon.net	11/13/2021	
11/15/2021 7:06:50	Mary (Lori) Hampsch	22 Rockridge Road	hampsch@comcast.net	11/15/2021	
11/15/2021 7:08:12	Alison Ho	84 Jones Road	amph804@yahoo.com	11/15/2021	
11/15/2021 7:09:10	Thanh-Danh Ho	84 Jones Road	amph804@gmail.com	11/15/2021	
11/15/2021 7:20:03	Ann Marie Lockwood	98 Dutcher Street	amlockw@yahoo.com	11/15/2021	We have a chance to do the right thing this second time around, due to the efforts of a dedicated few. Let's not be short-sighted twice.
11/15/2021 7:46:28	Jennifer Oliver	6 Jackson Way	Jct039@hotmail.com	11/15/2021	
11/15/2021 7:47:50	Elaine Dionne	134 Dutcher St Hopedale	elainedionne@comcast.n	11/15/2021	Please continue on this journey
11/15/2021 7:54:28	George Oliver	6 Jackson Way	Gresso16@yahoo.com	11/15/2021	
11/15/2021 8:22:35	Kathleen Boni	8C Mellen St. Hopedale, I	Kathleen.boni@emc.com	11/15/2021	
11/15/2021 8:27:26	Mary Wilson	3 Patrick Rd	mkwilsonma@gmail.com	11/15/2021	
11/15/2021 8:57:06	Madelyn Paquette	9 Lapworth Circle Hoped	mpaquette@umass.edu	11/15/2021	please listen to your constituents and let the town but the land
11/15/2021 8:57:42	Angela Burke	32 Prospect Street	angelaburke531@gmail.c	11/15/2021	
11/15/2021 9:05:59	James P Bisceglia	6 Rockridge Road	jbisceglia64@gmail.com	11/15/2021	I support the town of Hopedale purchasing both properties to deny the railroad company its purchase of the land.
11/15/2021 9:24:56	Anthony Garramone	17 Moore Road	agarramone2@gmail.com	11/15/2021	I was one of the participants in the Oct 2020 town meeting and in all my 34 years in Hopedale I have never seen unanimity at that level on any other issue - please support the decisions made at that town meeting.
11/15/2021 9:34:43	Yes	4 Rockridge Road	ghevey@verizon.net	11/15/2021	
11/15/2021 9:45:58	Finnbar Reilly	5 Gayle Rd. Hopedale, M/	finn_reilly@comcast.net	11/15/2021	
11/15/2021 10:00:50	Susan Garramone	17 Moore Road	sgarra@ix.netcom.com	11/15/2021	
11/15/2021 10:05:54	Anita Cellucci	52 Laurelwood Drive	Anitacellucci@gmail.com	11/15/2021	
11/15/2021 10:09:05	Jennifer Moore	5 overdale pkwy	jlindermoore@gmail.com	11/15/2021	Watersheds are vital parts of the ecosystem for many reasons. They are often ruined in the name of urban development. Leave the West St watershed alone and listen to the towns people when they say it
11/15/2021 10:15:24	Brenna Ashby	61 Westcott Road	747bea@gmail.com	11/15/2021	
11/15/2021 10:19:24	Robert Butler	39 Mellen St., Hopedale, I	dadofsammy@gmail.com	11/15/2021	
11/15/2021 10:31:06	Edward Burt	33 Westcott Rd	EBurt88@Gmail.com	11/15/2021	
11/15/2021 11:12:43	Jessica R Allen	3 Ballou Road	jessrathrun@gmail.com	11/15/2021	Thank you for considering our petition. The Parklands are a treasure worth protecting.
11/15/2021 12:44:01	Annmarie Moore	19 Haven Way, Hopedale	Annmarie.Moore@gmail.c	11/15/2021	
11/15/2021 12:44:38	Patrick Michael Fahey	137 Dutcher Street, Hope	mfahey@faheyfamily.com	11/15/2021	
11/15/2021 13:15:10	Douglas Moore	5 Overdale Pkwy	mooredp4@gmail.com	11/15/2021	The citizens voted loud and clearly what they want. Don't waste anymore time and money. Get this done for them
11/15/2021 13:37:10	Andrea May Moore	5 Overdale Parkway	andreamavlm@gmail.com	11/15/2021	Dear Select Board, Please follow to Town's unanimous vote in October 2020 to acquire the West Street watershed. We the townspeople have done all that we can to make our voice and decisions heard, and we want the Town of Hopedale to exercise the Right of First Refusal. Please make it happen. Thank you.
11/15/2021 13:47:19	Lee McKenna	5 Lloyd Street	McKennaLB@Gmail.com	11/15/2021	
11/15/2021 14:07:38	Steven Cardinale	29 Dana Park Hopedale M	stevcard@gmail.com	11/15/2021	Future generations of Hopedale citizens will be grateful and thankful if the board moves forward with the West Street land acquisition. Please keep this in mind! Thank you!
11/15/2021 14:53:22	blourie@milfordma.cor	21 Progress Street	blanchelourie311@hotma	11/14/2021	
11/15/2021 15:35:53	Kristi Brytowski	70 Bancroft Park	Kml0623@gmail.com	11/15/2021	
11/15/2021 15:41:22	Suzanne doyle	15 Whitney road Hopedal	Suziedoyle999@gmail.co	11/15/2021	
11/15/2021 15:44:15	Anthony Alves	164 Hopedale Street	tonyhopedale@gmail.com	11/15/2021	Please vote to save our forestland and protect Hopedale's resources for future generations to enjoy.
11/15/2021 16:06:50	Jeanne Heath	34 Laurelwood Drive	jeheath34@gmail.com	11/15/2021	I believed by our vote last October the townspeople made very clear the objective was to exercise Hopedale's Right of First Refusal and purchase the land parcel(s) in question. We have a second chance. to do just that. I ask that you complete the RoFR process. We have been granted a reprieve and have this one opportunity to acquire all of the Forestland. Let's do it!Jeanne Heath
11/15/2021 16:53:48	James Fitch	16 Northrop St.	Fitchfamily99@yahoo.com	11/15/2021	
11/15/2021 17:02:37	Kathryn Harwick-Foley	8 Ben's Way	kdhfoley@gmail.com	11/15/2021	
11/15/2021 17:05:23	Anne Betschart	100 Hopedale St #12	mamabetzz@yahoo.com	11/15/2021	
11/15/2021 17:27:42	Teresa Ballan	75 Jones Rd	Taballan6@gmail.com	11/15/2021	
11/15/2021 18:17:12	Chris Teekema	66 adin st	Chris.teekema@gmail.co	11/15/2021	Water rights are going to be critical for Hopedales future, this is seriously a no brainer for the town to own this land
11/15/2021 18:36:19	Debra McGonnell	21 Bancroft Park	Yogawoman57@verizon.r	11/15/2021	Thank you for your support.
11/15/2021 18:46:05	Laura Cooper	23 Cemetery Street	Llemon24@gmail.com	11/15/2021	
11/15/2021 19:35:16	Mary Margaret Mulrone	66 Dutcher st	mmmulroney@hotmail.cou	11/15/2021	
11/15/2021 19:37:05	Christopher Mulroney	66 dutcher st	Mulroneychristopher@gm	11/15/2021	
11/15/2021 19:40:38	Michael Kavanagh	46 Adin St, Hopedale MA	Mjk2011@gmail.com	11/15/2021	
11/15/2021 19:45:57	Denise Boldy	67 Jones road	boldydenise@gmail.com	11/15/2021	
11/15/2021 19:51:41	Richard McGuane	6 Crockett Circle	rickmcguane@gmail.com	11/15/2021	
11/15/2021 20:19:46	Sandra Kivlehan	9 Gaskill Circle	skivlehan@comcast.net	11/15/2021	
11/15/2021 20:26:36	Joanne D Whyte	196 Freedom Street	jwhyte27@verizon.net	11/15/2021	
11/15/2021 20:26:52	Kelli St. Germain	6 Malquinn Dr	kstgermain43@gmail.com	11/15/2021	Let's make this happen!!!
11/15/2021 21:18:20	John Broderick	133 Laurelwood Drive, Ho	Jbroderickhomes@comca	11/15/2021	
11/15/2021 21:28:07	Sharon Elsemiller	24 Driftway St	Elsemiller.s@gmail.com	11/15/2021	
11/15/2021 23:26:23	Sean Reilly	5 Gayle Road	sean_b_reilly@comcast.r	11/15/2021	
11/16/2021 6:55:19	Meredith Johnston	215 Hopedale st, Hopeda	Minardi05-go@yahoo.cor	11/16/2021	
11/16/2021 8:10:06	Joyce Jackson	13 Overdale pkwy	jjgs10@msn.com	11/16/2021	Please do the people of Hopedale's will and buy this property for the town.
11/16/2021 8:46:21	Griffin Nosek	16 Heron Lane	Griffinnosek2@gmail.com	11/16/2021	
11/16/2021 9:52:58	Robert Kracinovich	18 gannett way	kracinovich@hotmail.com	11/16/2021	Please follow the will of the people of Hopedale
11/16/2021 10:17:52	Janet Ellis	142 Freedom St.	jcellis967@gmail.com	11/16/2021	I support the purchase of the entire property as voted at the 10/20 town meeting.
11/16/2021 10:32:05	Alison Quinn Larkin	206 Dutcher Street Hopec	quinna@newton.k12.ma.u	11/16/2021	
11/16/2021 11:05:21	Elizabeth S. Callahan	10 Overdale Parkway	randecallahan@comcast.r	11/16/2021	
11/16/2021 11:29:36	Robert Callahan	10 Overdale Parkway	Ricallahan01747@gmail.c	11/16/2921	
11/16/2021 12:50:28	Richard Espanet	50 Westcott Rd.	4winns11@gmail.com	11/16/2021	Specifically to Mr. Keyes and Monsieur Arcudi..YOU work for the RESIDENTS and best interests of this Town - NOT the railroad and other special interests. Stop the lies and bullshit and DO YOUR DAMN JOB
11/16/2021 14:17:40	Kirsten McCandless	27 Oak St., Hopedale, MA	Kdmccandless@yahoo.cc	11/16/2021	Please honor the town meeting vote and exercise RoFR.
11/16/2021 14:20:25	Rebecca liberman	3 Richard Rd	nomad1055@gmail.com	11/16/2021	
11/16/2021 14:23:26	Adam Banayan	3 Richard Road	ajbanayan@gmail.com	11/16/2021	
11/16/2021 14:26:22	Elenore Alves	164 Hopedale St, Hopeda	Elenorealves@gmail.com	11/16/2021	
11/16/2021 14:26:50	Zachary Welch	3 Liberty Circle	zachary.welch.us@gmail.c	11/16/2021	
11/16/2021 14:26:53	Rachel Szemethy	17 Westcott Rd	rachelszem@gmail.com	11/16/2021	
11/16/2021 15:03:17	Christopher McCall	31 Westcott Road	chrisandcarla@comcast.r	11/16/2021	
11/16/2021 15:49:46	Laurie Rizzo	25 Larkin lane	Laurie_rizzo@outlook.cor	11/16/2021	
11/16/2021 17:46:29	Lona Moxim	17 Harmony trail	Lonasown@aol.com	11/16/2021	
11/16/2021 17:47:25	Eric Moxim	17 Harmony trail	Elmoxim@all.com	11/16/2021	
11/16/2021 17:48:29	Payton Moxim	17 Harmony Trail	Prmoxim@aol.com	11/16/2021	
11/16/2021 17:49:15	Blake Moxim	17 Harmony trail	Lonasown@aol.com	11/16/2021	
11/16/2021 17:50:57	Dyllan Moxim	17 Harmony trail	Damoxim@aol.com	11/16/2021	
11/16/2021 18:19:28	Kiera Seaver	141 Dutcher St	Kseaver13@gmail.com	11/16/2021	
11/16/2021 19:48:50	Grace Pool	4 Heron Lane	ggpool@comcast.net	11/16/2021	All of the forestland should be acquired by the town.
11/16/2021 19:58:46	Md3.ogilvie@gmail.co	6 Taft Circle	Md3.ogilvie@gmail.com	11/16/2021	
11/16/2021 20:00:30	David Ogilvie	6Taft Circle	Md3.ogilvie@gmail.com	11/16/2021	
11/16/2021 20:02:36	Ogilvie.Colin.b@gmail	6Taft Circle	Ogilvie.Colin.b@gmail.cou	11/16/2021	
11/16/2021 20:04:40	Donna Kennelly	8 Francis Rd	Dkennelly@comcast.net	11/16/2021	
11/16/2021 20:06:11	John Kennelly	8 Francis Rd	Jkennelly@comcast.net	11/16/2021	
11/16/2021 20:32:54	Joseph Fitzgerald	67 Daniels Street	Jofitz314@gmail.com	11/16/2021	
11/17/2021 0:35:31	Vaughn Cowen	17 peace street	Tyuagent@gmail.com	11/17/2021	
11/17/2021 3:36:10	John E Hanley	33 Hammond Road	jhanleyw379@gmail.com	11/17/2021	
11/17/2021 5:40:18	Mary Richadson	129 Mill Street, Hopedale	tobe25@charter.net	11/17/2021	
11/17/2021 6:15:31	Todd Thompson	31 Hammond Road	Toddrt2001@yahoo.com	7/26/1972	
11/17/2021 6:23:22	Anthony Ventura	54 Westcott Road	Ventura508@gmail.com	11/17/2021	Please do this to ensure our town remains a family oriented community.
11/17/2021 6:29:10	Richard Rinehart	7 Lapworth circle hopedal	Richyrinehart@yahoo.com	11/17/2021	
11/17/2021 6:44:23	Margaret Silva	1 Bancroft Park Hopedale	Peg-peg16@hotmail.com	11/18/2021	Please follow the petition and the clearly voiced will of the townspeople as per the petition.
11/17/2021 6:44:42	Geoffrey Aldrich	28 Dana Park	geoffrey@aldrichnet.com	11/17/2021	
11/17/2021 6:47:53	Nicholas Katz	9 Heron Lane, Hopedale,	nkatz98@gmail.com	11/17/2021	
11/17/2021 6:50:47	Maria Fontana	5 Tammie Road	Mfontana@grad.Bryant.ec	11/17/2021	
11/17/2021 6:56:03	Laura Martin	14 Cemerety St	lauraellen50@yahoo.com	11/17/2021	
11/17/2021 7:03:02	Nancy Macari	1 Northrop Street	Nanmacari@hotmail.com	11/17/2021	
11/17/2021 7:08:13	Donna Niziak	7 Cutler St Hopedale	mniziak@aol.com	11/17/2021	Please follow the actions unanimously approved by the Town citizens to purchase and protect our Forestland. We are all counting on you to fo the right thing for the future of our precious land.
11/17/2021 7:23:33	Christopher Dodge	24 Dutcher Street	cdodge79@gmail.com	11/17/2021	
11/17/2021 7:26:34	Palmina Chaplin	16 Westcott Rd	palern@comcast.net	11/17/2021	
11/17/2021 7:27:38	Donna Marsh	5 francis road	kdjmarsh@comcast.net	11/17/2021	
11/17/2021 7:33:28	Adam Myers	57 Westcott Rd	asstang@yahoo.com	11/17/2021	
11/17/2021 7:58:41	Kelly Naworski	2 Spruce Circle	Kelsteve929@comcast.ne	11/17/2021	
11/17/2021 8:03:20	Shana Miller	4 Ballou Rd	shanam77@gmail.com	11/17/2021	
11/17/2021 8:13:31	Timothy Kint	10 Larkin lane	Timothy.king@tiaabank.c	11/17/2022	
11/17/2021 8:34:57	Sara Fedish	33 Driftway St	Saraelizabethh@aol.com	11/17/2021	
11/17/2021 8:37:52	Catherine Sauro	18 Hill Street	Csauro92@gmail.com	11/17/2021	
11/17/2021 8:44:08	Michelle Piatt	7 Warfield St Hopedale	michelle.b.sager@gmail.c	11/17/2021	
11/17/2021 9:16:27	Derek J. Piatt	7 Warfield Street	derek.j.piatt@gmail.com	11/17/2021	
11/17/2021 9:28:38	Lynne Dodge	24 Dutcher Street	ldodge68@gmail.com	11/17/2021	
11/17/2021 9:28:43	Kyle Strick	5 Heron Lane	kylestrick@comcast.net	11/17/2021	Please complete the Right of First Refusal process, exercising the Town's Option to acquire all of the c. 61 Forestland, as the Town unanimously approved at the October 2020 Town Meeting. Don't silence our voices.
11/17/2021 9:38:38	Yes	63 Jones Rd.	doug.porter47@gmail.cor	11/17/2021	
11/17/2021 9:56:01	Kelly Diorio	15 Haven way hopedale	Kelly.e.obrien@gmail.com	11/17/2021	
11/17/2021 10:14:12	Carly Alden	12 Hope st Hopedale ma	Calden96@gmail.com	11/17/2021	Please save this land for our wildlife to be safe and not interrupted by development.
11/17/2021 10:23:52	Kathy Espanet	50 Westcott Road	kathyespanet@gmail.com	11/17/2021	
11/17/2021 10:39:53	Richard Crawford	190 Laurelwood Drive	rdcmortgage@aol.com	11/17/2021	Pls pursue the land purchase without delay
11/17/2021 11:01:34	Jeanne McGuane	6 Crockett Circle	je.mcguane@gmail.com	11/17/2021	
11/17/2021 11:02:51	Annette Smith	72 Jones Rd	amsmith910@hotmail.cor	11/17/2021	
11/17/2021 11:07:51	David Butler	77 Greene St	Butlerdavidjames@gmail	11/17/2021	
11/17/2021 11:34:51	Kristen Barraford	40 progress st hopedale r	K.barraford@gmail.com	11/17/2021	

11/17/2021 12:13:14	Ryan Henderson	93 Dutcher St	Ryanhenderson11@gmai	11/17/2021	
11/17/2021 12:19:05	Monica Cassidy	13 Whitney	cassidy.monica@gmail.co	11/17/2021	
11/17/2021 12:37:46	Lindsay Weaver	6 briar cliff rd	Lindsayscoupons90@gm	11/17/2021	Keep our parklands!
11/17/2021 13:27:40	Denise Taylor	139 Laurelwoid Drive Hop	lammassmom@gmail.com	11/17/2021	
11/17/2021 13:41:43	Rachel Demeo	38 Daniels street	Rachelm12104@yahoo.c	11/17/2021	
11/17/2021 15:12:36	Sheri Hayes	23 Moore Rd. Hopedale	Sherihayes@hotmail.com	11/17/2021	
11/17/2021 15:23:04	Alyssa Pool	4 Heron Lane	anpool01@gmail.com	11/17/2021	Please keep our land protected. The railroad should not be using this land!
11/17/2021 15:50:32	Margaret sacco	8 Soward Street	Mpegjen@gmail.com	11/17/2021	
11/17/2021 16:20:07	Martha Sayewich	6 union st	msmustangmuffie@aol.cc	11/17/2021	
11/17/2021 16:22:15	John Mullen	11 Moore Rd.	Mullenjohn@verizon.net	11/17/2021	
11/17/2021 16:35:15	Karlene A Alger	2 Greene St	karlenea.alger@gmail.cor	11/17/2021	
11/17/2021 16:41:17	Julia Greenwood	1 Centennial St	greenwoodj175@gmail.cc	11/17/2021	
11/17/2021 16:41:53	Jill Greenwood	1 Centennial St	jillelizabeth123@verizon.n	11/17/2021	
11/17/2021 16:50:55	grace dorsey	1 Sandy Hill Road Hopeda	grace.e.dorsey@gmail.co	11/17/2021	
11/17/2021 16:51:49	Rebecca Katz	9 Heron Lane	Rlk12@yahoo.com	11/17/2021	
11/17/2021 16:59:56	Mackensie Orchard	1 Robertson Drive	orchard.mackensie@gma	11/17/2021	
11/17/2021 17:17:49	Carl Saras	5 Crockett Circle, Hopeda	carl.saras@gmail.com	11/17/2021	
11/17/2021 17:21:27	Mary Saras	5 Crockett Circle, Hopeda	saras.mary@gmail.com	11/17/2021	Please do all you can to preserve the Parklands. There is so little recreation/open space left!
11/17/2021 17:41:19	Kelly McGovern	105 Dutcher St	mcgovernk0301@gmail.c	11/17/2021	
11/17/2021 17:45:56	John Greenwood	1 Centennial St	jackbrier@verizon.net	11/17/2021	
11/17/2021 18:01:33	Suzanne Swift	9 Patrick Road	Sswift7904@gmail.com	11/17/2021	
11/17/2021 18:20:30	Claire Manning	34 Larkin Lane	cmemanning@gmail.com	11/17/2021	
11/17/2021 19:00:48	Margaret Rothwell	79 Laurelwood Drive	M_rothwell@msn.com	11/17/2021	Please exercise our RofFR
11/17/2021 19:37:32	Rachel Hatem	11 Tillotson Rd	Barboza_rachel@hotmail.	11/2/1973	Purchase the land
11/17/2021 19:50:19	Thomas Silva	1 Bancroft Park	thomasfsilva113@gmail.c	11/17/2021	
11/17/2021 20:24:48	Jeffrey Kimball	70 Adin St	Jeff.p.kimball@gmail.com	11/17/2021	Please proceed with acquiring the property.
11/17/2021 20:35:57	Yolanda Tapanainen	14Rockridge Road, Hope	Michelletapanainen@com	11/17/2021	
11/17/2021 20:38:11	Julie Rinehart	7 Lapworth Cir	Rinehartjulie@gmail.com	11/17/2021	
11/17/2021 20:38:51	Michael Grider	32 Tammie Rd	Mcjoekry@verizon.net	11/17/2021	
11/17/2021 20:49:01	Tracy Johnson	3A Williams st	tracyl1868@gmail.com	11/17/2021	
11/17/2021 21:01:32	James Howard	13 Cutler St. Hopedale	jthbiz@gmail.com	11/17/2021	under no circumstances should we allow the proposed RR facility to be built at their proposed site. is there really zero plan for how to develop real, sustainable businesses in town that will actually enhance our property values and desirability?
11/17/2021 22:14:55	Christine Golden	15 Nelson St	christineg962@gmail.com	11/17/2021	
11/18/2021 6:55:43	Lynne McLain	2 Heron Lane	Lmclain25@gmail.com	11/18/2021	
11/18/2021 7:10:46	David M. Thomson	49 Westcott Road, Hoped	Ddthomson11@gmail.cor	11/18/2021	
11/18/2021 7:10:46	Donna D'Amico	112 Greene St	damico28@live.com	11/18/2021	
11/18/2021 8:37:56	Paul Stewardson	17 Tammie Rd Hopedale	Stew.family5@verizon.net	11/18/2021	
11/18/2021 10:20:35	Julie Gunduz	108 Dutcher Street, Hope	jgunduz@verizon.net	11/18/2021	Please adhere to the will of the people and prevent Railroad from destroying our forest.
11/18/2021 11:32:47	Daniel Malloy	49 Inman Street	danm41@verizon.net	11/18/2021	I'm hoping that you will approve the purchase the West Street land for the benefit of the town.
11/18/2021 14:18:49	Scott Ellis	53 dutcher st	Svellis15@gmail.com	11/18/2021	
11/18/2021 15:21:02	Amanda Auger	58 Hill St. Hopedale MA 0	Acabral83@yahoo.com	11/18/2021	
11/18/2021 15:24:10	Janet Donnelly	7 Crockett Circle	Jmdonn@mac.com	11/18/1956	
11/18/2021 18:24:11	W Scott Galante	21 Overdale Pkwy	Galante.scott@gmail.com	11/18/2021	As a registered voter, please act in the accordance of the overwhelming affirmative vote of the community at a special town meeting held in October 2020 to take first right of refusal to purchase all forestland under Chapter 61 off West Street. Thank you.
11/19/2021 9:15:06	Arthur F Posch	5 Oakview Lane	afposch@gmail.com	11/19/2021	
11/19/2021 11:50:56	David D. Williams	23 bancroft park	NOISYKIDS@AOL.COM	11/19/2021	please respect and honor the expressed will of the people of Hopedale i.e. the unanimous vote in favor of acquiring and protecting this land at the october special town meeting.
11/19/2021 12:29:09	James McKenna	5 Lloyd St Hopedale MA	mckennajp@gmail.com	11/19/2021	
11/19/2021 14:03:18	Kimberly Guyon	4 Soward St	Kimannguy1@verizon.net	11/19/2021	
11/19/2021 14:15:28	Pascal Viens	107 Hopedale St	Pascalviens@hotmail.con	11/19/2021	Please make sure to make decision based on the residents want and needs.
11/19/2021 14:34:39	Melody Butler	77 Greene St	butlermelodye@gmail.cor	11/19/2021	
11/19/2021 15:16:13	Paul DeRochet	126 Mendon St. Hopedale	Pmderocher@gmail.com	11/19/2021	
11/19/2021 15:34:48	Carol Donaher	25 Cemetery Street	cdonaher@comcast.net	11/19/2021	
11/19/2021 16:56:56	David Fitzgerald	1 Social Street	Davefitz46@hotmail.com	11/19/2021	
11/19/2021 17:13:21	Amanda Smith	1 Lake St	amander09@yahoo.com	11/19/2021	
11/19/2021 17:16:57	Judith Oldfield	28 Freedom Street	Judyo1216gmail.com	11/19/2021	
11/19/2021 18:09:15	Joshua Obal	5 Patrick Rd	milford_josh@yahoo.com	11/19/2021	Please act as the town voted to do in October 2020 and protect this important natural resource. Many thanks.
11/19/2021 18:25:33	Christine Best	123 Greene St., Hopedale	Chrisbest061418@yahoo	11/19/0021	
11/19/2021 18:49:48	Jenna-Rose Oosterma	123 Greene St	joosterman@uri.edu	11/19/2021	
11/19/2021 18:51:24	Tyler oosterman	123 green st Hopedale ma	Tyler.oosterman@yahoo.c	11/19/2021	
11/19/2021 19:11:16	Hannah Licarie	4 Nelson Strest	Hlicarie67@gmail.com	11/19/2021	
11/19/2021 19:27:32	Ken Wilson	3 Patrick Road Hopedale	Kenjamwilson@comcast.r	11/19/2021	Please approve and abide by town citizens earlier request to purchase property.
11/19/2021 20:43:31	Cynthia Normandin	61 Mill St	Cindy@normandintrans.cc	11/19/2021	
11/19/2021 20:45:41	Aubrie Rojee	140 Greene Street, Hoped	aubs0930@gmail.com	11/19/2021	
11/20/2021 3:58:40	Bryan Sullo	6 Oakwood Ave	bryan@sullo.family	11/20/2021	
11/20/2021 4:49:01	Christopher Best	123 Greene St	Bestie13@aol.com	11/20/2021	Save the woodlands
11/20/2021 7:17:40	Gregory Rogow	55 Mellen Street	grogow22@gmail.com	11/20/2021	Listen to the people.
11/20/2021 8:24:30	Joseph F.Oliveri	13 steel road	Joeoliveri@comcast.net	11/20/2021	Buy this land and protect the town and residents of Hopedale
11/20/2021 12:27:14	Lisa Maloney	143 Laurelwood Drive	maloneylisa415@gmail.c	11/20/2021	
11/20/2021 13:28:18	Patrick Maloney	143 Laurelwood Drive Ho	patroym99@gmail.com	11/20/2021	I request the BOS honor the unanimous wishes of its residents and buy all the land as voted at Town Meeting.
11/21/2021 11:41:12	Kevin Halpin	363 west street hopedale	Kevinhalpin1995@yahoo	11/21/2021	
11/21/2021 11:43:01	Eulalia Halpin	363 west street hopedale	Kevinhalpin1995@yahoo	11/21/2021	
11/21/2021 13:46:50	David Boni	8 Mellen Street	Mangledfin1@comcast.ne	11/21/2021	
11/21/2021 15:49:01	Thomas Martin	205 Laurelwood Drive	Tom.martin794@gmail.cc	11/21/2021	

EXHIBIT 7

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2185CV00238

ELIZABETH REILLY and others[1]

vs.

TOWN OF HOPEDALE and others[2]

MEMORANDUM OF DECISION ON DEFENDANT TOWN OF HOPEDALE'S MOTION FOR CLARIFICATION

Eleven taxpayers residing in the Town of Hopedale ("Town") sued to challenge a Settlement Agreement between the Town and Grafton & Upton Railroad Company ("Railroad"), concerning disputed forest lands. In pertinent part, the Settlement Agreement provided that in exchange for the Railroad voluntarily selling a portion of the forest lands to the Town, the Town would cease efforts to enforce its G.L. c. 61, § 8 Option to purchase the entirety of the forest lands from the original seller. The plaintiffs sought an injunction preventing the Board from purchasing the forest lands under the terms of the Settlement Agreement (Count I); a declaration of the Town's G.L. c. 61, § 8 rights (Count II); and a declaration that the lands were protected parkland pursuant to art. 97 (Count III).

On November 4, 2021, the court allowed the Town's motion for judgment on the pleadings on Count II because the plaintiffs lacked standing to assert the Town's rights. The court also entered judgment in favor of the Town on Count III because the allegations did not plausibly suggest that the lands met the requirements for art. 97 protection. As to Count I,

[1] Carol J. Hall, Donald Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle

[2] Louis J. Arcude III, Brian R. Keyes, Jon Delli Priscoli, and Michael R. Milanosky, One Hundred Forty Realty Trust, and Grafton & Upton Railroad Company

Entered and Copies Mailed 12/16/21

however, the court determined that the execution of the Settlement Agreement was procedurally defective because the Board failed to obtain Town Meeting approval for the reduced land acquisition as required by G.L. c. 40, § 14. The court enjoined the Town from purchasing the land unless it obtained such approval.

The Town has requested amendment or clarification of the decision to state that the Town has lost its statutory Option to buy the entire parcel. However, that is not what the court decided. As previously explained, although the terms of the Settlement Agreement are legal (including the Board's agreement to waive the Option), the Board exceeded its authority when it unilaterally entered into that agreement without Town Meeting approval of the reduced acquisition. Therefore, the Settlement Agreement is not effective. The Board might not hold the required Town Meeting or might fail to obtain enough votes to approve the acquisition. In either case, the Settlement Agreement would fail to take effect, meaning that the Railroad would retain the land and the Town would retain its money and the right to continue attempting to enforce the Option.[3] Until the reduced acquisition is approved by Town Meeting, the agreement is not effective, and the Town may (but is not required to) attempt to enforce the Option.

[3] In its Response, the Railroad argues that because the Settlement Agreement contains a severability clause, a failed Town Meeting vote would mean the Railroad need not sell any land, but the Town is still bound to its the waiver of the Option; in other words, the Railroad gets all the benefits of the agreement and gives up nothing in exchange. This would be unjust, to say the least. See *Carrig* v. *Gilbert-Varker Corp.*, 314 Mass. 351, 357 (1943) (contract only severable where it "consists of several and distinct items to be furnished or performed by one party" and "consideration [is] apportioned to each item [separately]"). In a similar case, a panel of the Appeals Court held that where a particular term was the "essence and foundation of [a Land Court] settlement agreement . . . the failure of that consideration [due to a judgment in a subsequent ten-taxpayer action] warranted rescission of the settlement agreement . . . ." *Abrams* v. *Bd. of Selectmen of Sudbury*, 76 Mass. App. Ct. 1128, 2010 WL 175045 at *2 (2010) (Rule 1:28 decision). For this reason, the Railroad's claim preclusion argument misses the mark: while claim preclusion might bar the Town from filing a *new* suit to enforce the Option, the Town could seek rescission of the Settlement Agreement. *Id.* at *2. Moreover, as to *this* suit, claim preclusion would not apply because the plaintiff taxpayers were not parties to the Land Court litigation.

Therefore, the court **DENIES** the Town's motion to the extent it seeks to amend the decision and **ALLOWS** the request for clarification as set forth above.

Karen L. Goodwin
Justice of the Superior Court

DATED: December 14 , 2021

EXHIBIT 8

From: AppealsCtClerk@appct.state.ma.us
To: Brian Riley
Subject: 2021-J-0111 - Notice of Docket Entry
Date: Thursday, April 8, 2021 1:03:47 PM

- COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

April 8, 2021

RE: No. 2021-J-0111
Lower Ct. No.: 2185CV0238

ELIZABETH REILLY & others [1]
vs.
TOWN OF HOPEDALE & others [2]

NOTICE OF DOCKET ENTRY

Please take note that on April 8, 2021, the following entry was made on the docket of the above-referenced case:

MEMORANDUM AND ORDER: This matter is before me by virtue of a petition, pursuant to G. L. c. 231, s. 118, first para., filed by the plaintiffs in Reilly, et al. v. Town of Hopedale, et al., Worcester Superior Court docket no. 2185CV0238. The plaintiffs are ten taxpayers residing in the Town of Hopedale (the town), and their suit, brought pursuant to G. L. c. 40, s. 53, seeks to enjoin the town, through its select board, from purchasing certain real property as an unauthorized expenditure for acquisition of land by purchase.

The plaintiffs sought an order from the Superior Court to enjoin the town and the defendant members of the town's select board from issuing any bonds, making any expenditures, paying any costs, including without limitation, for land or hydrogeological surveying, or transferring any property interests pursuant to a settlement agreement dated February 9, 2021, entered into with the Grafton and Upton Railroad ("the railroad") [3] pending resolution of the Superior Court action. The Superior Court judge denied the plaintiffs' motion and this petition followed. In this petition, the plaintiffs request the relief that was denied in the Superior Court. I issued a temporary stay pending resolution of the petition, and at my request, the defendants filed oppositions to the petition. The plaintiffs filed a reply to the opposition.

Background. The facts of this case are not contested. Although the legal significance of those facts is the subject of substantial dispute, a brief overview will suffice. The owner of certain forestland within the town took advantage of the advantageous tax treatment of that land offered by G. L. c. 61 thereby subjecting the property to the provisions of section 8 of that chapter. According to section 8, upon receipt of a bona fide offer to purchase forestland, the municipality wherein the land is located gains a statutory right of first refusal. In this case, the town sought to exercise that right. Whether the town effectively perfected that right and whether that right is preempted by federal law pertaining to railroads is the subject of on-going litigation in other fora.

Assuming that the town had or would effectively exercise its option to stand in place of the original purchaser, on October 24, 2020, the town meeting voted unanimously "to appropriate, the sum of One Million One Hundred Seventy-Five Thousand Dollars ($1,175,000), to pay costs of acquiring certain property, consisting of 130.18 acres, more or less, located at 364 West Street . . . , and for the payment of all other costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said amount under and pursuant to G.L. c. 44, s.7(1) or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor."

In the same special town meeting, the town voted "to purchase, or take by eminent domain pursuant to Chapter 79 of the General Laws, for the purpose of public park land, the land located at 364 West Street which is not classified as

forestland under Chapter 61 of the General Laws, consisting of 25.06 acres, more or less, . . . and in order to fund said acquisition, borrow . . . the sum of $25,000, and to apply any discretionary grants, gifts, awards, or donations of money given to the Town for the purpose of land conservation, and further to authorize the Board of Selectmen to take any and all actions and execute any and all documents to carry out the purposes of this article."

Thereafter, in the related Land Court proceedings wherein the town was attempting to assert its statutory right of first refusal, the town and the railroad were encouraged to mediate that dispute. As a result of that mediation, on February 9, 2021, the town, through its select board, and the railroad entered into a settlement agreement. The settlement provided for the town to, among other things, purchase 64 acres for $587,000, rather than the full 155 acres of land for $1,175,000. This litigation ensued.

Discussion. A single justice of this court has the authority to enter a preliminary injunction like the one requested by the plaintiffs, and that authority "does not depend on a determination that the trial court judge, in denying relief, made incorrect rulings of law or abused his [or her] discretion." Jet-Line Servs., Inc. v. Bd. of Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988); G. L. c. 40, s. 53.

In a ten taxpayer case, such as this one, I am required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public, and I must consider whether is a likelihood of statutory violations and how such statutory violations affect the public interest. See Edwards v. Boston, 408 Mass. 643, 647 (1990).

Because the Superior Court judge's decision turned on whether the plaintiffs had shown a likelihood of success in their claim that the settlement agreement was unlawful, I start with an analysis of the plaintiffs' chances. For the reasons stated herein, I conclude that the plaintiffs have shown a likelihood of success sufficient to consider the effect of an injunction on the public interest.

A town select board's general authority to acquire land is granted by statute. G.L. c. 40 s. 14. However, to exercise that general authority, the select board requires the vote of the town at town meeting. Id. The powers to purchase or take real property for public purposes set forth in section 14, though, are not the only methods by which a town may acquire real property. See G.L. c.60, s.s. 64 et seq., G.L. c.45, 14, and G.L. c.40, s.8C.

The plaintiffs argue that G. L. c. 61, s. 8 is another source of authority for a town to acquire real property outside the provisions of G. L. c. 40, s. 14. The defendants contend that completion of the purchase secured by the right of first refusal found in G. L. c. 68, s. 8 is implicitly dependent on the authority to purchase set forth in G. L. c. 40, s. 14. Neither party has cited, nor am I aware of, any appellate cases deciding this issue. I need not and do not resolve this dispute.

Even if a town vote was necessary to authorize the board's decision to exercise the right of first refusal pursuant to G.L. c. 40, s. 14, the plaintiffs' argument that no such authorization occurred at the October 24, 2020 special town meeting is sufficiently meritorious to consider granting the requested injunction.

The motion at town meeting plainly does not contain an authorization to purchase but was merely an appropriation of funds for the purchase pursuant to G. L. c. 68, s. 8. Section 14 of chapter 40 requires both authorization and an appropriation. G.L c. 40, s. 14. The absence of an explicit authorization is particularly noteworthy where, at the same town meeting, the motion to acquire the portion of the property at issue that was not forestland contained an explicit authorization. Because there were two motions to acquire land at the special town meeting and the motions utilized different language, it would be reasonable to conclude that the voters understood there to be a material difference in what they were voting in favor of. CF Fernandes v. Attleboro Hous. Auth., 470 Mass. 117, 129 (2014) ("The omission of particular language from a statute is deemed deliberate where the Legislature included such omitted language in related or similar statutes").

Assuming, arguendo, that the defendants' position is correct, i.e. that G. L. c. 40, s. 14 authorization was required to complete the purchase pursuant to the right of first refusal, the result of the vote would have been ineffective to complete the purchase of the entirety of the forestland. Thus, it would not serve as an authorization to complete a purchase of a lesser amount thereof.

Assuming, arguendo and as the plaintiffs contend, that G.L. c. 61, s. 8 is an independent source of the select board's

authority to purchase land in the absence of a town vote, the select board's authority would be limited by the language of that statute.

The plain language of that statute would not appear to authorize the select board to acquire any less than the entirety of the real property subject to the right of first refusal. "No sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section." G. L. c. 61, s. 8. Here, the significant reduction in both the acreage of land to be sold and the purchase price as set forth in the settlement agreement constitute a material change in the terms.

This interpretation of the source of the select board's authority would also distinguish this case from Russell v. Town of Canton, 361 Mass. 727 (1972), a case upon which the plaintiffs and the Superior Court judge relied. In Russell, the Supreme Judicial Court concluded that that the motion authorizing the select board to take all of an owners' land by eminent domain did not preclude selectmen from choosing and taking only part thereof. Id. at 732. In Russell, neither the town of Canton, nor the Supreme Judicial Court, were faced with the all-or-nothing nature of the right of first refusal found in G. L. c. 61, s. 8. Id. ("We express no opinion on the question whether a town's authorization for a taking may, by appropriate language, be expressly limited to or conditioned upon the taking of the entire parcel authorized to be taken, for this was not attempted in the case before us.") Consequently, while Russell may guide in this case, it is not controlling.

For these reasons, I find that the plaintiffs have demonstrated some likelihood of success in establishing that the town's purchase of the land, pursuant to the settlement agreement, would be a statutory violation. To be clear, I am not deciding this case on the merits; only that the plaintiffs have demonstrate some chance of success on their claim. See Jet-Line Servs., Inc., 25 Mass. App. Ct. at 648 (single justice "not required to, and did not, decide the case or any of its pivotal issues on the merits"). Having so concluded, I move on to the effect an injunction would have on the public interest.

The public interest in protecting the public funds from unauthorized expenditure is self-evident. "The words of [G. L. c. 40, s. 53] and our cases interpreting it demonstrate that a violation of any law designed to prevent abuse of public funds is, by itself, sufficient harm to justify an injunction." Edwards v. Boston, 408 Mass. 643, 646 (1990). Section 14 of chapter 40, with its statutory requirement of a town vote before a purchase, is a statute designed to prevent the abuse of public funds. Thus, the plaintiffs have demonstrated that the requested injunction serves the public interest.

I am mindful of the defendants' arguments that the settlement agreement allows the public to salvage some of the benefits of its right of first refusal, and that permanently preventing the execution of that agreement could result in the town receiving none of the forestland. The settlement agreement may represent sound public policy, the correct litigation strategy in the Land Court, and a general benefit to the public and the town. Nevertheless, it may well be unlawful.

Nothing in this memorandum and order should be construed as preventing the town from conducting a town vote authorizing the select board to purchase any or all of the land at issue, which would render the transaction lawful.

Conclusion. I find that the plaintiffs have demonstrated a likelihood of success in showing that, pursuant to the statutes discussed herein, the select board lacks the authority to purchase the land described in the settlement agreement without an authorization from the town at town meeting. I further find that a preliminary injunction pending a determination on the merits would serve the public interest in preventing the unauthorized expenditure of public funds. Consequently, the Hopedale Board of Selectmen is enjoined from issuing any bonds, making any expenditures, paying any costs, or transferring any property interests pursuant to the Settlement Agreement dated February 9, 2021, entered into with the Grafton and Upton Railroad, pending final judgement or further order of this court, or a single justice thereof, whichever is first to occur. (Meade, J.). *Notice/Attest/Frison, J.

Footnotes:

1. Carol J. Hall, Hillary Smith, David Smith, Megan Fleming, Stephanie A McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle.

2. Louis J. Arcudi, III, Brian R. Keyes, Grafton & Upton Railroad Company, John Delli Prisculi, Michael R. Milanoski, and One Hundred Forty Realty Trust.

3. The land is owned by the trust defendant. However, the trust is controlled by the railroad. For convenience, I refer only to the railroad but include the trust where appropriate.

REGISTRATION FOR ELECTRONIC FILING. Every attorney with an appeal pending in the Appeals Court must have an account with eFileMA.com. Registration with eFileMA.com constitutes consent to receive electronic notification from the Appeals Court and e-service of documents. Self-represented litigants are encouraged, but not required, to register for electronic filing.

ELECTRONIC FILING. Attorneys must e-file all non-impounded documents. Impounded documents and submissions by self-represented litigants may be e-filed. No paper original or copy of any e-filed document is required. Additional information is located on our Electronic Filing page: http://www.mass.gov/courts/court-info/appealscourt/efiling-appeals-faq-gen.html

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. Any document containing confidential or impounded material must be filed in compliance with Mass. R. App. P. 16(d), 16(m), 18(a)(1)(A)(iv), 18(d), and 21.
Very truly yours,

The Clerk's Office

Dated: April 8, 2021

To: Harley Clarke Racer, EsquireDavid E. Lurie, EsquireBrian W. Riley, EsquireDonald C. Keavany, Jr., EsquireAndrew DiCenzo, EsquireWorcester Superior Court Dept.

If you have any questions, or wish to communicate with the Clerk's Office about this case, please contact the Clerk's Office at 617-725-8106. Thank you.

EXHIBIT 9

E-FILED
11/24/2021

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT
C.A. NO. 2185CV00238D

E-Documents sent 11/30/21

ELIZABETH REILLY, CAROL J. HALL, DONALD HALL, HILLARY SMITH, DAVID SMITH, MEGAN FLEMING, STEPHANIE A. MCCALLUM, JASON A. BEARD, AMY BEARD, SHANNON W. FLEMMING, and JANICE DOYLE,

Plaintiffs,

v.

TOWN OF HOPEDALE, LOUIS J. ARCUDI, III, BRIAN R. KEYES, GRAFTON & UPTON RAILROAD COMPANY, JON DELLI PRISCOLI, MICHALE MILANOSKI, and ONE HUNDRED FORTY REALTY TRUST,

Defendants.

ASSENTED TO EMERGENCY MOTION OF DEFENDANTS TOWN OF HOPEDALE AND HOPEDALE BOARD OF SELECTMEN FOR STAY OF JUDGMENT PROVISION

#47

The defendants Town of Hopedale and Louis J. Arcudi, III and Brian R. Keyes, named in their capacity as members of the elected Hopedale Board of Selectmen (hereinafter "Town" or "Board"), hereby submit an Emergency Motion regarding a provision of the November 10, 2021 Judgment ("Judgment") and the Court's Order entered in the above captioned matter. A true copy of the Judgment is attached to this motion for reference, and the relevant provision is also set forth on pages 12-13 of the Memorandum of Decision and Order.

Superior Court Rule 9A(d)(1) Certification

The Town certifies that Town Counsel contacted counsel for all other parties and said counsel have assented to the within motion.

November 30, 2021 ALLOWED Graham J. Atwood, Jr. ATTEST: Anne Oas Asst. Clerk

In support of this motion, the Town states that the Judgment found in favor of the Plaintiffs on Count I of the Verified Complaint, and in favor of the Town and other defendants ("Railroad Defendants") on Counts II and III. On November 22, 2021, the Town served a Motion for Clarification of the Judgment upon counsel for the other parties. Pursuant to Superior Court Rule 9A, however, it may be the first full week of December before the Town can file the Rule 9A package with the Court. Counsel for the Plaintiffs and for the Railroad Defendants have informed Town Counsel that, while assenting to this Emergency Motion, they will each be submitting an opposition or response to the Town's Motion for Clarification, and all pleadings shall be filed in conformance with Rule 9A

In addition to the Memorandum of Decision's discussion as to Counts I - III, the Court included an Order enjoining the Railroad Defendants from performing any clearing or other site work on the subject Property for a period of 60 days after entry of judgment. While this injunction is expressly directed at the Railroad Defendants, the Court stated in relevant part:

> While G.L. c.40, §14, does not provide any particular time period in which a town must hold a town meeting to authorize the acquisition of land, the Legislature has expressed a view on the appropriate time frame for such matters in G.L. c.61, §8, which gives a town 120 days to exercise its first refusal option. Because the decision now before the Town is more limited in scope, however, a shorter period of 60 days is appropriate for this temporary injunction.

As a result, the Board of Selectmen is effectively required to either obtain a new Town Meeting vote or take some other action to acquire the Property (the latter being the subject of the Town's Motion for Clarification) *within the same 60 day period*, which will expire on or about January 9, 2022. It is critical to the Town's important interests regarding the Property that the Motion to Clarify the Judgment be considered before the Board can address its next step, but the current 60-day period may expire or be too limited if the early January deadline stay in place.

Therefore, the Town moves that this honorable Court extend the 60-day injunctive period contained in the Order and Judgment through and including January 31, 2022, such that after the Court rules on the Town's Motion to Clarify, the Board of Selectmen will have sufficient time to act pursuant to the terms of the Judgment.

Defendants,
TOWN OF HOPEDALE, LOUIS J. ARCUDI AND BRIAN R. KEYES,

By their attorney,

Brian W. Riley (BBO# 555385)
KP Law, P.C.
101 Arch Street
12th Floor
Boston, MA 02110-1109
(617) 556-0007
briley@k-plaw.com

Dated: November 24, 2021
789154/HOPD/0145

CERTIFICATE OF SERVICE

I, Brian W. Riley, hereby certify that on the below date, I served a copy of the foregoing Assented To Emergency Motion of Defendants Town of Hopedale and Hopedale Board of Selectmen for Stay of Judgment Provision, by first class mail and electronic mail, to the following counsel of record:

David E. Lurie, Esq.
Harley C. Racer, Esq.
Lurie Friedman LLP
One McKinley Square
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dlurie@luriefriedman.com
hracer@luriefriedman.com

David C. Keavany, Jr., Esq.
Christopher Hays Wojcik & Mavricos, LLC
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

Brian W. Riley

Dated: November 24, 2021

JUDGMENT ON THE PLEADINGS	Trial Court of Massachusetts The Superior Court
DOCKET NUMBER 2185CV00238	Dennis P. McManus, Clerk of Courts
CASE NAME Reilly, Elizabeth et al vs. Town of Hopedale et al	COURT NAME & ADDRESS Worcester County Superior Court 225 Main Street Worcester, MA 01608

This action came before the Court, Hon. Karen Goodwin, presiding, upon a motion for judgment on the pleadings,

After hearing or consideration thereof;

40

It is **ORDERED AND ADJUDGED:**

Judgment to enter for the Plaintiffs on Count I, enjoining the Board of Selectmen and The Town of Hopedale from purchasing land as set forth in the Settlement Agreement and the Railroad Defendants are enjoined for 60 days from the date of this Judgment from carrying out any work on the contested forest land. Counts II and III are hereby dismissed.

DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK
11/10/2021	X

Date/Time Printed: 11-10-2021 11:20:54 SCV117: 07/2016

Entered and Copies Mailed 11/10/21