

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

vs. )

Case No. 4:22-cv-40080-ADB

TOWN OF HOPEDALE, THE HOPEDALE )  
SELECT BOARD, by and through its members, )  
GLENDA HAZARD, BERNARD STOCK, )  
and BRIAN KEYES and THE HOPEDALE )  
CONSERVATION COMMISSION by and )  
through its members, BECCA SOLOMON, )  
MARCIA MATTHEWS and DAVID )  
GUGLIELMI )  
Defendants )

LEAVE TO FILE GRANTED ON:  
February 3, 2023

**PLAINTIFFS’ RESPONSE TO TOWN OF HOPEDALE’S SUPPLEMENTAL  
MEMORANDUM, FILED ON JANUARY 31, 2023**

Plaintiffs, Grafton & Upton Railroad Company (“G&U”) and One Hundred Forty Realty Trust (“Trust”), briefly respond to the Town of Hopedale’s Supplemental Memorandum (ECF #63) filed on February 1, 2023.

As set forth in the Affidavits of Jon Delli Priscoli and Ronald Dana, and the Fourth Affidavit of Michael Milanoski, filed herewith, the Suffolk County lawsuit cited by the Town in its Supplemental Memorandum will not have any adverse effect on the plans of the G&U to develop and operate a state-of-the-art rail transportation and transloading facility at 364 West Street. The Suffolk County lawsuit alleges a dispute with respect to the enforceability of a Letter of Intent regarding the purchase and sale of the stock of the G&U and other assets of G&U’s principal, Jon Delli Priscoli. The Suffolk lawsuit does not challenge, or contest the June 30, 2021 Amended and Restated Lease Agreement between the Trust and G&U regarding 364 West

Street that provides G&U, inter alia, control over the property at 364 West Street. There is no evidence – other than the pure speculation of the Town – that the LOI dispute will have any adverse impact on the development plans of the G&U with respect to the subject property.

Moreover, had the Town read the Suffolk County Complaint and the Exhibits attached thereto, it would have learned the identity of the third-party attempting to acquire the G&U. See Exhibits D and E to the Suffolk County Complaint, attached as Exhibit 1 to the Town’s Supplemental Memorandum. To the extent that there is any uncertainty as to the identity of the third-party, it has been addressed through the Dana Affidavit, filed herewith. Ronald Dana is the principal of multiple transportation related entities in the northeast, including Dana Transport, Inc. and GU Railcare, LLC. Dana Railcare performs transloading services as G&U’s agent at G&U’s Upton Yard.<sup>1</sup> Dana Affidavit, ¶2. Mr. Dana, through his affidavit, confirms that should Dana Transport be successful in acquiring the stock of the G&U, G&U will absolutely follow through developing and operating the state-of-the-art rail transportation and transloading facility consistent with the conceptual revised Site Plan for the 364 West Street site – entitled “GU Railroad’s Metrowest Transloading & Logistics Center in Hopedale, MA” dated August 1, 2022. Id., ¶¶6-7. Mr. Dana is also aware of the June 30, 2021 Amended and Restated Lease Agreement between the Trust and G&U regarding 364 West Street that provides G&U site control at this location regardless of ownership of the land. Id., ¶5. Likewise, Mr. Milanoski has confirmed that should his group be successful in acquiring the stock of the G&U, G&U will absolutely follow through developing and operating the state-of-the-art rail transportation and transloading facility consistent with the conceptual revised Site Plan for the 364 West Street site

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<sup>1</sup> G&U has previously cited the Upton Railyard as an example of its familiarity with operating a rail transportation and transloading facility, similar to what G&U intends to develop and operate at 364 West Street, Hopedale. See Second Affidavit of Michael Milanoski (ECF #30), ¶¶13-16.

– entitled “GU Railroad’s Metrowest Transloading & Logistics Center in Hopedale, MA” dated August 1, 2022. Fourth Milanoski Aff., ¶7.

Simply put, nothing has changed regarding the intended development at 364 West Street. The property continues to be controlled by G&U and G&U continues to intend develop the property into a state-of-the art rail transportation and transloading facility. The proposed property development is realistic and practical and will serve the expanding need for rail transportation and transloading services, locally, regionally and nationally. G&U will proceed with the development and operation of the site as a rail transportation and transloading facility, regardless of the outcome of the Suffolk County lawsuit. See, Affidavits of Delli Priscoli, Dana and the Fourth Affidavit of Milanoski.

The Town’s repeated reliance on City of Girard v. Youngstown Belt Ry. Co., 134 Ohio St. 3d 79 (2012) (Girard) is again misplaced as the facts of Girard are starkly different than the facts here, including the fact that the property at issue in Girard was a vacant lot which the railroad had rarely used for 9+ years and for which the railroad only offered hypotheticals with respect to development. Here, G&U immediately commenced work towards developing its rail transportation and transloading center at 364 West Street after acquisition. G&U’s plans for 364 West Street are not secondary, vague, or hypothetical – they are very real and current. See Affidavit of Michael Milanoski (ECF #6), ¶¶61-68.

Moreover, the Town appears to insist that G&U must presently submit precise and final plans for the size and location of each and every building, each and every parking area, each and every detention basin and all stormwater engineering in order to seek and be entitled to preemption under the ICCTA. The Town cites no case law or STB decision supporting its position in this regard because there is no such precedent, and Girard is not to the contrary.

Every action taken by G&U since it acquired control over the 364 West Street site in October 2020 has been consistent with developing the site into a rail transportation and transloading facility. See Affidavit of Michael Milanoski (ECF #6), ¶¶61-68; Second Affidavit of Milanoski (ECF #30), ¶¶22-26, 28.

G&U also submits the Affidavit of its engineer, Michael Dean, P.E, D&L Design Group, Inc., to respond to the Town's repeated reliance on its engineer's opinion that D&L Design has a "fake website" as part of its attempt to question the integrity of the conceptual plan prepared by D&L for the 364 West Street parcel. See Town's Supplemental Memorandum, p. 2. The website is not "fake"; it just has not been created yet. See, <http://dandldesigngroup.com/>. Moreover, Mr. Dean's Affidavit includes the most recent version of the conceptual site plan for 364 West Street he and his firm has engineered for the site, which includes his professional engineer's stamp. See, Dean Affidavit, Exhibit 3. It should go without saying, but the lack of a website for Mr. Dean's new company has nothing to do with Mr. Dean's credentials, experience, education and training as a professional engineer. The fact that the Town spends so much time discussing the lack of a website for Mr. Dean's new company is indicative of its desperation to create a non-existent issue in an attempt to distract the court from the Town's unlawful and unprecedented eminent domain land grab. The Town may not like the development plan, but the development plan is far from speculative.

Finally, the Town's Supplemental Memorandum continues to ignore the scope of the Town's threatened eminent domain taking. The threatened taking is unprecedented in size and scope and includes land on both sides of the rail track that bisects 364 West Street. Second Affidavit of Milanoski (ECF #30), ¶28. The threatened taking will completely displace G&U

from the entirety of the 130+- acres at 364 West Street and prevent G&U from conducting any of its planned rail transportation activity on those 130+- acres. Id.

For the reasons set forth above, and in G&U's Memorandum of Law in Support of its Motion for Preliminary Injunction to Enjoin Taking, G&U has met its burden for the issuance of a preliminary injunction enjoining the Town of Hopedale from taking of any portion of the property at 364 West Street, and respectfully requests that the Court enter such injunction forthwith. In the alternative, G&U requests that the Court enter an injunction forthwith, and further Order G&U to file a Petition for Declaratory Order with the Surface Transportation Board, while retaining jurisdiction over this case.

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

By Their Attorneys,

/s/ Donald C. Keavany, Jr.  
Donald C. Keavany, Jr., BBO# 631216  
Andrew P. DiCenzo, BBO# 689291  
Christopher Hays, Wojcik & Mavricos, LLP  
370 Main Street, Suite 970  
Worcester, MA 01608  
Tel. 508-792-2800  
[dkeavany@chwmlaw.com](mailto:dkeavany@chwmlaw.com)  
[adicenzo@chwmlaw.com](mailto:adicenzo@chwmlaw.com)

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to counsel of record for all parties on this 7<sup>th</sup> day of February 2023.

/s/ Donald C. Keavany, Jr.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GRAFTON & UPTON RAILROAD )  
COMPANY, JON DELLI PRISCOLI and )  
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GUGLIELMI )

Defendants )

Case No. 4:22-cv-40080-ADB

**AFFIDAVIT OF JON DELLI PRISCOLI IN RESPONSE TO SUPPLEMENTAL  
MEMORANDUM SUBMITTED BY TOWN OF HOPEDALE**

Now comes Jon Delli Priscoli, who on oath deposes and says as follows:

1. I am the sole owner of the Grafton & Upton Railroad Company (G&U) and the Chief Executive Officer of the G&U. I have personal knowledge of the facts set forth in this Affidavit.

2. I have read the Town’s Supplemental Memorandum in Further Opposition to Plaintiffs’ Motion for Preliminary Injunction, in which the Town submitted a copy of the Complaint that was filed on behalf of Michael Milanoski in Suffolk County Superior Court in January 2023.

3. Initially, while I will not respond to all of the allegations in the Suffolk County lawsuit in this affidavit in this forum, I will unequivocally state that the

allegations regarding my motivations to sell the G&U and other holdings I possess are not true. But, more importantly, the claims asserted in the Suffolk County lawsuit do not, and will not affect the G&U's development plans for its Metrowest Transloading & Logistics Center at 364 West Street, as there is a lease between One Hundred Forty Realty Trust and G&U for the 364 West Street site. A true and accurate copy of the June 30, 2021 Amended and Restated Lease Agreement between One Hundred Forty Realty Trust and Grafton & Upton Railroad Company is attached hereto as Exhibit 1.

4. The initial term of this Amended and Restated Lease is for a period of thirty (30) years through October 14, 2052 with automatic 3-year renewals.

5. A true and accurate copy of the most recent Site Plan for the 364 West Street site – entitled “GU Railroad’s Metrowest Transloading & Logistics Center in Hopedale, MA” dated August 1, 2022, is attached hereto as Exhibit 2.

6. I understand that both parties seeking to acquire the G&U intend to develop the 364 West Street property consistent with the framework illustrated in the attached Plan. As a result, the 364 West Street property will be developed by the G&U into a state-of-the art rail transportation and logistics center regardless of the outcome of the Suffolk County lawsuit.

7. The Town’s proposed taking of 364 West Street will interfere with the plans of G&U to develop that site into a state-of-the-art rail transportation and transloading facility.

Signed under the penalties of perjury this 6<sup>th</sup> day of February 2023.

  
\_\_\_\_\_  
Jon Dell'Priscoli



CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to counsel of record for all parties on this 7<sup>th</sup> day of February 2023.

/s/ Donald C. Keavany, Jr.

# **EXHIBIT 1**

## AMENDED AND RESTATED LEASE AGREEMENT

This AMENDED AND RESTATED LEASE AGREEMENT (the “Lease”) is made as of June 30, 2021 by and between One Hundred Forty Realty Trust, a Massachusetts Trust, with offices at 7 EDA Avenue, Carver, MA 02330 (“Landlord”) and Grafton & Upton Railroad Company, a Massachusetts corporation with offices at 42 Westboro Road, North Grafton, Massachusetts 01536 (“Tenant”).

WHEREAS, Landlord and Tenant entered into a Lease Agreement as of October 14, 2020; and

WHEREAS, Landlord and Tenant wish to amend the Lease Agreement and restate it pursuant to and in accordance with the terms and conditions of this Lease;

WHEREAS, in particular, this Lease recognizes that the Premises, as defined below, have increased in size subsequent to the Lease Agreement dated as of October 14, 2020 by reason of a Settlement Agreement and Mutual Release among Landlord, Tenant and the Town of Hopedale, Massachusetts;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1. PREMISES - TERM OF LEASE

1.01 Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described premises (hereinafter called the “Premises”); The land in Hopedale, Worcester County, Massachusetts located on the westerly side of Route 140 thereon shown as plan recorded at the Worcester County Registry of Deeds Plan Book 957, Plan 48 (2-sheets), on June 17, 2021 at 10:18AM, titled Plan of Land, Grafton and Upton Railroad, 364 West Street, Hopedale MA, Existing Boundary Plan of Land prepared by Engineering Design Consultants, Inc on June 15, 2021 containing 194.101 acres of land, more or less, hereinafter referred to as the “Premises” See attached plan in Exhibit I.

1.02 Condition of the Premises. Tenant acknowledges that it has entered into this Lease after a full and complete examination thereof, legal title, their present uses and non-uses, and law, ordinances, and regulations affecting the same and, agrees to accept the same in the same condition in which they or any part thereof now are and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Landlord, except as set forth below, and without recourse to Landlord as to the legal title thereto, the nature, condition or useability thereof, or the use to which the Premises, or any part thereof may be put.

1.03 Term. The “Initial Term” shall commence on October 14, 2020 (the “Commencement Date”) and terminate at midnight on October 14, 2050; provided, however, that this Lease shall remain in full force and effect for subsequent terms (“Renewal Term”) of 3 years each unless Tenant gives Landlord notice at least 180 days' prior to the expiration of the Initial Term or any Renewal Term of an intention to terminate the Lease at the end of the then current

Term. For purposes of this Lease, the phrase “Term” shall mean collectively (a) the Initial Term and (b) any Renewal Term.

ARTICLE 2.  
RENT

2.01 Rent. Tenant shall pay Landlord, without offset or deduction and without previous demand therefore, as items constituting rent (collectively, “Rent”):

- (i) Fixed Rent at the rate of \$3,000.00 per month beginning as of the date on which Tenant completes the installation of the first 2 lengths of track on the Premises for railroad transloading used by Tenant for common carrier rail transportation operations and services, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that such operations and services are or may be subject to the jurisdiction of the Surface Transportation Board (“STB”) and other federal and state agencies (the “Fixed Rent Commencement Date”) through the Initial Term in advance on the first day of each calendar month or portion thereof during the Term.
- (ii) In addition to paying Fixed Rent, the Tenant shall pay the Landlord Bonus Rent based upon railcar traffic transloaded on the Premise as follows: Twenty-Five (\$25.00) Dollars per railcar transloading (“one move only”) at the Premises for a period of Twenty (20) years after the Fixed Rent Commencement by the Tenant

(b) Fixed Rent shall be prorated for any partial month of the Term during which such Rent is due.

2.02 Impositions. Tenant shall pay without notice, and without abatement, deduction or set-off, all Impositions (as defined in Article 3 hereof) and all other reasonable costs, expenses and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of rent.

ARTICLE 3.  
PAYMENT OF TAXES, ASSESSMENTS

3.01 Impositions. Beginning as of the Fixed Rent Commencement Date, Tenant shall pay or cause to be paid (except as explicitly provided in Section 3.02), once first rent is paid per Section 2.01a, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien upon the Premises, or any part thereof or any appurtenance thereto (all such taxes, assessments, water and sewer rents, rates and charges,

levies, license and permit fees and other governmental charges being hereafter referred to as “Impositions”); provided, however, that:

- (a) If, by law, any Imposition may at the option of the taxpayer be paid in installments, Tenant may pay the same in such installments over such period as the law allows, and Tenant shall only be liable for such installments as shall become due during the Term of this Lease, provided that the full amount of all Impositions attributable to the Term shall be paid by Tenant in the event of an earlier termination of this Lease due to a default of Tenant; and
- (b) All Impositions for the municipal fiscal years in which the Term of this Lease shall begin and end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said year as is within the Term hereby demised.
- (c) Tenant shall not be responsible for any Imposition that arises out of a violation of any Legal Requirement or the presence on the Premises of any Hazardous Materials or the violation of any Environmental Law (as such terms are defined in Article 8.02) that existed prior to the execution and delivery of this Lease. Landlord agrees to use reasonable efforts to minimize the disruption of Tenant’s business operations as the result of work that may be performed on the Premises to remediate any such violations.

Solely for the purpose of determining Tenant’s obligation to pay real estate taxes under this Lease, the Premises shall be deemed to include the entire parcel of land on which the Premises are located containing 194 acres more or less.

Unless Landlord exercises its right to require Tenant to make deposits to pay Impositions under Section 3.03, Landlord shall promptly forward all tax bills and other governmental invoices to Tenant so as to enable Tenant to meet its obligations hereunder in a timely manner.

3.02 Landlord’s Taxes; Substitute Taxes. Nothing herein contained shall require the Tenant to pay (i) municipal, state or federal income taxes (if any) assessed against Landlord; or (ii) municipal, state or federal capital levy, gift, estate, succession, inheritance or transfer taxes of Landlord; or (iii) corporation excess profits or franchise taxes imposed upon any corporate owner of the fee of the Premises; or (iv) any income, profits, or revenue tax, assessment or charge imposed upon the rent payable by Tenant under this Lease, provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the commencement of the Term hereof shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, Impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise on the rents received therefrom, or measured by or based in whole or in part upon the Premises and imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based (“Substitute Taxes”), shall be deemed to be included within the term “Impositions” for the purposes hereof. Tenant shall pay and discharge all Substitute Taxes as herein provided in respect of the payment of Impositions to the extent that such

Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions. Tenant shall, in addition to the foregoing, pay any new tax of a nature not presently in effect, but which may be hereafter levied, assessed, or imposed on the Premises or on Landlord as owner of the Premises, if such tax shall be based on or arise out of the ownership, use or occupation of the Premises. For the purpose of computing Tenant's liability for such type of tax, the Premises shall be deemed the only property of Landlord. Tenant shall be entitled to receive the benefit of any TIF (tax increment financing) plan with respect to the Premises that accrues during the Term of the Lease.

3.03 Payments to Landlord. So long as Tenant pays the Impositions in a timely manner and fulfills its other obligations hereunder, Tenant may make such payments directly to the municipality or other entity to which Impositions are due and payable. After an Event of Default hereunder by Tenant, if Landlord so requires, Tenant shall deposit with Landlord, monthly with each payment of Fixed Rent, one-twelfth of such amount as Landlord reasonably estimates will be required to pay all taxes, betterments, assessments and other governmental liens against the Premises before the same become due. Landlord shall not be deemed a trustee with respect to such deposits and shall not be required to keep said deposits separate from its general accounts or to pay interest thereon to Tenant unless required by law. If at any time Landlord reasonably determines such deposits are or will be insufficient to discharge the amounts actually required to pay such taxes, betterments, assessments and liens as may be due, any deficiency shall be promptly deposited by Tenant with Landlord. Tenant shall transmit to Landlord all bills for such taxes, betterments, assessments and liens as soon as received. Should the amount deposited with Landlord by Tenant in any year exceed the amount required, such excess shall be applied to escrow payments for the succeeding year.

3.04 Receipts. Unless required to make monthly deposits under Section 3.03, Tenant shall furnish to Landlord within thirty days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment thereof.

3.05 Abatements; Contests by Tenant. Tenant shall be privileged to seek a reduction in the valuation of the Premises assessed for tax purposes and to contest in good faith by appropriate proceedings, at Tenant's expense, the amount or validity in whole or in part of any Imposition, provided that

- (a) Tenant shall provide Landlord with security reasonably satisfactory to Landlord to assure payment of contested items (which at Landlord's reasonable discretion may mean making deposits under Section 3.03 which would enable Landlord to pay the contested items in full);
- (b) Tenant shall immediately pay to Landlord any additional amounts needed to enable Landlord to pay such contested item or items if the protection of the Premises or of Landlord's interest therein from any lien or claim shall, in the reasonable judgment of Landlord, require such payment; and
- (c) Landlord shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall

require that such proceedings be brought by or in the name of Landlord. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless Landlord from any such reasonable costs and expenses.

Subject to the foregoing, and without cost to it, Landlord shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any valuation or Imposition and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

3.06 Abatements by Landlord; Allocations. Landlord shall have a right to seek a reduction in the valuation of the Premises assessed for tax purposes and to prosecute any action or proceeding theretofore commenced by Tenant, if such assessed valuation or valuations shall in whole or in part relate and pertain to any period of time subsequent to the expiration or termination of this Lease or property of Landlord that includes the Premises. Tenant shall be entitled to any refund of any Imposition and penalties or interest thereon received by Landlord which have been paid by Tenant, or which have been paid by Landlord but previously reimbursed in full by Tenant.

#### ARTICLE 4. SURRENDER

4.01 Yield Up. Except as provided in Article 11 or elsewhere to the contrary in this Lease, Tenant shall, as of the Termination Date as defined in Article 11 of this Lease, surrender and deliver up the Premises to the possession and use of Landlord without delay and in good order, condition and repair (excepting only fire or casualty and reasonable wear and tear). The Premises shall at that time be free and clear of all leases and occupancies. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term or created or suffered by Landlord.

4.02 Fixtures. Except as provided in Article 11 or elsewhere to the contrary in this Lease, where furnished by or at the expense of Tenant, any buildings, transloading facilities, track and other rail facilities and all trade fixtures, business equipment, furniture and personal property installed on the Premises by Tenant or any sublessee ("Tenant's Property") and any Alterations designated for removal by Landlord in accordance with Section 7.05 shall be removed by Tenant prior to the Termination Date; provided that Tenant shall restore any damage caused by such removal. In the event the Premises are not restored in accordance with the preceding sentence, Tenant shall pay all Landlord's costs of restoring such damage to comply with the preceding sentence.

4.03 Abandoned Property. Any personal property of Tenant or any sublessee or occupant which shall remain in the Premises after the termination of this Lease and the removal of Tenant or such occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such sublessee or occupant and either may be retained by

Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord shall give written notice to Tenant to such effect, such property shall be removed by Tenant at Tenant's sole cost and expense.

4.04 Extension to Remove. If this Lease shall terminate pursuant to Article 15 hereof, then, notwithstanding Sections 4.02 and 4.03 hereof Tenant shall have a reasonable time after the Termination Date (not exceeding thirty (30) days) to remove any property which it shall otherwise be entitled to remove pursuant to Section 4.02 hereof.

4.05 No Liability. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any occupant following termination of this Lease, unless due to the gross negligence or willful and wrongful acts of Landlord, its employees or agents.

4.06 Holding Over. If Tenant occupies the Premises after the Termination Date without having entered into a new lease thereof with Landlord or having reached some other agreement with Landlord to continue Tenant's occupation, Tenant shall be a Tenant-at-sufferance, subject to all of the terms and provisions of this Lease. Such a holding over, even if with the consent of Landlord, shall not constitute an extension or renewal of this Lease.

4.07 Survival. The provisions of this Article shall survive any termination of this Lease.

## ARTICLE 5. INSURANCE

5.01 All Risk Casualty Insurance. Tenant, at its sole cost and expense, shall keep in full force and effect casualty insurance on the buildings and other improvements on the Premises in an amount at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage and extended to include breakdown of boilers, machinery and electrical equipment. The insurance shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction. Such insurance shall include an agreed amount provision. The replacement cost of the buildings shall be determined at least once every thirty-six (36) months by the agreement of Landlord and Tenant. If Landlord and Tenant are unable to so agree, the replacement cost shall be determined at the expense of the Tenant by an appraiser who shall be mutually and reasonably acceptable to Landlord and Tenant.

During any construction or alteration of the Premises, Tenant shall also keep in full force and effect all risk builder's risk insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Landlord may reasonably require.

5.02 Liability Insurance. Tenant, at its sole cost and expense, shall maintain:

- (a) for the mutual benefit of Landlord and Tenant, general public liability insurance against claims for personal injury, death, and property damage, occurring upon, in or about the Premises, and on, in or about any adjoining



sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least \$5,000,000 for any one accident and \$2,000,000 for injury to any one individual and \$1,000,000 for damage to property;

(b) such liability insurance may be in such greater or lesser limits as may hereafter be reasonably determined in accordance with Section 5.07, but in no event less than such limits as are from time to time customarily carried with respect to similar properties where the Premises are located;

(c) such liability insurance as may be mutually agreed upon by the Landlord and Tenant to cover the Tenant's intended railroad and transloading operations to be developed on the Premises, and

(d) such other insurance and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are customarily insured against in the case of similar buildings where the Premises are located due regard being, or to be, given to height, type and construction.

5.03 Insurance Carriers, Policies. All insurance provided for in this Article 5 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in the state where the Premises are located. Upon the execution of this Lease, and thereafter not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this Article 5, duplicate originals of the policies bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord.

5.04 No Separate Insurance Except with respect to the insurance required by subdivision (a) of Section 5.02 hereof, neither Landlord nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 5 to be furnished by, or which may reasonably be required to be furnished by Tenant unless Landlord and Tenant are included therein as the insured, with loss payable as in this Lease provided. Each party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as in Section 5.03 hereof required.

5.05 Adjustment.

(a) All policies of insurance provided for in Section 5.01 hereof shall name Landlord and Tenant as the insured as their respective interests may appear. The loss, if any, under such policies shall be payable to the Landlord.

(b) All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Tenant or any sublessee shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

5.06 Non-cancellation. Each such policy or certificate therefore issued by the insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be cancelled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to Landlord and to any mortgagee named therein.

5.07 Insurance Limit Changes. Landlord may reasonably require a change in the amounts or limits of the insurance to be maintained hereunder pursuant to Section 5.02 hereof or may reasonably require from Tenant such other insurance as is referred to in Section 5.02(d) hereof; provided that any such additional coverage shall be consistent with amounts, limits or additional insurance as may be required for similar industrial buildings in the I-495 West submarket in which the Premises are located.

5.08 Waiver of Subrogation. To the extent obtainable (even though extra premium may result therefrom), all insurance policies carried by either party covering the Premises, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer to make any claim against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement.

5.09 Waiver of Rights. Landlord and Tenant each hereby waive all claims, causes of action and rights of recovery against the other and their respective partners, agents, officers and employees, for any damage to or destruction of persons, property or business which shall occur on or about the Premises and shall result from any of the perils insured under any and all policies of insurance maintained by Landlord and Tenant, regardless of cause, including the negligence and intentional wrongdoing of either party and their respective agents, officers and employees but only to the extent of recovery, if any, under such policy or policies of insurance; provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.

## ARTICLE 6.

### LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

6.01 Performance by Landlord. If Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article 3 hereof, or to take out, pay for, maintain or deliver any of the insurance policies or certificates provided for in Article 5 hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed pursuant to this Lease, then Landlord may, but shall be under no obligation to:

- (a) pay any Imposition payable by Tenant pursuant to the provisions of Article 3 hereof, or
- (b) take out, pay for and maintain any of the insurance policies provided for in Article 5 hereof, or
- (c) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided,

and may enter upon the Premises (after one (1) day's notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

6.02 Reimbursement. All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord, including reasonable attorneys' fees, in connection with the performance of any such act, together with interest thereon at two (2) percent per annum in excess of the then current prime rate as established by the Wall Street Journal (the "Prime Rate") from the date of such payment or incurring by Landlord of such cost and expense, shall constitute Impositions payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. If Landlord shall exercise its rights under Section 6.01 to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such Impositions to Landlord upon demand.

6.03 Entry. During the progress of any work in the Premises which may under the provisions of this Article 6 be performed by Landlord, Landlord may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment; provided that Landlord shall use reasonable efforts to minimize any inconvenience or disruption to Tenant. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby.

ARTICLE 7.  
REPAIRS AND MAINTENANCE OF THE PREMISES;  
UTILITIES; ALTERATIONS; OTHER EXPENSES.

7.01 Repairs and Maintenance.

(a) Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises (including all improvements now or hereafter erected thereon), all sidewalks, curbs and entrances adjoining the same and shall keep the Premises in the same condition as they now are, except for normal wear and tear or damage from fire or casualty or a Taking, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, including repairs to the HVAC system and other building service equipment. All repairs made by Tenant shall be at least equal in quality and class to existing conditions.

7.02 Cleaning; Snow Removal. Tenant shall put, keep and maintain all portions of the Premises and the sidewalks and curbs adjoining the same in a clean and orderly condition, free of rubbish, snow, ice and unlawful obstructions.

7.03 No Liability. Landlord shall in no event be required to make any alterations, rebuildings, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

7.04 Utilities. Tenant shall pay, as Impositions, directly to the utility provider all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises and service inspections made therefore, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of Landlord (“Utility Charges”).

7.05 Alterations. Tenant and any of its sublessees, assignees or licensees shall be entitled to make any and all alterations, improvements, repairs, etc., including without limitation the construction of rail facilities and buildings and the installation of transloading equipment, to the Premises in its sole determination. No approvals from Landlord are required. Tenant shall cause each contractor and subcontractor to carry worker’s compensation insurance in statutory amounts covering all of their respective employees and comprehensive public liability insurance in amounts reasonably satisfactory to Landlord (such insurance to be written by companies reasonably satisfactory to Landlord and insuring Tenant and Landlord as well as the contractor and subcontractors). Tenant shall pay promptly when due the entire cost of such work. Tenant shall not cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Premises, and shall discharge or bond any such liens which may be so filed or recorded not later thirty (30) days after completion of the work and in any event not later the ninety (90) days after the filing or recording of a notice of contract. All such work shall be performed in a good and workmanlike manner and in compliance with all legal requirements and the provisions of all applicable insurance policies. Tenant shall indemnify and hold Landlord harmless from and against any and all third party suits, demands, causes of action, claims, losses, debts, liabilities, damages, penalties or judgments, including, without limitation, reasonable attorneys’ fees, arising from injury to any person or property occasioned by or growing out of such work (such indemnity shall survive the expiration or termination of this Lease) unless caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

ARTICLE 8.  
COMPLIANCE WITH LAWS, ORDINANCES, ETC.

8.01 Legal Requirements. Throughout the Term of this Lease, Tenant shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks and curbs adjoining the same or to the use or manner of use of the Premises or the owners, tenants or occupants thereof, whether or not such law, ordinance, rule, regulation or requirement shall affect the interior or exterior of any buildings or interfere with the use and enjoyment of the Premises, and shall be responsible, at Tenant’s expense, to make Alterations required to correct any violations that are not expressly made the responsibility of the Landlord hereunder or that existed prior to the execution and delivery of this Lease. Landlord understands and acknowledges that pursuant to Article 11.01 the Premises may be used for any lawful purpose and will be used by Tenant for rail transportation purposes in connection with and support of Tenant’s existing and future rail transportation service, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that certain of these activities or uses may be subject to local or state laws,

regulations, ordinances, rules or judicial or regulatory proceedings and that Tenant may seek to preclude the applicability or enforceability and any pre-approval or permitting requirements of any such laws, regulations, ordinances, rules or judicial or regulatory jurisdiction or decisions by reliance on the doctrine of federal preemption. Tenant will hold Landlord harmless on account of any such uses that result in preemption of local and state regulatory authorities and processes (“Legal Requirements”).

8.02 Hazardous Materials. Tenant shall not generate, store or use any “Hazardous Materials” (as hereinafter defined) in or on the Premises except in compliance with any and all applicable Legal Requirements, or dispose of Hazardous Materials from the Premises to any other location except a properly approved disposal facility and then only in compliance with any and all Legal Requirements regulating such activity, nor permit any occupant of the Premises to do so. As used in this Lease, “Hazardous Materials” means and includes any chemical, substance, waste, material, gas or emission which is radioactive or deemed hazardous, toxic, a pollutant, or a contaminant under any statute, ordinance, by-law, rule, regulation, executive order or other administrative order, judgment, decree, injunction or other judicial order of or by any governmental authority, now or hereafter in effect, relating to pollution or protection of human health or the environment. As used herein, the term “Hazardous Material” means any hazardous, radioactive or toxic substance, material or waste or petroleum derivative which is or becomes regulated by any Environmental Law (as defined below). The term “Hazardous Material” includes, without limitation, any material or substance which is (i) designated as a “hazardous substance” pursuant to Section 1311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (iii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601), or (iv) defined as “hazardous substance” or “oil” under Chapter 21E of the General Laws of Massachusetts (collectively “Environmental Laws”). If, at any time during the Term, any governmental authority requires testing to determine whether there has been any release of Hazardous Materials by Tenant or anyone claiming by, through or under Tenant, then Tenant shall reimburse Landlord upon demand, as Additional Rent, for the reasonable costs thereof. Tenant shall execute affidavits, certifications and the like, as may be reasonably requested by Landlord from time to time concerning Tenant’s knowledge and belief concerning the presence of Hazardous Materials in or on the Premises. Landlord reserves the right to enter the Premises at reasonable times (provided twenty-four (24) hours’ notice is given to Tenant, except in case of emergency) to inspect the same for Hazardous Materials. Tenant shall indemnify, defend, and hold harmless Landlord, and the holder of any mortgage on the Premises from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys’ fees and the cost of litigation, arising from or relating to the breach by Tenant or anyone claiming by, through or under Tenant of the provisions of this Section 8.02 and shall immediately discharge or cause to be discharged any lien imposed upon the Premises in connection with any such claim. The provisions of this Section 8.02 shall survive the expiration or termination of this Lease. Landlord shall indemnify, defend, and hold harmless Tenant from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys’ fees and the cost of litigation, arising from or relating to actions taken or conditions existing on the Premises on or before the

Commencement Date in violation of the laws and regulations referred to hereinabove in this Section.

8.03 Insurance Requirements. Tenant shall likewise observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises if such observance or compliance is required by reason of any condition, event or circumstance arising after the commencement of the Term of this Lease. In any case Tenant shall be privileged to substitute policies of other insurance companies, provided such policies meet the requirements of Article 5.

8.04 Contests. Tenant shall have the right, after ten (10) days' prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 8.01 hereof, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurring of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

Subject to the foregoing and without cost to it, Landlord shall execute and deliver all appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement and further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

## ARTICLE 9. DISCHARGE OF LIENS

9.01 Tenant Responsibilities. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises, the underlying fee, or any part thereof as a result of any action by Tenant, Tenant, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise in accordance with Section 8.01. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, if such lien shall continue for five (5) days after notice from Landlord to Tenant, but shall not be obligated to, discharge the same either by

paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects upon another fifteen (15) days notice from Landlord to Tenant, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of two (2%) percent per annum in excess of the then prevailing Prime Rate from the respective dates of Landlord's making of the payment or incurring of the reasonable cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

9.02 No Consent. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof.

ARTICLE 10.  
NO WASTE

10.01 Prohibition. Tenant shall not do or suffer any strip or waste or damage, or injury to the Premises or the underlying fee or any part thereof.

ARTICLE 11.  
USE OF PROPERTY

11.01 Tenant's business operations. The Premises may be used by Tenant for any lawful purpose. Landlord acknowledges and agrees that the Premises will be used by Tenant for common carrier rail transportation operations and services, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that such operations and services are or may be subject to the jurisdiction of the Surface Transportation Board ("STB") and other federal and state agencies. Notwithstanding any other provision of this Lease, Landlord (a) shall not, except with the prior written consent of Tenant, take any actions that would interfere with, adversely affect or disrupt Tenant's rail operations or service, (b) shall not take or permit any action, including any action to sell, transfer, assign or encumber the Premises in any manner that would interfere with, disrupt or adversely affect such rail transportation, service or operations, except with the prior written consent of Tenant, (c) shall not, without the prior written consent of Tenant, remove, retire or alter any buildings, facilities, equipment, track and other rail facilities if the effect would be to interfere with, adversely affect or disrupt Tenant's rail operations or service, (d) shall permit Tenant or its sublessees, licensees, assignees or customers to construct, install and own buildings, facilities, equipment, track or other rail facilities on the Premises, and to remove or recover the value of any such buildings, facilities, equipment, track or other rail facilities in the event that they can no longer be used or accessed by any such sublessee, licensee, assignee or customer, (e) acknowledges and agrees that the Termination Date of this Lease shall not occur and Tenant shall be permitted to continue to occupy and use the Premises for rail transportation purposes unless and until the STB or any other governmental agency with jurisdiction has relieved Tenant

of its common carrier rail service obligations or authorized Tenant to abandon or discontinue its rail operations and service on the Premises and (f) shall permit Tenant to sublease, assign, license or permit occupation of portions of the Premises for rail transportation related businesses and activities and for the construction, installation and maintenance of buildings, facilities, equipment and other property related to or used in connection with rail transportation. For purposes of this Article 11, the consent of Tenant may be given or withheld for any reason in the sole judgment of Tenant.

ARTICLE 12.  
ENTRY ON PREMISES BY LANDLORD

12.01 Permission. Tenant shall permit Landlord and its authorized representatives, upon reasonable prior notice to Tenant, to enter the Premises at all reasonable times for the purpose of inspecting the Premises for compliance with the covenants and obligations of this Lease and to exercise any of its rights hereunder which require such entry; provided, however, that any such inspection shall not unreasonably interfere with rail operations of Tenant.

ARTICLE 13.  
INDEMNIFICATION

13.01 Indemnification Tenant shall indemnify and save Landlord harmless against and from all liabilities, obligations, damages, penalties, third party claims, costs, charges and reasonable expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term of this Lease:

- (a) any work or thing done in or on the Premises or any part thereof by Tenant or any party other than Landlord;
- (b) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof including any sidewalk or curb to the extent part of the Premises;
- (c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;
- (d) any accident, injury or damage to any person or property occurring in or on the Premises or any part thereof, including any sidewalk or curb to the extent part of the Premises; or
- (e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any third party claim arising out of any of the occurrences from which Tenant is required, pursuant to the preceding paragraph, to indemnify and save Landlord harmless against, Tenant upon written notice from Landlord shall at Tenant's expense defend such action or proceeding using legal



counsel reasonably satisfactory to Landlord. If Tenant has supplied Landlord with insurance policies covering any of the aforementioned risks no claim shall be made against Tenant unless and until the insurer shall fail or refuse to defend and/or pay all or any part thereof.

Notwithstanding the foregoing, to the extent necessary to preserve its rights, Landlord shall have the right to make claim, institute legal proceedings, or otherwise seek redress against Tenant prior to the expiration of any statute of limitations or other period or limitation limiting the time or manner in which Landlord may seek redress regardless of whether any insurer is responding or not. Notwithstanding the foregoing, no indemnification shall be provided by Tenant if the underlying damage, injury, or loss was caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

Landlord shall protect, indemnify, and hold the Tenant harmless from and against any and all loss, claims, liability or reasonable costs (including court costs and reasonable attorneys' fees) incurred by reason of any damage to any property (including but not limited to property of the Tenant) or any injury (including but not limited to death) to any person in or about the Premises to the extent such injury or damage shall be caused by or arise from any gross negligence or willful misconduct by Landlord or his employees or agents.

Landlord shall protect and ensure Tenant's access to the Premises consistent with Landlord's deeded easements for right to travel in common through each and every right of way to the Premises. Furthermore Landlord acknowledges the public safety easement for fire protection water furnished to the Premises and will protect the Tenant from any interference with the transmission of such fire protection water by any third party.

The foregoing provision of this Article (as well as any other provisions dealing with indemnity and the like by Tenant of Landlord) shall be deemed to be modified in each case by the insertion in the appropriate place of the language: "except as otherwise provided in M.G.L. c. 186, Section 15."

#### ARTICLE 14. IMPROVEMENTS

14.01 Improvements by Landlord NONE.

14.02 Improvements by Tenant. All improvements undertaken by Tenant shall be paid for in full by Tenant. Landlord shall have no responsibility to make any such payments for any improvements.

#### ARTICLE 15. CASUALTY AND EMINENT DOMAIN

15.01 Substantial Taking; Termination. In the event that the entire Premises or any substantial part thereof, shall be taken by any exercise of the right of eminent domain or shall receive any direct or consequential or substantial damages for which Landlord or Tenant or either of them shall be entitled to compensation by reason of anything lawfully done in pursuance of any public or other authority during the Term, then this Lease shall terminate at the election of Landlord, which election may be made notwithstanding Landlord's entire interest may not have been divested. If, in the sole judgment of Tenant, such taking or damage renders

the Premises unusable, uneconomical or burdensome for Tenant's business operations after such taking, Tenant shall have the right, effective when its possession or use is disturbed, to terminate this Lease by notice in writing to Landlord delivered within thirty (30) days of the first day on which Tenant's possession is so disturbed. At the option of Tenant, it may take appropriate legal or regulatory actions in order to prevent or minimize any taking by eminent domain or any other action that would render the Premises unusable, uneconomical or burdensome for Tenant's business operations. Any damages by reason of eminent domain or anything done in pursuance of any public or other authority shall be allocated equitably between Landlord and Tenant.

15.02 Termination by Tenant. If the Premises shall be substantially damaged by fire or other casualty such that Tenant reasonably determines that the Premises are unusable for the Tenant's business operations, then Tenant may terminate this Lease as of the date of the occurrence of such damage by written notice thereof to Landlord within thirty (30) days after the date of such damage, in which event this Lease shall terminate on the date set forth in such notice, and Landlord shall allow Tenant a fair diminution of payment of any Impositions from and after the date of such damage to the date of such termination of this Lease to the extent the Premises are unusable for the Tenant's business operations hereunder.

15.03 Landlord's Obligations; Abatement of Impositions Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such taking or damage or the repair thereof, provided that Landlord uses reasonable efforts to minimize inconvenience and disruption to Tenant during such repair or restoration, except that (i) Landlord shall allow Tenant a fair diminution of the payment of any Impositions during the time and to the extent the Premises are unusable for the Tenant's business operations, and (ii) in the event of a partial taking, a just proportion of Rent, similarly determined, shall be abated for the remainder of the Term.

## ARTICLE 16.

### ASSIGNMENTS AND SUBLEASES OF TENANT'S INTERESTS ARE ALLOWED

16.01 Assignment and Sublease If Tenant wishes to assign this Lease or sublease or assign all or any portion of the Premises, Tenant shall so notify Landlord in writing. Such notice shall include (i) the name of the proposed assignee, licensee or sublessee, (ii) a description of the use of the Premises by such sublessee, licensee or assignee, and (iii) such financial information concerning the proposed assignee, licensee or sublessee as Landlord may reasonably require.

(b) Upon the consummation of an assignment, license or sublease, (i) Tenant shall deliver to Landlord a fully executed copy of said assignment, license or sublease, and (ii) after any such assignment, license or sublease, Tenant shall remain primarily liable to Landlord hereunder (which liability shall be joint and several with the assignee or sublessee). Tenant shall give Landlord written documentation of any improvements to be made to the Premises by any assignee or sublessee, that substantially differ from the improvements made or to be made by the Tenant.

(c) Tenant shall not be entitled to enter into any assignment, license or sublease, or to request Landlord's consent thereto, during the continuance of an Event of Default hereunder by Tenant.

(d) Any assignment, license or sublease entered into pursuant to this Section 16.01 shall be subject to all of the terms and provisions of this Lease, including without limitation this Section 16.01. If Tenant enters into any such assignment, license or sublease, Landlord may, at any time and from time to time after the occurrence of an Event of Default hereunder, collect Impositions from such assignee or sublessee, and apply the net amount collected against Tenant's obligations hereunder.

#### ARTICLE 17. DEFAULT PROVISIONS

17.01 Events of Default. If any one or more of the following events (herein called "Events of Default") shall happen:

(a) If default shall be made in the due and punctual payment of any Impositions or other sums payable under this Lease or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after notice from Landlord to Tenant specifying the items in default; or

(b) If the leasehold hereby created shall be taken on execution, or by other process of law, and such taking is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if any assignment shall be made of Tenant's property for the benefit of creditors; or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of Tenant's assets by a court of competent jurisdiction, and such appointment is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if a petition is filed by Tenant under any bankruptcy or insolvency law; or if a petition is filed against Tenant under any bankruptcy or insolvency law and the same shall not be dismissed within sixty (60) days from the date upon which it is filed; or a lien or other involuntary encumbrance is filed against Tenant's leasehold (or against the Premises or any building thereon or part thereof based on a claim against Tenant) and, as to a lien under MGL chapter 254, is not discharged within the period set forth in Section 8.01 or, as to any other lien or encumbrance, is not discharged or bonded within thirty (30) days after the filing thereof; or

(c) If default shall be made by either party in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease provided other than those referred to in paragraphs (a) or (b) of this Section for a period of thirty (30) days after notice from the non-defaulting party to the defaulting party

specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, the defaulting party fails to proceed within the last mentioned thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with diligence (it being intended in connection with a default not susceptible of being cured with diligence within the last mentioned thirty (30) day period that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence);

then and in any such event the non-defaulting party at any time thereafter may give written notice to the defaulting party specifying such event or events of default and stating that this Lease and the Term hereby demised shall expire and terminate on a date not earlier than the Termination Date as defined in Article 11, and the Term and all rights of the defaulting party under this Lease, shall expire and terminate unless prior to the Termination Date the event or events of default shall have been cured, and the defaulting party shall remain liable as hereinafter provided. Landlord acknowledges, if it is the defaulting party, that Tenant would suffer irreparable harm which would be difficult to ascertain and quantify and for which immediate remedies at law would be inadequate and that Tenant shall be entitled to equitable relief therefor, including without limitation specific performance and temporary, preliminary and permanent injunctive relief, in addition to any and all other rights and remedies available to it at law or in equity.

17.02 Surrender. Upon any such expiration or termination of this Lease, but subject to the provisions of Article 11 above, Tenant shall, as of the Termination Date, quit and peacefully surrender the Premises to Landlord, and Landlord, upon or at any time after such Termination Date, may without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income from the same.

17.03 Relet. At any time or from time to time after any such Termination Date, but subject to the provisions of Article 11 above, Landlord may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its unfettered discretion, may determine and may collect and receive the rents therefore. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

17.04 Remedies.

(a) No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord any Impositions and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and

thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for liquidated and agreed current damages for Impositions and other charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting, after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(b) Tenant shall pay such current damages (herein called "deficiency") to Landlord, and Landlord shall be entitled to recover from Tenant each deficiency as the same shall arise.

(c) At any time after any such expiration or termination, in lieu of collecting any further annual deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the value of the then fair and reasonable rental value of the Premises for the same period, minus any such annual deficiencies previously recovered from Tenant.

17.05 No Waiver. No failure by either party to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

17.06 Injunction Relief. In the event of any breach or threatened breach by either party of any of the agreements, terms, covenants or conditions contained in this Lease, the other party shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

17.07 Reimbursement of Landlord's Expenses. Either party shall pay the other party's reasonable expenses, including reasonable attorneys' fees, incurred by the other party in enforcing any obligations of a defaulting party under this Lease.

17.08 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or

all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 18.  
TENANT'S OPTION TO PURCHASE  
INTENTIONALLY LEFT BLANKARTICLE 19

SIGNS

19.01 Signs. Tenant shall be permitted to place one or more signs on the Premises subject to Landlord's consent that will not be unreasonably withheld, conditioned or delayed.

ARTICLE 19.  
INVALIDITY OF PARTICULAR PROVISIONS

19.01 Separability. If any term or provisions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 20.  
NOTICES

20.01 Notices. Any and all disapprovals, objections, offers or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be deemed to have been duly given, delivered or served if and when sent by registered or certified mail, return receipt requested or by overnight courier with tracking and receipt service, addressed if to the Tenant to:

One Hundred Forty Realty Trust  
7 EDA Avenue  
Carver, MA 02330  
Attn: Jon Delli Priscoli

or to such other address as Tenant may from time to time designate by written notice to Landlord, or if to Landlord addressed to:

Grafton & Upton Railroad Company  
42 Westboro Road  
North Grafton, MA 01536  
Attn: Michael R. Milanoski

ARTICLE 21.  
COVENANT OF QUIET ENJOYMENT

21.01 Quiet Enjoyment. Tenant, upon paying the Fixed Rent other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by Landlord or anyone claiming by, through or under Landlord as such, subject, however, to the exceptions, reservations and conditions of this Lease.

ARTICLE 22.  
NO RENT ABATEMENT

22.01 No Abatement. Except as in this Lease otherwise expressly provided, no abatement, diminution or reduction of rent and other charges shall be claimed by or allowed to Tenant, or any person claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to the Premises, by virtue or because of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations or for any other cause or reason; provided that this provision shall not apply with respect to circumstances resulting from (i) Landlord's breach of its covenant of quiet enjoyment, (ii) a violation of Legal Requirements by reason of Hazardous Materials existing on the Premises on the date on which the 2008 Lease was executed, other than the conditions disclosed to Tenant as referred to in Section 8.01, or (iii) the gross negligence or willful misconduct of Landlord.

ARTICLE 23.  
ESTOPPEL CERTIFICATES

23.01 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten days after request by Landlord, certify by written instrument, duly executed, acknowledged and delivered, to Landlord, or any other person, firm, or corporation specified by Landlord:

- (a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;
- (b) whether or not, to the best knowledge of the person executing the certificate on behalf of Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of Tenant to be performed or complied with, and, if so, specifying the same;
- (c) the dates, if any, to which the Fixed Rent and other charges hereunder have been paid;
- (d) the date of expiration of the current Term; and
- (e) the Fixed Rent then payable under this Lease.

ARTICLE 24.  
WAIVER OF JURY TRIAL AND COUNTERCLAIMS

24.01 Waiver. The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Lease or any of its provisions, any negotiations in connection therewith, or Tenant's use or occupation of the Premises.

ARTICLE 25.  
CONSENT OF LANDLORD

25.01 Consents. Notwithstanding anything contained elsewhere in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against Landlord for money damages by reason of any reasonable refusal, reasonable withholding or reasonable delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance or injunction to enforce any such requirement.

ARTICLE 26.  
NO WAIVER

26.01 No Waiver. No acceptance by Landlord of a lesser sum than the Fixed Rent or Additional Rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

ARTICLE 27.  
DEPOSIT

27.01 Deposit. Tenant has deposited sufficient consideration with Landlord to bind this Lease.

ARTICLE 28.  
INTEGRATION; NO ORAL MODIFICATION; GOVERNING LAW

28.01 Integration. All prior understandings and agreements between the parties are merged within this agreement, which alone fully and completely sets forth the understanding of the parties; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the party against whom enforcement of the change or termination is sought.

28.02 Governing Law. This Lease Agreement shall be governed by the laws of the Commonwealth of Massachusetts.



ARTICLE 29.  
SUBORDINATION

29.01 Lease Subordinate. This Lease is and shall be subject and subordinate to any mortgage now or hereafter on the Premises, and to all advances under any such mortgage and to all renewals, amendments, extensions and consolidations thereof, provided that the holder of such mortgagee's interest enters into a non-disturbance and attornment agreement with Tenant which provides that in the event that such mortgagee succeeds to Landlord's interest hereunder, then, provided that Tenant is not in default hereunder beyond the cure period provided in this Lease, such party shall recognize and be bound by the terms of this Lease. In the event that the holder of any mortgage succeeds to Landlord's interest in the Premises or any portion thereof, Tenant hereby agrees to attorn to such mortgagee. In confirmation of such subordination, Tenant shall execute and deliver promptly any certificate in recordable form that Landlord or any mortgagee may reasonably request. Notwithstanding the foregoing provisions of this Section, the holder of any mortgage on the Premises may at any time subordinate its mortgage to this Lease by written notice to Tenant.

ARTICLE 30.  
COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES

30.01 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, and any successors and assigns.

ARTICLE 31.  
RECORDING OF NOTICE OF LEASE

31.01 Recording. Landlord and Tenant mutually agree that a notice of this Lease may be recorded with the appropriate recording office in the state in which the Premises are located.

ARTICLE 32.  
CAPTIONS AND TABLE OF CONTENTS

32.01 References. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

32.02 Table of Contents. The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

ARTICLE 33.  
FORCE MAJEURE

33.01 Force Majeure. Neither Landlord nor Tenant shall be deemed to be in default hereunder (and the time for performance of any of their respective obligations hereunder other than the payment of money shall be postponed) for so long as the performance of such obligation

is prevented by strike, lock-out, act of God, absence of materials or any other matter not reasonably within the control of the party which must perform the obligation (collectively, "Force Majeure").

ARTICLE 34.  
CONSTRUCTION

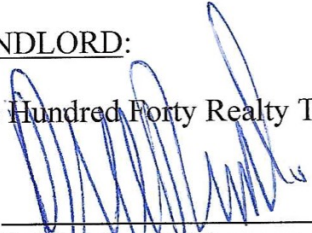
34.01 Construction. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term Landlord whenever used herein, shall mean only the owner at the time of Landlord's interest herein, and no covenant or agreement of Landlord, express or implied, shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any agent, fiduciary, shareholder, officer, director or partner of Landlord, and the liability of Landlord, in any event, shall be limited to Landlord's interest in the Premises. Unless repugnant to the context, "Landlord" and "Tenant" mean the person or persons, natural or corporate, named above as Landlord and as Tenant respectively, and their respective heirs, executors, administrators, successors and assigns.

This LEASE is made between One Hundred Forty Realty Trust, a Massachusetts Trust, with offices at 7 EDA Avenue, Carver, MA 02330 ("Landlord") and the Grafton & Upton Railroad Company, a Massachusetts corporation with offices at 42 Westboro Road, North Grafton, Massachusetts 01536 ("Tenant").

EXECUTED as an instrument under seal as of the date first above written.

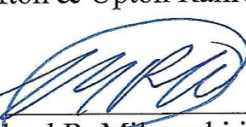
LANDLORD:

One Hundred Forty Realty Trust

By:   
Jon DelliPriscoli, Manager, duly authorized,  
of One Hundred Forty Realty Trust, a  
Massachusetts Trust

TENANT:

Grafton & Upton Railroad Company

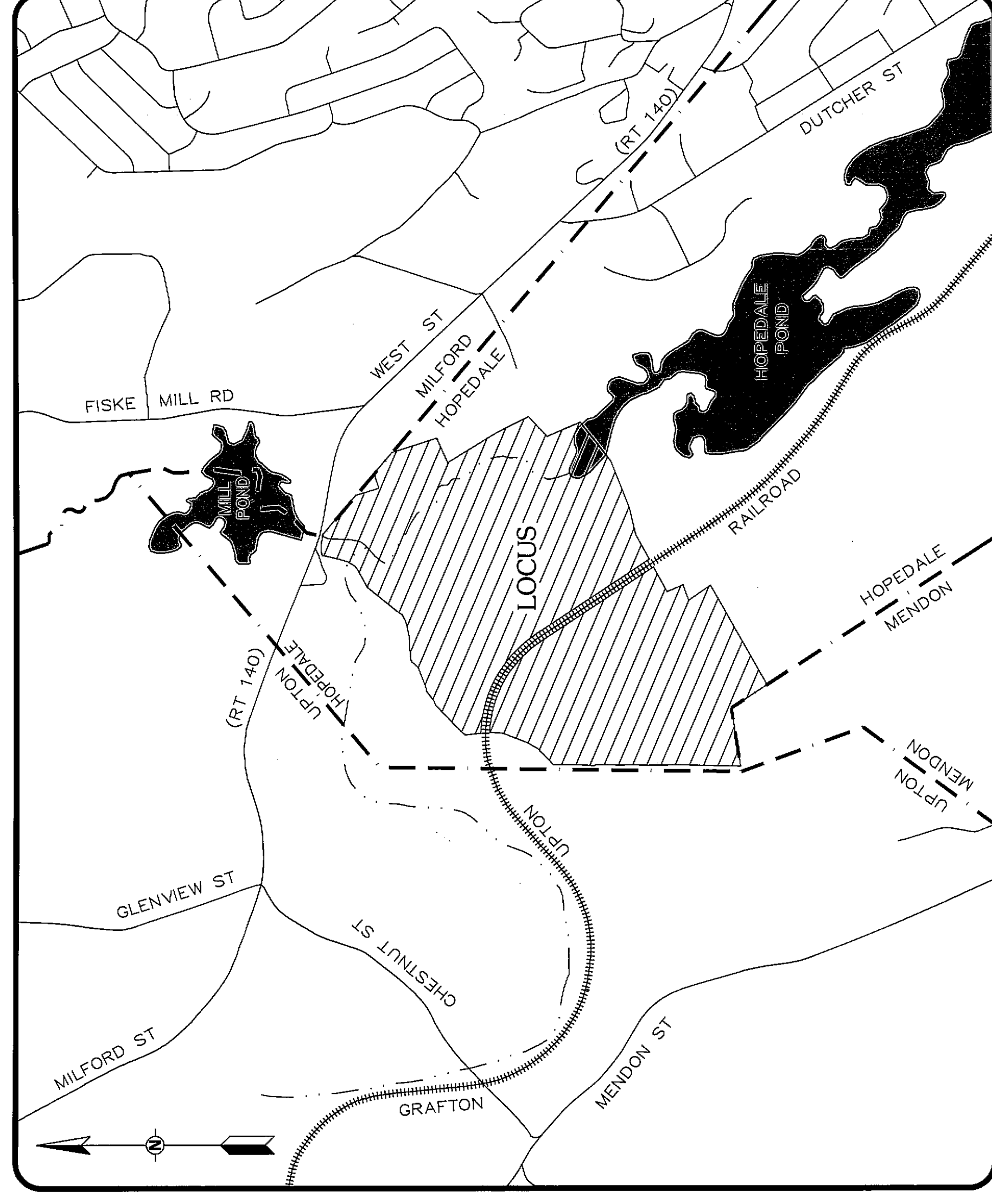
By:   
Michael R. Milanoski its President duly  
authorized

**EXHIBIT I**

Plan of Land, Grafton and Upton Railroad,  
364 West Street, Hopedale MA, Existing Boundary

# PLAN OF LAND GRAFTON & UPTON RAILROAD

364 WEST STREET  
(WORCESTER COUNTY)  
HOPEDALE, MASSACHUSETTS



**ASSESSORS REFERENCES**

ASSESS. PARCEL ID: 2-5-0  
(TRACTS 1, 2, 3, 4, & 5)  
ASSESS. PARCEL ID: 3-1-0  
(18 AC. TRACT)

**WORCESTER COUNTY**

**PLAN REFERENCES**

PB 826 PL 85 PB 352 PL 81  
PB 817 PL 4 PB 338 PL 92  
PB 788 PL 85 PB 226 PL 113  
PB 782 PL 3 PB 183 PL 63  
PB 674 PL 52 PB 169 PL 46  
PB 480 PL 59 PB 13 PL 73

**HOPEDALE TOWN RECORD**

**PLAN REFERENCES**

1960 HOPEDALE ASSESSOR'S MAP  
1949 HOPEDALE TOWN BOUNDARY  
PLAN BY R. SMETHURST  
1915 HOPEDALE ASSESSOR'S MAP

**RAILROAD**

1909 GRAFTON & UPTON  
RAILROAD PLAN  
BY R.E. ALLEN & SON

**OWNER**

ONE HUNDRED FORTY REALTY TRUST  
42 WESTBORO ROAD  
NORTH GRAFTON, MA 01536

**DEED REFERENCES**

DEED BK 65363 PAGE 65  
(TRACTS 1 & 2 & 18 AC. TRACT)  
DEED BK 73222 PAGE 181  
(TRACTS 3, 4, & 5)

**LIBRARY OF CONGRESS**

1904 PLAN OF LAND BY THE PARK  
COMMISSIONERS OF HOPEDALE  
1870 TOWN MAP OF MILFORD  
BY F.W. BEERS & CO.  
1857 MAP OF WORCESTER COUNTY  
BY H.F. WALLING  
1851 TOWN MAP OF MILFORD  
BY O. HARKNESS  
1851 TOWN MAP OF UPTON  
BY H.F. WALLING  
1830 TOWN MAP OF MENDON  
BY NEMELL NELSON

**PARCEL LINE TABLE**

Line #	Length	Direction
L1	611.32	N01° 10' 56"E
L2	190.60	N00° 43' 30"W
L3	86.96	N00° 48' 48"W
L4	121.33	N01° 28' 22"E
L5	158.71	N00° 23' 50"W
L6	207.24	N01° 18' 13"E
L7	73.76	N04° 41' 04"E
L8	137.72	N02° 40' 48"E
L9	180.94	N00° 10' 59"W
L10	213.37	N45° 50' 41"E
L11	104.02	N30° 29' 59"E
L12	42.98	N24° 10' 06"E
L13	39.26	N19° 26' 48"E
L14	93.41	N21° 30' 38"E
L15	75.06	N21° 39' 01"E
L16	44.94	N09° 49' 09"E
L17	93.19	N01° 27' 44"E
L18	83.13	N05° 10' 36"W
L19	148.17	N05° 57' 57"W
L20	47.28	N40° 01' 39"E

**PARCEL LINE TABLE**

Line #	Length	Direction
L21	98.54	N44° 34' 16"E
L22	257.96	N48° 19' 28"E
L23	36.94	N72° 25' 40"E
L24	113.81	N52° 37' 15"E
L25	27.23	N75° 50' 35"E
L26	225.22	N69° 13' 17"E
L27	75.37	N44° 01' 10"E
L28	34.27	N60° 51' 44"E
L29	94.33	N66° 01' 19"E
L30	122.29	N66° 41' 04"E
L31	110.05	N77° 13' 17"E
L32	42.99	N74° 14' 55"E
L33	69.44	N61° 46' 09"E
L34	66.27	N34° 20' 25"E
L35	85.76	N39° 16' 01"E
L36	270.37	N39° 00' 48"E
L37	182.46	N61° 20' 45"E
L38	55.91	N53° 44' 19"E
L39	73.35	N31° 21' 50"E
L40	85.92	N16° 41' 40"E

**PARCEL LINE TABLE**

Line #	Length	Direction
L41	115.29	N13° 54' 01"E
L42	58.03	N10° 38' 22"E
L43	38.36	S78° 12' 06"E
L44	24.17	N49° 50' 37"W
L45	271.20	S78° 53' 24"E
L46	238.25	S79° 47' 16"E
L47	286.02	S73° 39' 46"E
L48	66.00	N46° 35' 09"E
L49	232.77	S16° 57' 24"E
L50	109.93	N72° 13' 36"E
L51	41.66	N77° 14' 36"E
L52	29.90	S49° 50' 37"E
L53	34.75	S49° 50' 37"E
L54	52.24	S18° 21' 23"E
L55	209.16	S17° 27' 17"E
L56	187.45	S18° 07' 53"E
L57	14.70	S45° 45' 29"W
L58	82.80	S61° 19' 22"W
L59	165.00	S23° 13' 37"E
L60	157.42	S70° 28' 28"W

**PLAN NOTES**

- THE PROPERTY LINES AND EXISTING CONDITIONS SHOWN HEREON ARE THE RESULT OF AN ON-THE-GROUND INSTRUMENT SURVEY PERFORMED BY LIGHTHOUSE LAND SURVEYING LLC BETWEEN MARCH AND APRIL 2021.
- SURVEY TRAVERSE POINTS 2, 19, AND 50 WERE OBSERVED WITH A CARLSON BRX4+ GPS RECEIVER. STATIC OBSERVATIONS WERE PERFORMED ON MARCH 22, 2021. POSITIONS WERE OBTAINED FROM NGS OPUS SOLUTIONS.
- HORIZONTAL DATUM:**  
MASSACHUSETTS STATE PLANE - MAINLAND ZONE NAD83 (2011)  
EPOCH 2010.00 - US FEET
- VERTICAL DATUM:**  
NORTH AMERICAN VERTICAL DATUM OF 1988 (GEOID 12E) - US FEET
- ALL ON-THE-GROUND OBSERVATIONS WERE PERFORMED USING LEICA TS12 (3") ROBOTIC TOTAL STATIONS.
- THE LEGAL STATUS OF THE STREETS AND/OR WAYS SHOWN HEREON, WHETHER THEY ARE PUBLIC OR PRIVATE, WAS NOT MADE PART OF THIS SURVEY.
- CARPENTER ROAD IS AN ANCIENT WAY OF VARIABLE WIDTH RANGING FROM 1 ROD TO 2 RODS WIDE AND BOUNDED BY INTERMITTENT STONEWALLS ON BOTH SIDES. THE WAY IS DESCRIBED IN DEEDS DATING BACK TO 1844 (SEE DB 387 PG 630) AND ILLUSTRATED ON MAPS AND PLANS DATED BACK TO 1830 (SEE TOWN OF HOPEDALE & LIBRARY OF CONGRESS PLAN REFERENCES).
- OWNERS NAMES SHOWN HEREON ARE BASED UPON ASSESSORS INFORMATION OBTAINED AS OF THE DATE OF THE SURVEY. IT DOES NOT REPRESENT A CERTIFICATION OF TITLE NOR DOES IT GUARANTEE THE OWNERSHIP OF LOCUS OR ABUTTING PROPERTIES.
- SEVERAL FOOTPATHS CROSS THE PROPERTY LINE AT VARIOUS LOCATIONS AS ILLUSTRATED HEREIN. NO EVIDENCE WAS FOUND IN THE PUBLIC RECORD OF ANY RIGHTS OF WAY.

**PARCEL CURVE TABLE**

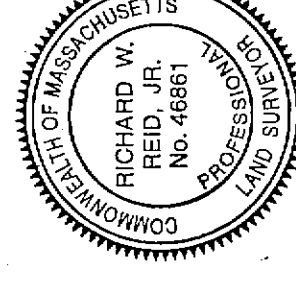
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	157.03	388.39	23° 06' 22"	S89° 45' 17"E	155.971
C2	83.98	388.39	12° 21' 26"	S72° 30' 49"W	83.818
C3	241.01	388.39	35° 27' 47"	N84° 04' 00"E	237.183
C4	11.85	2033.00	0° 20' 03"	S75° 03' 08"E	11.854
C5	130.24	2032.87	3° 40' 15"	S77° 03' 17"E	130.222
C6	391.78	1052.00	21° 20' 16"	S54° 24' 04"E	389.520

I CERTIFY TO THE EXISTENCE OF THE FOLLOWING:

THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 250 CMR 6.00.

THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THAT THE LINES OF STREETS AND WAYS ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.



*Richard W. Gailor*  
PROFESSIONAL LAND SURVEYOR  
JUNE 15, 2021  
DATE

WORCESTER DISTRICT REGISTRY  
OF DEEDS, WORCESTER, MA

PLAN BOOK: 959 PLAN: 48  
Received: 6/17/21  
Sheet: 10 of 18

Fee: \$ 210.  
ATTEST: *Richard W. Gailor*  
Register

REGISTRY USE ONLY

REVISIONS:

REV #	DATE	DESCRIPTION

DRWN BY: ZRB  
CHK'D BY: PSB  
APRVD BY: RWR

PREPARED BY:  
**EDC** Engineering Design Consultants, Inc.  
32 Turnpike Road  
Southborough, Massachusetts  
(508) 480-0225

PROJECT:  
GRAFTON & UPTON RAILROAD  
364 WEST STREET  
(WORCESTER COUNTY)  
HOPEDALE, MASSACHUSETTS

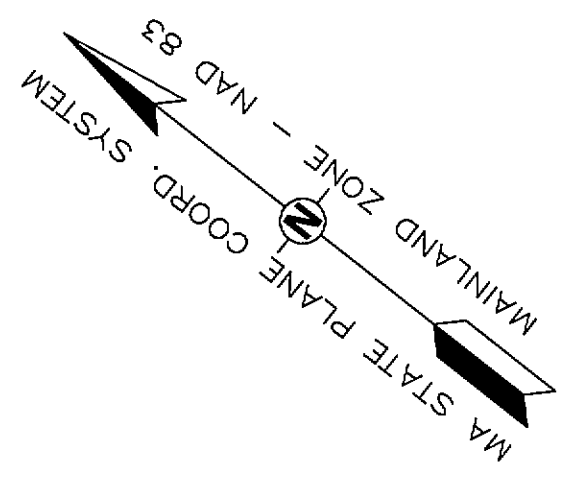
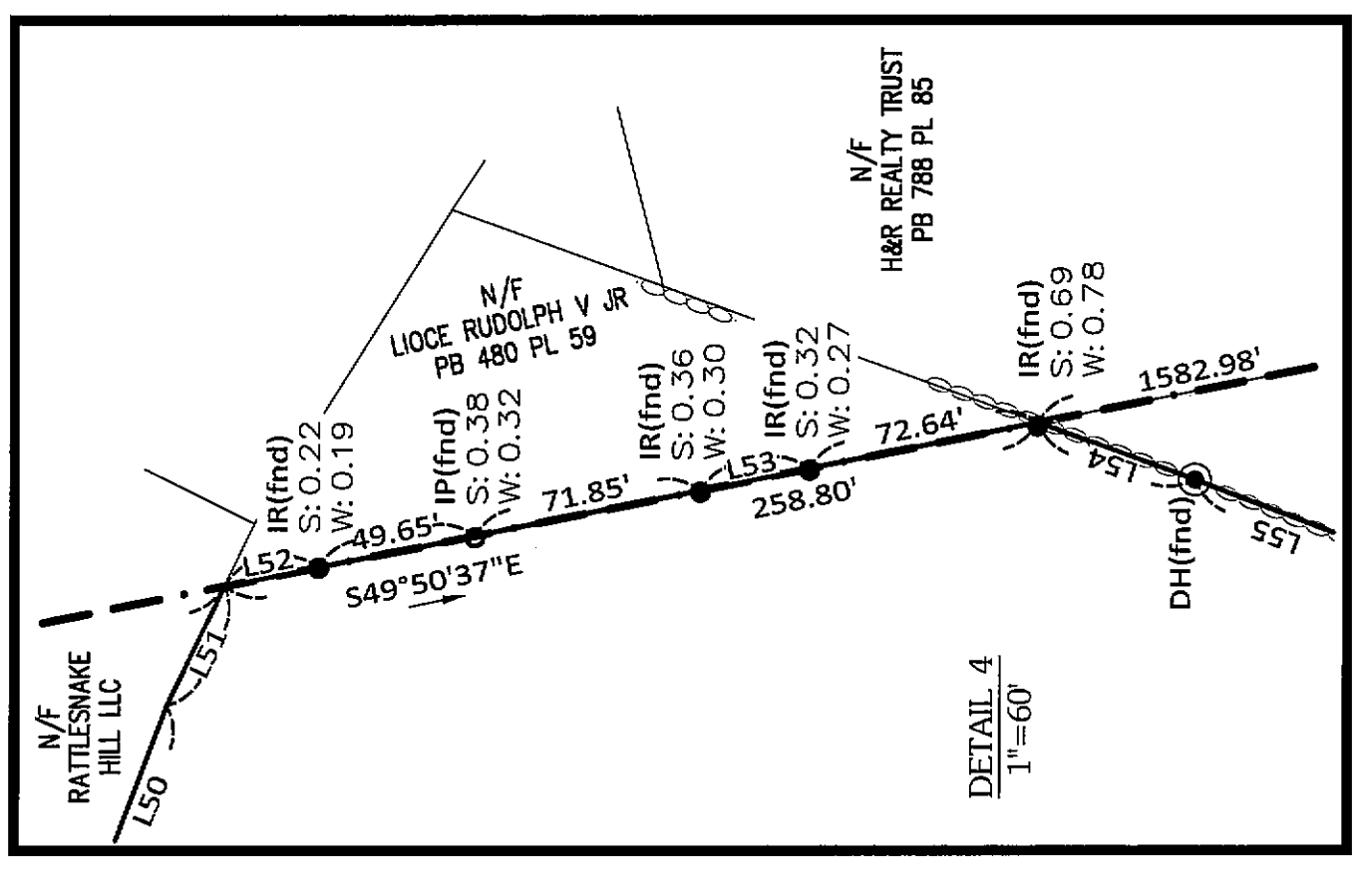
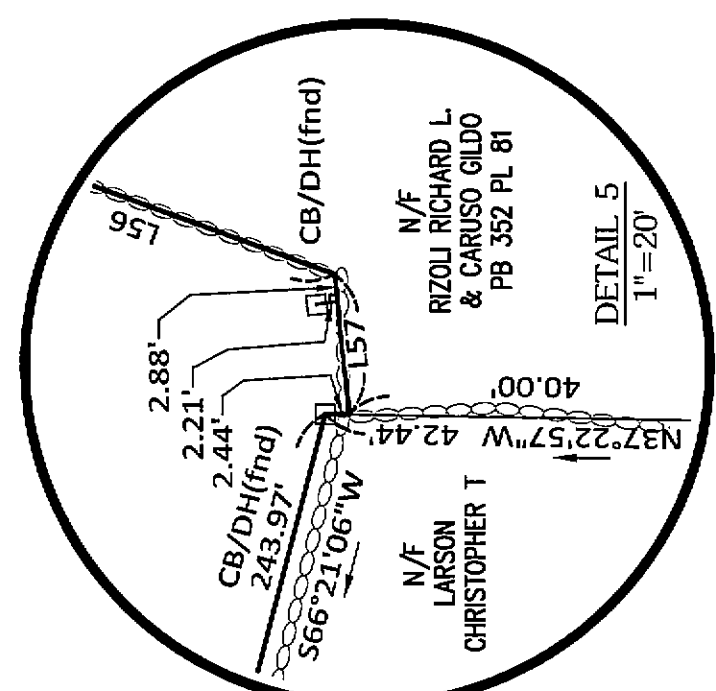
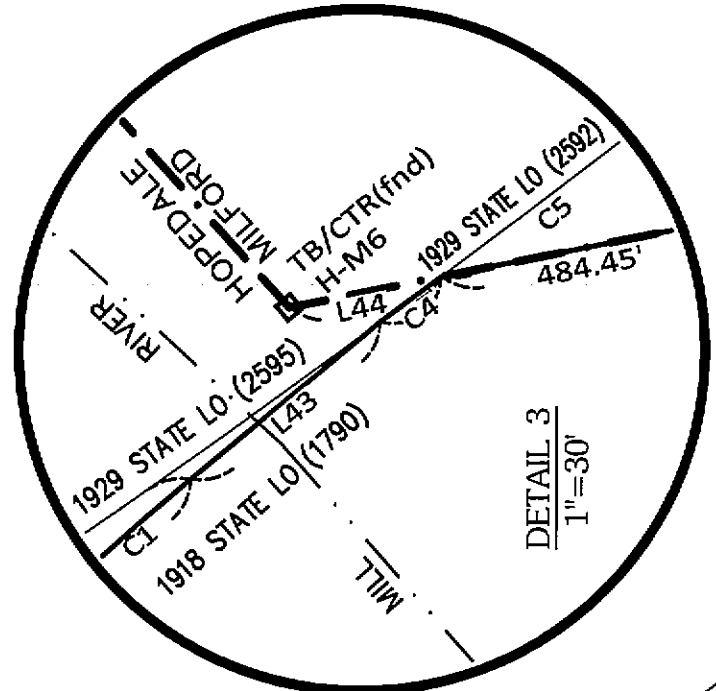
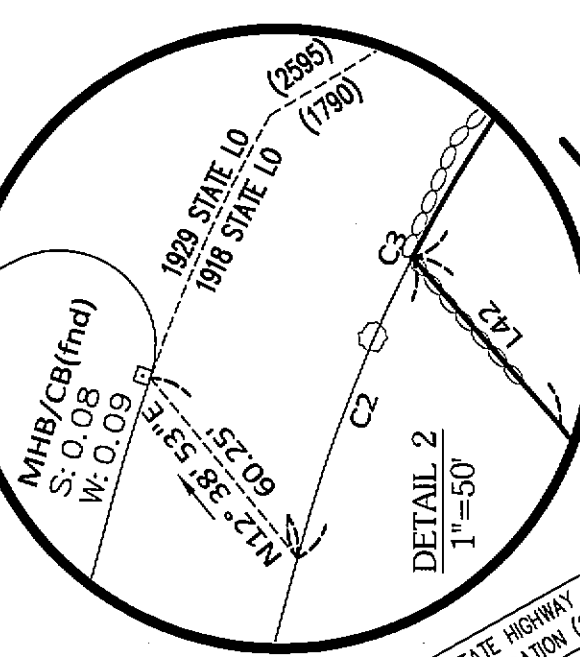
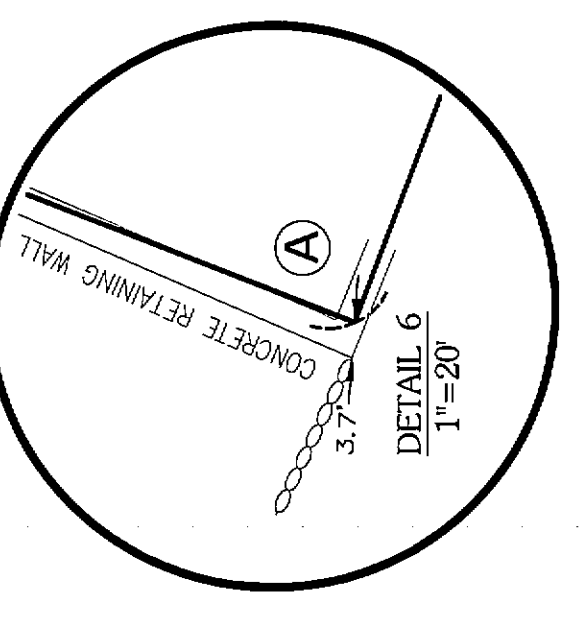
TITLE:  
EXISTING BOUNDARY  
PLAN OF LAND

PREPARED FOR:  
Grafton & Upton Railroad Company  
42 Westboro Road  
North Grafton, Massachusetts 01536

DATE: JUNE 15, 2021  
1 OF 2  
EDC PROJECT NUMBER  
3659

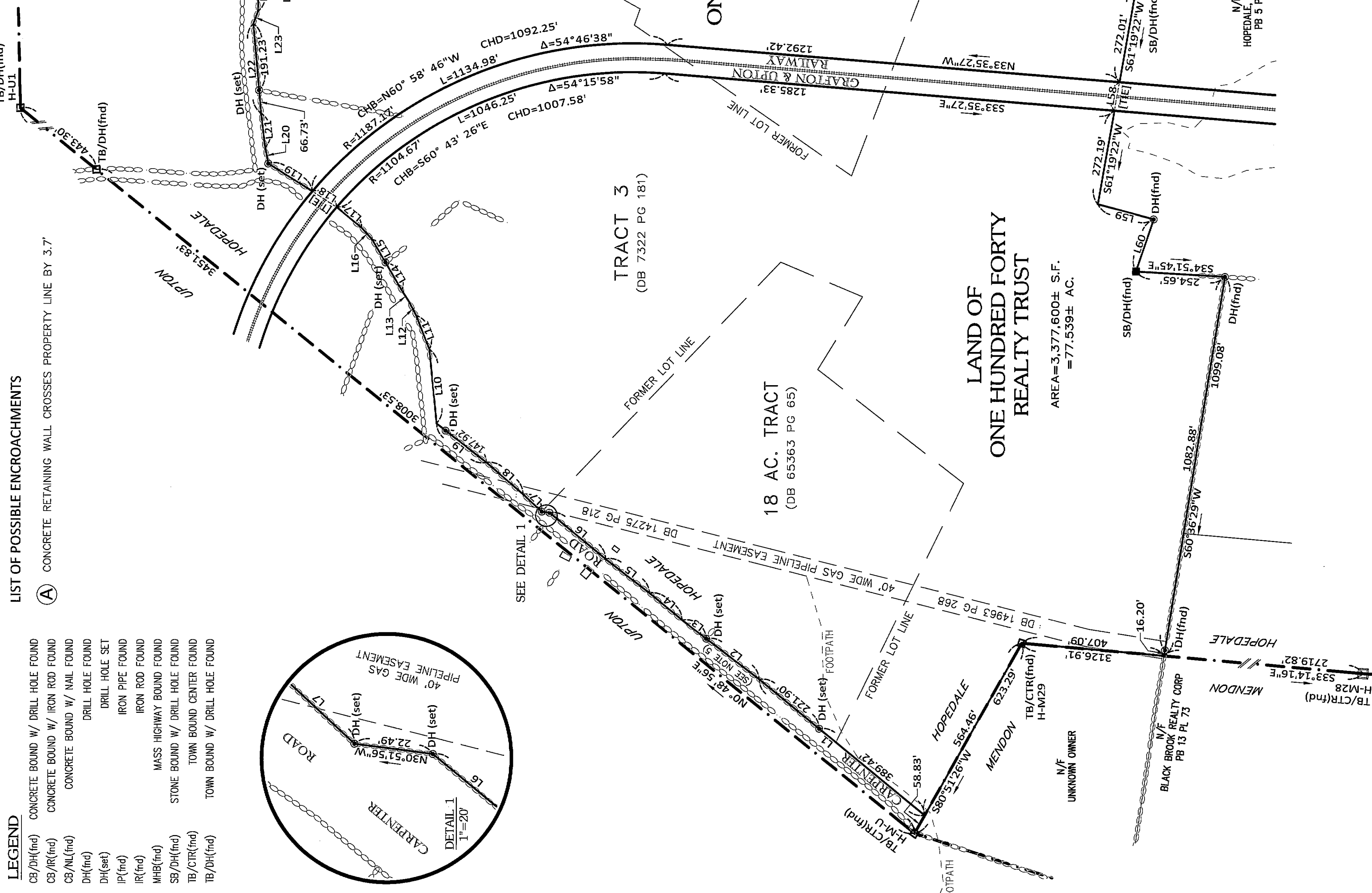
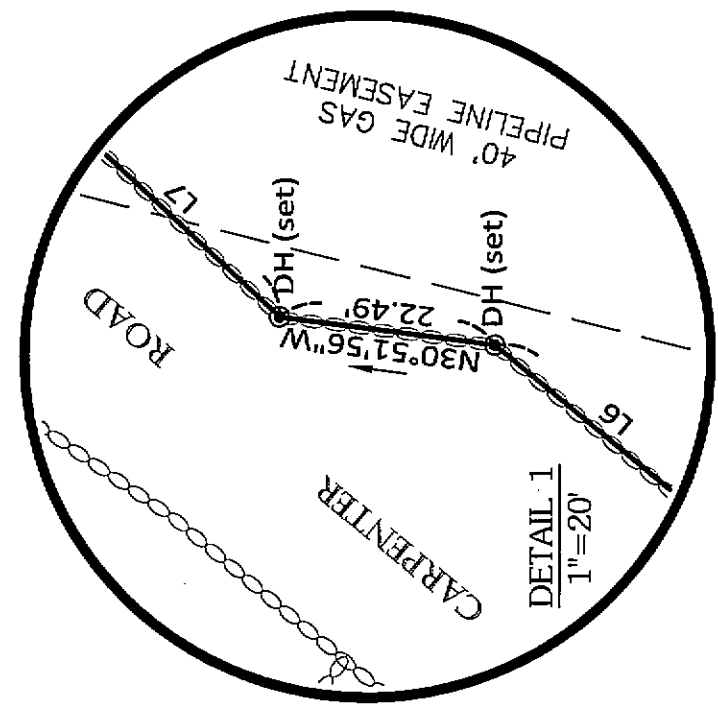
PLAN BOOK 957 PLAN 18  
SHEET 2 OF 2

REGISTRY USE ONLY

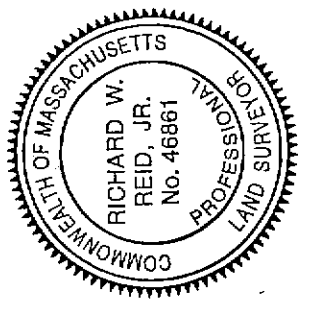


- LIST OF POSSIBLE ENCROACHMENTS
- (A) CONCRETE RETAINING WALL CROSSES PROPERTY LINE BY 3.7'

- LEGEND
- CS/DH(fnd) CONCRETE BOUND W/ DRILL HOLE FOUND
  - CS/IR(fnd) CONCRETE BOUND W/ IRON ROD FOUND
  - CS/NL(fnd) CONCRETE BOUND W/ NAIL FOUND
  - DH(fnd) DRILL HOLE FOUND
  - IP(fnd) DRILL HOLE SET
  - IR(fnd) IRON PIPE FOUND
  - MHB(fnd) IRON ROD FOUND
  - SB/DH(fnd) MASS HIGHWAY BOUND FOUND
  - Tbl/CTR(fnd) TOWN BOUND CENTER FOUND
  - TB/DH(fnd) TOWN BOUND W/ DRILL HOLE FOUND



I CERTIFY TO THE EXISTENCE OF THE FOLLOWING:  
 THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 250 CMR 6.00.  
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*Richard W. Gidd*  
 PROFESSIONAL LAND SURVEYOR

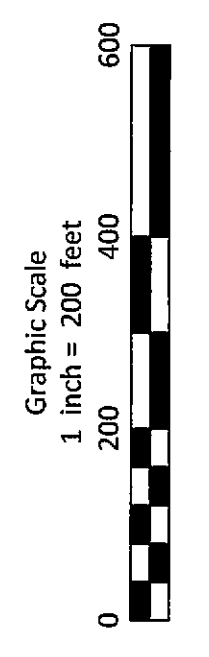
DATE: JUNE 15, 2021

DATE: JUNE 15, 2021  
 2 OF 2  
 EDC PROJECT NUMBER 3659

TITLE: EXISTING BOUNDARY PLAN OF LAND  
 PREPARED FOR: Grafton & Upton Railroad Company  
 42 Westboro Road  
 North Grafton, Massachusetts 01536

PROJECT: GRAFTON & UPTON RAILROAD  
 364 WEST STREET  
 (WORCESTER COUNTY)  
 HOPEDALE, MASSACHUSETTS


PREPARED BY: Engineering Design Consultants, Inc.  
 32 Turnpike Road  
 Southborough, Massachusetts  
 (508) 480-0225

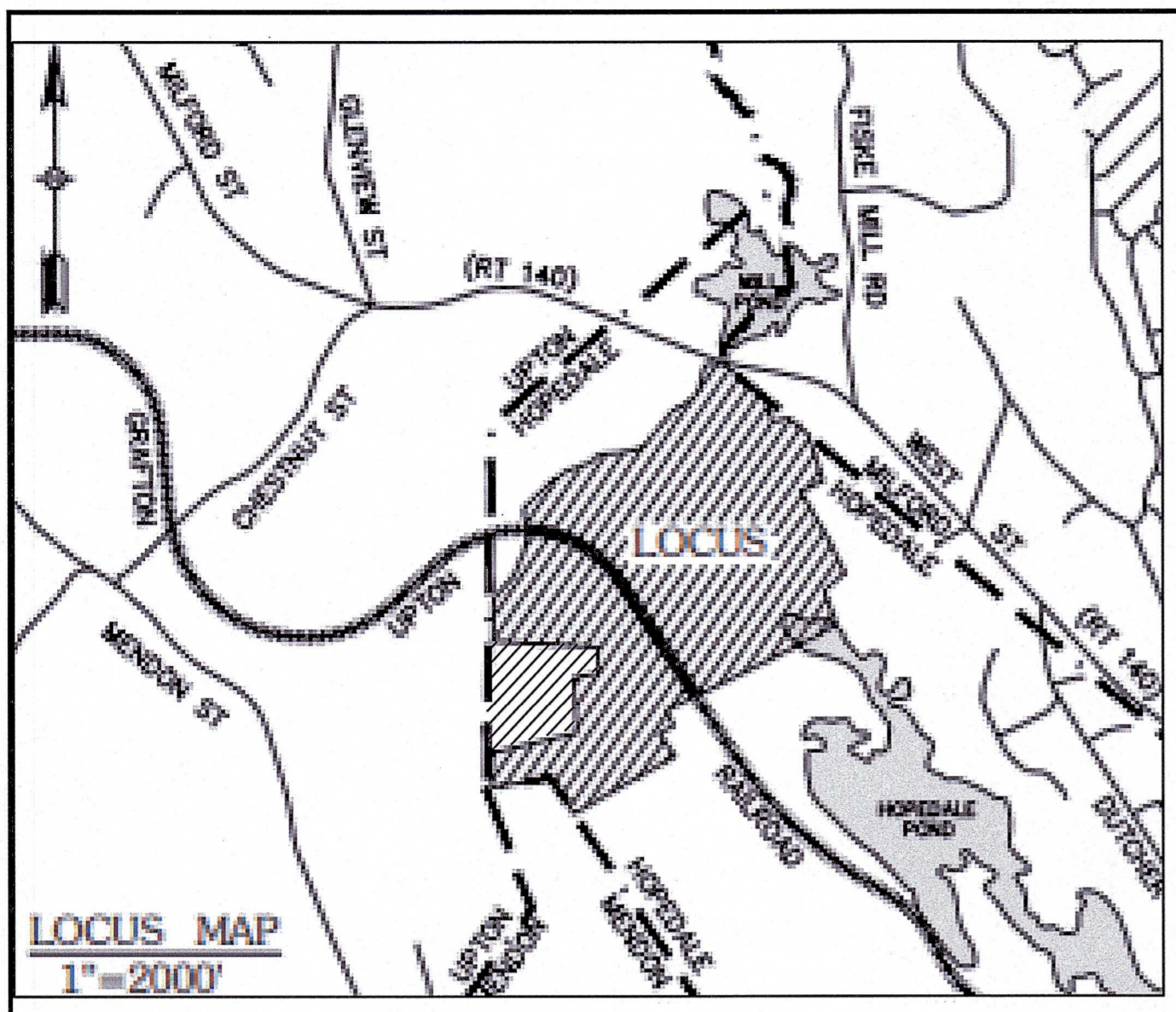


REV #	DATE	DESCRIPTION
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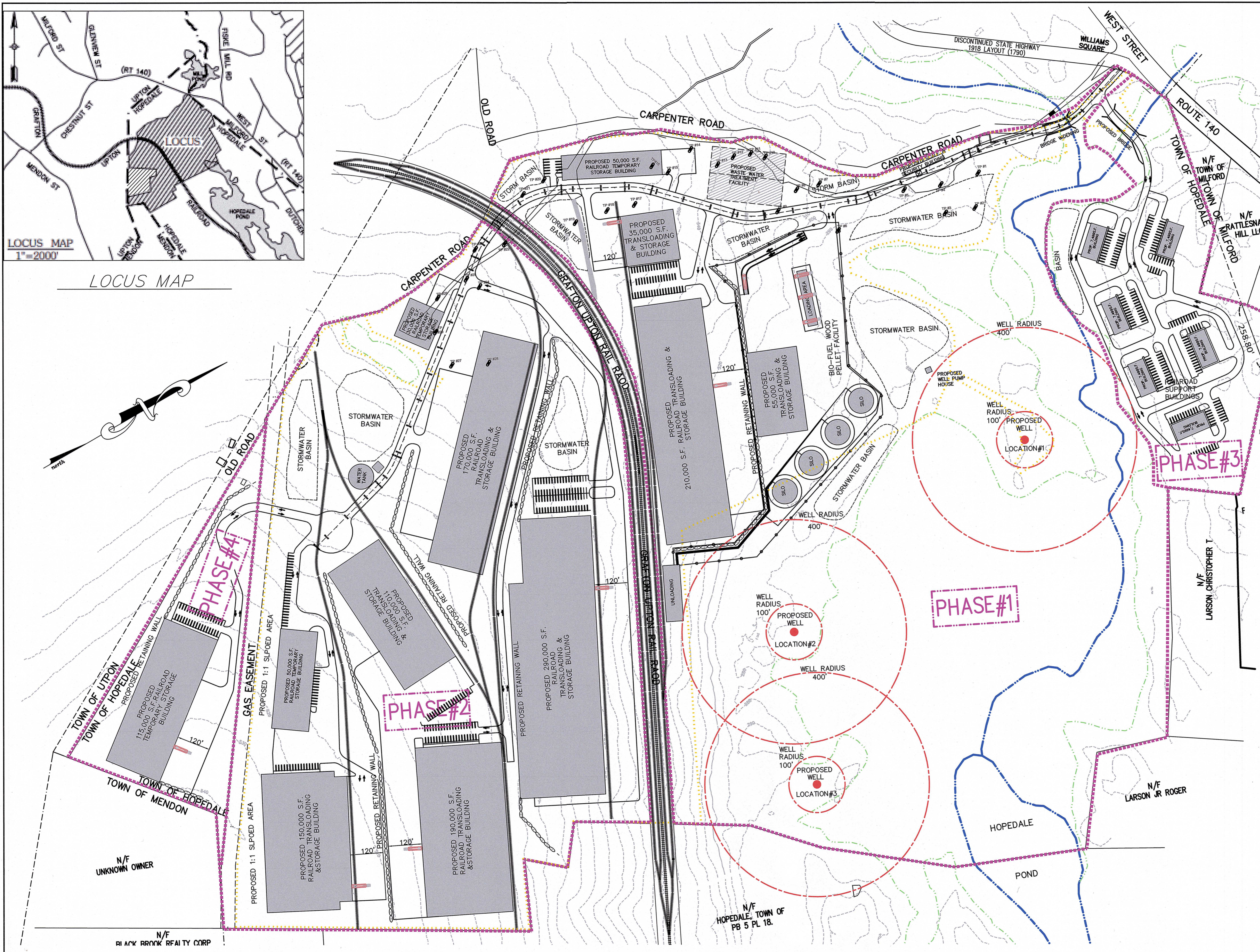
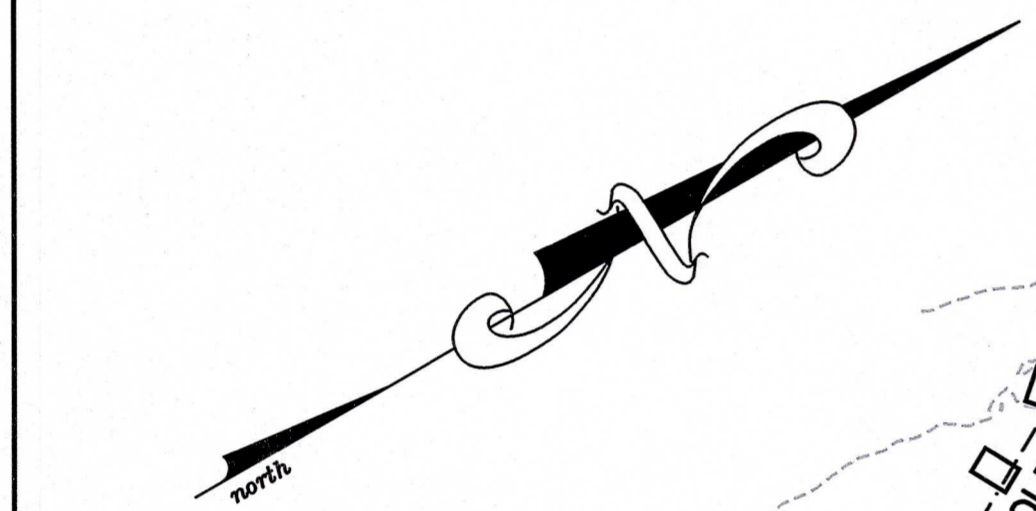
DRAWN BY: ZSB  
 CHECKED BY: FSB  
 APPROVED BY: RWR

## **EXHIBIT 2**

<b>PE</b>	<b>PLS</b>
 MICHAEL DEAN No. 46255 PROFESSIONAL ENGINEER	



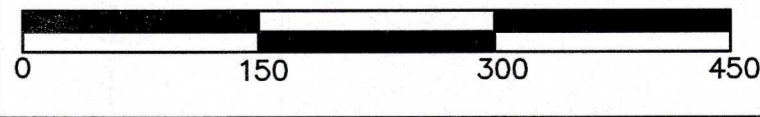
LOCUS MAP



- NOTES:
1. THIS IS A DEVELOPMENT MASTER PLAN THAT WILL BE USED FOR THE FRAMEWORK FOR THE FUTURE CONSTRUCTION OF THE PARCEL.
  2. ALL EXISTING TOPOGRAPHY WAS TAKEN FROM NOAA ACCESS VIEWER AND SHALL BE VERIFIED PRIOR TO START OF DESIGN ON THE PARCEL.
  3. PROPOSED STORMWATER BASINS SHOWN ON THIS PLAN HAVE BEEN SIZED FOR THE TOTAL BUILD OUT SHOWN ON THESE PLANS.
  4. ALL TRAIN RAILS SHOWN ON THIS PLAN HAVE BEEN DESIGNED USING 2.5% SLOPES MAXIMUM. PROPERTY SURVEY HAS BEEN COMPLETED BY ENGINEERING DESIGN CONSULTANTS, INC. AND OVERALL PROPERTY LINES HAVE BEEN TAKEN FROM SURVEY PERFORMED BY ENGINEERING DESIGN CONSULTANTS, INC.
  5. ALL WETLANDS SHOWN ON THIS PLAN HAVE BEEN TAKEN FROM MASSGIS.

364 WEST STREET  
 TITLE:  
**GU Railroad's Metrowest  
 Transloading &  
 Logistics Center**  
 in  
 HOPEDALE, MA

 **D&L Design Group**  
 115 Water Street • Milford, MA 01757  
 P: (508) 408-2577  
 www.dandlgroup.com

SCALE: 1"=150 FEET  


SCALE: AS SHOWN  
 DATE: MAY 21, 2021  
 REV. 7/8/22 REV. 8/1/22  
 JOB NO: J-012  
 PLAN NO: SITE - PLAN  
 SHEET NO: 1 OF 1

**Rail Development Plan**

N/F BLACK BROOK REALTY CORP

N/F HOPEDALE, TOWN OF PB 5 PL 18.

N/F LARSON JR ROGER

N/F LARSON CHRISTOPHER T.

N/F RATTLESNAKE HILL LLC

N/F TOWN OF MILFORD

TOWN OF HOPEDALE

WEST STREET

ROUTE 140

CARPENTER ROAD

CARPENTER ROAD

OLD ROAD

PROPOSED 170,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 290,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 190,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 150,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 50,000 S.F. RAILROAD STORAGE BUILDING

PROPOSED 35,000 S.F. TRANSLOADING & STORAGE BUILDING

PROPOSED 50,000 S.F. RAILROAD STORAGE BUILDING

PROPOSED 50,000 S.F. RAILROAD STORAGE BUILDING

PROPOSED 115,000 S.F. RAILROAD TEMPORARY STORAGE BUILDING

PROPOSED 115,000 S.F. RAILROAD TEMPORARY STORAGE BUILDING

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PROPOSED 115,000 S.F. RAILROAD TEMPORARY STORAGE BUILDING

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

Plaintiffs )

vs. )

TOWN OF HOPEDALE, THE HOPEDALE )  
SELECT BOARD, by and through its members, )  
GLENDA HAZARD, BERNARD STOCK, )  
and BRIAN KEYES and THE HOPEDALE )  
CONSERVATION COMMISSION by and )  
through its members, BECCA SOLOMON, )  
MARCIA MATTHEWS and DAVID )  
GUGLIELMI )

Defendants )

Case No. 4:22-cv-40080-ADB

**AFFIDAVIT OF MICHAEL R. MILANOSKI IN RESPONSE TO MOTION OF TOWN  
OF HOPEDALE’S SUPPLEMENTAL MEMORANDUM**

Now comes Michael R. Milanoski, who on oath deposes and says as follows:

1. I have personal knowledge of the facts set forth in this Affidavit.
2. I have read the Town’s Supplemental Memorandum in Further Opposition to Plaintiffs’ Motion for Preliminary Injunction, in which the Town submitted a copy of the Complaint that was filed on my behalf in Suffolk County Superior Court in January 2023.
3. The claims I have asserted in the Suffolk County lawsuit do not, and will not affect the Grafton & Upton Railroad Company’s development plans for its Metrowest Transloading & Logistics Center at 364 West Street, as there is a lease between One Hundred Forty Realty Trust and G&U for the 364 West Street site.



4. I have attached hereto as Exhibit 1 a true and accurate copy of the June 30, 2021 Amended and Restated Lease Agreement between One Hundred Forty Realty Trust and Grafton & Upton Railroad Company.

5. The initial term of this Amended and Restated Lease is for a period of thirty (30) years through October 14, 2052 with automatic 3-year renewals.

6. A true and accurate copy of the most recent Site Plan for the 364 West Street site – entitled “GU Railroad’s Metrowest Transloading & Logistics Center in Hopedale, MA” dated August 1, 2022, is attached hereto as Exhibit 2. This is not a final plan as G&U’s efforts to develop the property have been tied up as a result of this lawsuit and prior state court litigation, but it represents a realistic conceptual plan based on information we know about the site.

7. If, as and when I am successful in purchasing the G&U with other shortline railroad operators, I have no doubt that the 364 West Street property will be developed and operated by the Grafton and Upton Railroad Company consistent with the framework illustrated in the attached Plan. The Town’s proposed taking of 364 West Street will interfere with the plans of G&U to develop that site into a state-of-the-art rail transportation and transloading facility.

Signed under the penalties of perjury this 6th day of February 2023.



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Michael R. Milanoski

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to counsel of record for all parties on this 7<sup>th</sup> day of February 2023.

/s/ Donald C. Keavany, Jr.

# **EXHIBIT 1**

## AMENDED AND RESTATED LEASE AGREEMENT

This AMENDED AND RESTATED LEASE AGREEMENT (the “Lease”) is made as of June 30, 2021 by and between One Hundred Forty Realty Trust, a Massachusetts Trust, with offices at 7 EDA Avenue, Carver, MA 02330 (“Landlord”) and Grafton & Upton Railroad Company, a Massachusetts corporation with offices at 42 Westboro Road, North Grafton, Massachusetts 01536 (“Tenant”).

WHEREAS, Landlord and Tenant entered into a Lease Agreement as of October 14, 2020; and

WHEREAS, Landlord and Tenant wish to amend the Lease Agreement and restate it pursuant to and in accordance with the terms and conditions of this Lease;

WHEREAS, in particular, this Lease recognizes that the Premises, as defined below, have increased in size subsequent to the Lease Agreement dated as of October 14, 2020 by reason of a Settlement Agreement and Mutual Release among Landlord, Tenant and the Town of Hopedale, Massachusetts;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1. PREMISES - TERM OF LEASE

1.01 Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described premises (hereinafter called the “Premises”); The land in Hopedale, Worcester County, Massachusetts located on the westerly side of Route 140 thereon shown as plan recorded at the Worcester County Registry of Deeds Plan Book 957, Plan 48 (2-sheets), on June 17, 2021 at 10:18AM, titled Plan of Land, Grafton and Upton Railroad, 364 West Street, Hopedale MA, Existing Boundary Plan of Land prepared by Engineering Design Consultants, Inc on June 15, 2021 containing 194.101 acres of land, more or less, hereinafter referred to as the “Premises” See attached plan in Exhibit I.

1.02 Condition of the Premises. Tenant acknowledges that it has entered into this Lease after a full and complete examination thereof, legal title, their present uses and non-uses, and law, ordinances, and regulations affecting the same and, agrees to accept the same in the same condition in which they or any part thereof now are and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Landlord, except as set forth below, and without recourse to Landlord as to the legal title thereto, the nature, condition or useability thereof, or the use to which the Premises, or any part thereof may be put.

1.03 Term. The “Initial Term” shall commence on October 14, 2020 (the “Commencement Date”) and terminate at midnight on October 14, 2050; provided, however, that this Lease shall remain in full force and effect for subsequent terms (“Renewal Term”) of 3 years each unless Tenant gives Landlord notice at least 180 days' prior to the expiration of the Initial Term or any Renewal Term of an intention to terminate the Lease at the end of the then current

Term. For purposes of this Lease, the phrase “Term” shall mean collectively (a) the Initial Term and (b) any Renewal Term.

ARTICLE 2.  
RENT

2.01 Rent. Tenant shall pay Landlord, without offset or deduction and without previous demand therefore, as items constituting rent (collectively, “Rent”):

- (i) Fixed Rent at the rate of \$3,000.00 per month beginning as of the date on which Tenant completes the installation of the first 2 lengths of track on the Premises for railroad transloading used by Tenant for common carrier rail transportation operations and services, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that such operations and services are or may be subject to the jurisdiction of the Surface Transportation Board (“STB”) and other federal and state agencies (the “Fixed Rent Commencement Date”) through the Initial Term in advance on the first day of each calendar month or portion thereof during the Term.
- (ii) In addition to paying Fixed Rent, the Tenant shall pay the Landlord Bonus Rent based upon railcar traffic transloaded on the Premise as follows: Twenty-Five (\$25.00) Dollars per railcar transloading (“one move only”) at the Premises for a period of Twenty (20) years after the Fixed Rent Commencement by the Tenant

(b) Fixed Rent shall be prorated for any partial month of the Term during which such Rent is due.

2.02 Impositions. Tenant shall pay without notice, and without abatement, deduction or set-off, all Impositions (as defined in Article 3 hereof) and all other reasonable costs, expenses and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of rent.

ARTICLE 3.  
PAYMENT OF TAXES, ASSESSMENTS

3.01 Impositions. Beginning as of the Fixed Rent Commencement Date, Tenant shall pay or cause to be paid (except as explicitly provided in Section 3.02), once first rent is paid per Section 2.01a, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien upon the Premises, or any part thereof or any appurtenance thereto (all such taxes, assessments, water and sewer rents, rates and charges,

levies, license and permit fees and other governmental charges being hereafter referred to as “Impositions”); provided, however, that:

- (a) If, by law, any Imposition may at the option of the taxpayer be paid in installments, Tenant may pay the same in such installments over such period as the law allows, and Tenant shall only be liable for such installments as shall become due during the Term of this Lease, provided that the full amount of all Impositions attributable to the Term shall be paid by Tenant in the event of an earlier termination of this Lease due to a default of Tenant; and
- (b) All Impositions for the municipal fiscal years in which the Term of this Lease shall begin and end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said year as is within the Term hereby demised.
- (c) Tenant shall not be responsible for any Imposition that arises out of a violation of any Legal Requirement or the presence on the Premises of any Hazardous Materials or the violation of any Environmental Law (as such terms are defined in Article 8.02) that existed prior to the execution and delivery of this Lease. Landlord agrees to use reasonable efforts to minimize the disruption of Tenant’s business operations as the result of work that may be performed on the Premises to remediate any such violations.

Solely for the purpose of determining Tenant’s obligation to pay real estate taxes under this Lease, the Premises shall be deemed to include the entire parcel of land on which the Premises are located containing 194 acres more or less.

Unless Landlord exercises its right to require Tenant to make deposits to pay Impositions under Section 3.03, Landlord shall promptly forward all tax bills and other governmental invoices to Tenant so as to enable Tenant to meet its obligations hereunder in a timely manner.

3.02 Landlord’s Taxes; Substitute Taxes. Nothing herein contained shall require the Tenant to pay (i) municipal, state or federal income taxes (if any) assessed against Landlord; or (ii) municipal, state or federal capital levy, gift, estate, succession, inheritance or transfer taxes of Landlord; or (iii) corporation excess profits or franchise taxes imposed upon any corporate owner of the fee of the Premises; or (iv) any income, profits, or revenue tax, assessment or charge imposed upon the rent payable by Tenant under this Lease, provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the commencement of the Term hereof shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, Impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise on the rents received therefrom, or measured by or based in whole or in part upon the Premises and imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based (“Substitute Taxes”), shall be deemed to be included within the term “Impositions” for the purposes hereof. Tenant shall pay and discharge all Substitute Taxes as herein provided in respect of the payment of Impositions to the extent that such

Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions. Tenant shall, in addition to the foregoing, pay any new tax of a nature not presently in effect, but which may be hereafter levied, assessed, or imposed on the Premises or on Landlord as owner of the Premises, if such tax shall be based on or arise out of the ownership, use or occupation of the Premises. For the purpose of computing Tenant's liability for such type of tax, the Premises shall be deemed the only property of Landlord. Tenant shall be entitled to receive the benefit of any TIF (tax increment financing) plan with respect to the Premises that accrues during the Term of the Lease.

3.03 Payments to Landlord. So long as Tenant pays the Impositions in a timely manner and fulfills its other obligations hereunder, Tenant may make such payments directly to the municipality or other entity to which Impositions are due and payable. After an Event of Default hereunder by Tenant, if Landlord so requires, Tenant shall deposit with Landlord, monthly with each payment of Fixed Rent, one-twelfth of such amount as Landlord reasonably estimates will be required to pay all taxes, betterments, assessments and other governmental liens against the Premises before the same become due. Landlord shall not be deemed a trustee with respect to such deposits and shall not be required to keep said deposits separate from its general accounts or to pay interest thereon to Tenant unless required by law. If at any time Landlord reasonably determines such deposits are or will be insufficient to discharge the amounts actually required to pay such taxes, betterments, assessments and liens as may be due, any deficiency shall be promptly deposited by Tenant with Landlord. Tenant shall transmit to Landlord all bills for such taxes, betterments, assessments and liens as soon as received. Should the amount deposited with Landlord by Tenant in any year exceed the amount required, such excess shall be applied to escrow payments for the succeeding year.

3.04 Receipts. Unless required to make monthly deposits under Section 3.03, Tenant shall furnish to Landlord within thirty days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment thereof.

3.05 Abatements; Contests by Tenant. Tenant shall be privileged to seek a reduction in the valuation of the Premises assessed for tax purposes and to contest in good faith by appropriate proceedings, at Tenant's expense, the amount or validity in whole or in part of any Imposition, provided that

- (a) Tenant shall provide Landlord with security reasonably satisfactory to Landlord to assure payment of contested items (which at Landlord's reasonable discretion may mean making deposits under Section 3.03 which would enable Landlord to pay the contested items in full);
- (b) Tenant shall immediately pay to Landlord any additional amounts needed to enable Landlord to pay such contested item or items if the protection of the Premises or of Landlord's interest therein from any lien or claim shall, in the reasonable judgment of Landlord, require such payment; and
- (c) Landlord shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall

require that such proceedings be brought by or in the name of Landlord. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless Landlord from any such reasonable costs and expenses.

Subject to the foregoing, and without cost to it, Landlord shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any valuation or Imposition and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

3.06 Abatements by Landlord; Allocations. Landlord shall have a right to seek a reduction in the valuation of the Premises assessed for tax purposes and to prosecute any action or proceeding theretofore commenced by Tenant, if such assessed valuation or valuations shall in whole or in part relate and pertain to any period of time subsequent to the expiration or termination of this Lease or property of Landlord that includes the Premises. Tenant shall be entitled to any refund of any Imposition and penalties or interest thereon received by Landlord which have been paid by Tenant, or which have been paid by Landlord but previously reimbursed in full by Tenant.

#### ARTICLE 4. SURRENDER

4.01 Yield Up. Except as provided in Article 11 or elsewhere to the contrary in this Lease, Tenant shall, as of the Termination Date as defined in Article 11 of this Lease, surrender and deliver up the Premises to the possession and use of Landlord without delay and in good order, condition and repair (excepting only fire or casualty and reasonable wear and tear). The Premises shall at that time be free and clear of all leases and occupancies. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term or created or suffered by Landlord.

4.02 Fixtures. Except as provided in Article 11 or elsewhere to the contrary in this Lease, where furnished by or at the expense of Tenant, any buildings, transloading facilities, track and other rail facilities and all trade fixtures, business equipment, furniture and personal property installed on the Premises by Tenant or any sublessee ("Tenant's Property") and any Alterations designated for removal by Landlord in accordance with Section 7.05 shall be removed by Tenant prior to the Termination Date; provided that Tenant shall restore any damage caused by such removal. In the event the Premises are not restored in accordance with the preceding sentence, Tenant shall pay all Landlord's costs of restoring such damage to comply with the preceding sentence.

4.03 Abandoned Property. Any personal property of Tenant or any sublessee or occupant which shall remain in the Premises after the termination of this Lease and the removal of Tenant or such occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such sublessee or occupant and either may be retained by



Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord shall give written notice to Tenant to such effect, such property shall be removed by Tenant at Tenant's sole cost and expense.

4.04 Extension to Remove. If this Lease shall terminate pursuant to Article 15 hereof, then, notwithstanding Sections 4.02 and 4.03 hereof Tenant shall have a reasonable time after the Termination Date (not exceeding thirty (30) days) to remove any property which it shall otherwise be entitled to remove pursuant to Section 4.02 hereof.

4.05 No Liability. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any occupant following termination of this Lease, unless due to the gross negligence or willful and wrongful acts of Landlord, its employees or agents.

4.06 Holding Over. If Tenant occupies the Premises after the Termination Date without having entered into a new lease thereof with Landlord or having reached some other agreement with Landlord to continue Tenant's occupation, Tenant shall be a Tenant-at-sufferance, subject to all of the terms and provisions of this Lease. Such a holding over, even if with the consent of Landlord, shall not constitute an extension or renewal of this Lease.

4.07 Survival. The provisions of this Article shall survive any termination of this Lease.

## ARTICLE 5. INSURANCE

5.01 All Risk Casualty Insurance. Tenant, at its sole cost and expense, shall keep in full force and effect casualty insurance on the buildings and other improvements on the Premises in an amount at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage and extended to include breakdown of boilers, machinery and electrical equipment. The insurance shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction. Such insurance shall include an agreed amount provision. The replacement cost of the buildings shall be determined at least once every thirty-six (36) months by the agreement of Landlord and Tenant. If Landlord and Tenant are unable to so agree, the replacement cost shall be determined at the expense of the Tenant by an appraiser who shall be mutually and reasonably acceptable to Landlord and Tenant.

During any construction or alteration of the Premises, Tenant shall also keep in full force and effect all risk builder's risk insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Landlord may reasonably require.

5.02 Liability Insurance. Tenant, at its sole cost and expense, shall maintain:

- (a) for the mutual benefit of Landlord and Tenant, general public liability insurance against claims for personal injury, death, and property damage, occurring upon, in or about the Premises, and on, in or about any adjoining

sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least \$5,000,000 for any one accident and \$2,000,000 for injury to any one individual and \$1,000,000 for damage to property;

(b) such liability insurance may be in such greater or lesser limits as may hereafter be reasonably determined in accordance with Section 5.07, but in no event less than such limits as are from time to time customarily carried with respect to similar properties where the Premises are located;

(c) such liability insurance as may be mutually agreed upon by the Landlord and Tenant to cover the Tenant's intended railroad and transloading operations to be developed on the Premises, and

(d) such other insurance and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are customarily insured against in the case of similar buildings where the Premises are located due regard being, or to be, given to height, type and construction.

5.03 Insurance Carriers, Policies. All insurance provided for in this Article 5 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in the state where the Premises are located. Upon the execution of this Lease, and thereafter not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this Article 5, duplicate originals of the policies bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord.

5.04 No Separate Insurance Except with respect to the insurance required by subdivision (a) of Section 5.02 hereof, neither Landlord nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 5 to be furnished by, or which may reasonably be required to be furnished by Tenant unless Landlord and Tenant are included therein as the insured, with loss payable as in this Lease provided. Each party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as in Section 5.03 hereof required.

5.05 Adjustment.

(a) All policies of insurance provided for in Section 5.01 hereof shall name Landlord and Tenant as the insured as their respective interests may appear. The loss, if any, under such policies shall be payable to the Landlord.

(b) All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Tenant or any sublessee shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

5.06 Non-cancellation. Each such policy or certificate therefore issued by the insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be cancelled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to Landlord and to any mortgagee named therein.

5.07 Insurance Limit Changes. Landlord may reasonably require a change in the amounts or limits of the insurance to be maintained hereunder pursuant to Section 5.02 hereof or may reasonably require from Tenant such other insurance as is referred to in Section 5.02(d) hereof; provided that any such additional coverage shall be consistent with amounts, limits or additional insurance as may be required for similar industrial buildings in the I-495 West submarket in which the Premises are located.

5.08 Waiver of Subrogation. To the extent obtainable (even though extra premium may result therefrom), all insurance policies carried by either party covering the Premises, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer to make any claim against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement.

5.09 Waiver of Rights. Landlord and Tenant each hereby waive all claims, causes of action and rights of recovery against the other and their respective partners, agents, officers and employees, for any damage to or destruction of persons, property or business which shall occur on or about the Premises and shall result from any of the perils insured under any and all policies of insurance maintained by Landlord and Tenant, regardless of cause, including the negligence and intentional wrongdoing of either party and their respective agents, officers and employees but only to the extent of recovery, if any, under such policy or policies of insurance; provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.

## ARTICLE 6.

### LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

6.01 Performance by Landlord. If Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article 3 hereof, or to take out, pay for, maintain or deliver any of the insurance policies or certificates provided for in Article 5 hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed pursuant to this Lease, then Landlord may, but shall be under no obligation to:

- (a) pay any Imposition payable by Tenant pursuant to the provisions of Article 3 hereof, or
- (b) take out, pay for and maintain any of the insurance policies provided for in Article 5 hereof, or
- (c) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided,

and may enter upon the Premises (after one (1) day's notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

6.02 Reimbursement. All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord, including reasonable attorneys' fees, in connection with the performance of any such act, together with interest thereon at two (2) percent per annum in excess of the then current prime rate as established by the Wall Street Journal (the "Prime Rate") from the date of such payment or incurring by Landlord of such cost and expense, shall constitute Impositions payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. If Landlord shall exercise its rights under Section 6.01 to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such Impositions to Landlord upon demand.

6.03 Entry. During the progress of any work in the Premises which may under the provisions of this Article 6 be performed by Landlord, Landlord may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment; provided that Landlord shall use reasonable efforts to minimize any inconvenience or disruption to Tenant. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby.

ARTICLE 7.  
REPAIRS AND MAINTENANCE OF THE PREMISES;  
UTILITIES; ALTERATIONS; OTHER EXPENSES.

7.01 Repairs and Maintenance.

(a) Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises (including all improvements now or hereafter erected thereon), all sidewalks, curbs and entrances adjoining the same and shall keep the Premises in the same condition as they now are, except for normal wear and tear or damage from fire or casualty or a Taking, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, including repairs to the HVAC system and other building service equipment. All repairs made by Tenant shall be at least equal in quality and class to existing conditions.

7.02 Cleaning; Snow Removal. Tenant shall put, keep and maintain all portions of the Premises and the sidewalks and curbs adjoining the same in a clean and orderly condition, free of rubbish, snow, ice and unlawful obstructions.

7.03 No Liability. Landlord shall in no event be required to make any alterations, rebuildings, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

7.04 Utilities. Tenant shall pay, as Impositions, directly to the utility provider all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises and service inspections made therefore, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of Landlord (“Utility Charges”).

7.05 Alterations. Tenant and any of its sublessees, assignees or licensees shall be entitled to make any and all alterations, improvements, repairs, etc., including without limitation the construction of rail facilities and buildings and the installation of transloading equipment, to the Premises in its sole determination. No approvals from Landlord are required. Tenant shall cause each contractor and subcontractor to carry worker’s compensation insurance in statutory amounts covering all of their respective employees and comprehensive public liability insurance in amounts reasonably satisfactory to Landlord (such insurance to be written by companies reasonably satisfactory to Landlord and insuring Tenant and Landlord as well as the contractor and subcontractors). Tenant shall pay promptly when due the entire cost of such work. Tenant shall not cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Premises, and shall discharge or bond any such liens which may be so filed or recorded not later thirty (30) days after completion of the work and in any event not later the ninety (90) days after the filing or recording of a notice of contract. All such work shall be performed in a good and workmanlike manner and in compliance with all legal requirements and the provisions of all applicable insurance policies. Tenant shall indemnify and hold Landlord harmless from and against any and all third party suits, demands, causes of action, claims, losses, debts, liabilities, damages, penalties or judgments, including, without limitation, reasonable attorneys’ fees, arising from injury to any person or property occasioned by or growing out of such work (such indemnity shall survive the expiration or termination of this Lease) unless caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

ARTICLE 8.  
COMPLIANCE WITH LAWS, ORDINANCES, ETC.

8.01 Legal Requirements. Throughout the Term of this Lease, Tenant shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks and curbs adjoining the same or to the use or manner of use of the Premises or the owners, tenants or occupants thereof, whether or not such law, ordinance, rule, regulation or requirement shall affect the interior or exterior of any buildings or interfere with the use and enjoyment of the Premises, and shall be responsible, at Tenant’s expense, to make Alterations required to correct any violations that are not expressly made the responsibility of the Landlord hereunder or that existed prior to the execution and delivery of this Lease. Landlord understands and acknowledges that pursuant to Article 11.01 the Premises may be used for any lawful purpose and will be used by Tenant for rail transportation purposes in connection with and support of Tenant’s existing and future rail transportation service, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that certain of these activities or uses may be subject to local or state laws,

regulations, ordinances, rules or judicial or regulatory proceedings and that Tenant may seek to preclude the applicability or enforceability and any pre-approval or permitting requirements of any such laws, regulations, ordinances, rules or judicial or regulatory jurisdiction or decisions by reliance on the doctrine of federal preemption. Tenant will hold Landlord harmless on account of any such uses that result in preemption of local and state regulatory authorities and processes (“Legal Requirements”).

8.02 Hazardous Materials. Tenant shall not generate, store or use any “Hazardous Materials” (as hereinafter defined) in or on the Premises except in compliance with any and all applicable Legal Requirements, or dispose of Hazardous Materials from the Premises to any other location except a properly approved disposal facility and then only in compliance with any and all Legal Requirements regulating such activity, nor permit any occupant of the Premises to do so. As used in this Lease, “Hazardous Materials” means and includes any chemical, substance, waste, material, gas or emission which is radioactive or deemed hazardous, toxic, a pollutant, or a contaminant under any statute, ordinance, by-law, rule, regulation, executive order or other administrative order, judgment, decree, injunction or other judicial order of or by any governmental authority, now or hereafter in effect, relating to pollution or protection of human health or the environment. As used herein, the term “Hazardous Material” means any hazardous, radioactive or toxic substance, material or waste or petroleum derivative which is or becomes regulated by any Environmental Law (as defined below). The term “Hazardous Material” includes, without limitation, any material or substance which is (i) designated as a “hazardous substance” pursuant to Section 1311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (iii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601), or (iv) defined as “hazardous substance” or “oil” under Chapter 21E of the General Laws of Massachusetts (collectively “Environmental Laws”). If, at any time during the Term, any governmental authority requires testing to determine whether there has been any release of Hazardous Materials by Tenant or anyone claiming by, through or under Tenant, then Tenant shall reimburse Landlord upon demand, as Additional Rent, for the reasonable costs thereof. Tenant shall execute affidavits, certifications and the like, as may be reasonably requested by Landlord from time to time concerning Tenant’s knowledge and belief concerning the presence of Hazardous Materials in or on the Premises. Landlord reserves the right to enter the Premises at reasonable times (provided twenty-four (24) hours’ notice is given to Tenant, except in case of emergency) to inspect the same for Hazardous Materials. Tenant shall indemnify, defend, and hold harmless Landlord, and the holder of any mortgage on the Premises from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys’ fees and the cost of litigation, arising from or relating to the breach by Tenant or anyone claiming by, through or under Tenant of the provisions of this Section 8.02 and shall immediately discharge or cause to be discharged any lien imposed upon the Premises in connection with any such claim. The provisions of this Section 8.02 shall survive the expiration or termination of this Lease. Landlord shall indemnify, defend, and hold harmless Tenant from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys’ fees and the cost of litigation, arising from or relating to actions taken or conditions existing on the Premises on or before the

Commencement Date in violation of the laws and regulations referred to hereinabove in this Section.

8.03 Insurance Requirements. Tenant shall likewise observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises if such observance or compliance is required by reason of any condition, event or circumstance arising after the commencement of the Term of this Lease. In any case Tenant shall be privileged to substitute policies of other insurance companies, provided such policies meet the requirements of Article 5.

8.04 Contests. Tenant shall have the right, after ten (10) days' prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 8.01 hereof, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurring of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

Subject to the foregoing and without cost to it, Landlord shall execute and deliver all appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement and further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

#### ARTICLE 9. DISCHARGE OF LIENS

9.01 Tenant Responsibilities. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises, the underlying fee, or any part thereof as a result of any action by Tenant, Tenant, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise in accordance with Section 8.01. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, if such lien shall continue for five (5) days after notice from Landlord to Tenant, but shall not be obligated to, discharge the same either by

paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects upon another fifteen (15) days notice from Landlord to Tenant, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of two (2%) percent per annum in excess of the then prevailing Prime Rate from the respective dates of Landlord's making of the payment or incurring of the reasonable cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

9.02 No Consent. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof.

ARTICLE 10.  
NO WASTE

10.01 Prohibition. Tenant shall not do or suffer any strip or waste or damage, or injury to the Premises or the underlying fee or any part thereof.

ARTICLE 11.  
USE OF PROPERTY

11.01 Tenant's business operations. The Premises may be used by Tenant for any lawful purpose. Landlord acknowledges and agrees that the Premises will be used by Tenant for common carrier rail transportation operations and services, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that such operations and services are or may be subject to the jurisdiction of the Surface Transportation Board ("STB") and other federal and state agencies. Notwithstanding any other provision of this Lease, Landlord (a) shall not, except with the prior written consent of Tenant, take any actions that would interfere with, adversely affect or disrupt Tenant's rail operations or service, (b) shall not take or permit any action, including any action to sell, transfer, assign or encumber the Premises in any manner that would interfere with, disrupt or adversely affect such rail transportation, service or operations, except with the prior written consent of Tenant, (c) shall not, without the prior written consent of Tenant, remove, retire or alter any buildings, facilities, equipment, track and other rail facilities if the effect would be to interfere with, adversely affect or disrupt Tenant's rail operations or service, (d) shall permit Tenant or its sublessees, licensees, assignees or customers to construct, install and own buildings, facilities, equipment, track or other rail facilities on the Premises, and to remove or recover the value of any such buildings, facilities, equipment, track or other rail facilities in the event that they can no longer be used or accessed by any such sublessee, licensee, assignee or customer, (e) acknowledges and agrees that the Termination Date of this Lease shall not occur and Tenant shall be permitted to continue to occupy and use the Premises for rail transportation purposes unless and until the STB or any other governmental agency with jurisdiction has relieved Tenant



of its common carrier rail service obligations or authorized Tenant to abandon or discontinue its rail operations and service on the Premises and (f) shall permit Tenant to sublease, assign, license or permit occupation of portions of the Premises for rail transportation related businesses and activities and for the construction, installation and maintenance of buildings, facilities, equipment and other property related to or used in connection with rail transportation. For purposes of this Article 11, the consent of Tenant may be given or withheld for any reason in the sole judgment of Tenant.

ARTICLE 12.  
ENTRY ON PREMISES BY LANDLORD

12.01 Permission. Tenant shall permit Landlord and its authorized representatives, upon reasonable prior notice to Tenant, to enter the Premises at all reasonable times for the purpose of inspecting the Premises for compliance with the covenants and obligations of this Lease and to exercise any of its rights hereunder which require such entry; provided, however, that any such inspection shall not unreasonably interfere with rail operations of Tenant.

ARTICLE 13.  
INDEMNIFICATION

13.01 Indemnification Tenant shall indemnify and save Landlord harmless against and from all liabilities, obligations, damages, penalties, third party claims, costs, charges and reasonable expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term of this Lease:

- (a) any work or thing done in or on the Premises or any part thereof by Tenant or any party other than Landlord;
- (b) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof including any sidewalk or curb to the extent part of the Premises;
- (c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;
- (d) any accident, injury or damage to any person or property occurring in or on the Premises or any part thereof, including any sidewalk or curb to the extent part of the Premises; or
- (e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any third party claim arising out of any of the occurrences from which Tenant is required, pursuant to the preceding paragraph, to indemnify and save Landlord harmless against, Tenant upon written notice from Landlord shall at Tenant's expense defend such action or proceeding using legal

counsel reasonably satisfactory to Landlord. If Tenant has supplied Landlord with insurance policies covering any of the aforementioned risks no claim shall be made against Tenant unless and until the insurer shall fail or refuse to defend and/or pay all or any part thereof.

Notwithstanding the foregoing, to the extent necessary to preserve its rights, Landlord shall have the right to make claim, institute legal proceedings, or otherwise seek redress against Tenant prior to the expiration of any statute of limitations or other period or limitation limiting the time or manner in which Landlord may seek redress regardless of whether any insurer is responding or not. Notwithstanding the foregoing, no indemnification shall be provided by Tenant if the underlying damage, injury, or loss was caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

Landlord shall protect, indemnify, and hold the Tenant harmless from and against any and all loss, claims, liability or reasonable costs (including court costs and reasonable attorneys' fees) incurred by reason of any damage to any property (including but not limited to property of the Tenant) or any injury (including but not limited to death) to any person in or about the Premises to the extent such injury or damage shall be caused by or arise from any gross negligence or willful misconduct by Landlord or his employees or agents.

Landlord shall protect and ensure Tenant's access to the Premises consistent with Landlord's deeded easements for right to travel in common through each and every right of way to the Premises. Furthermore Landlord acknowledges the public safety easement for fire protection water furnished to the Premises and will protect the Tenant from any interference with the transmission of such fire protection water by any third party.

The foregoing provision of this Article (as well as any other provisions dealing with indemnity and the like by Tenant of Landlord) shall be deemed to be modified in each case by the insertion in the appropriate place of the language: "except as otherwise provided in M.G.L. c. 186, Section 15."

#### ARTICLE 14. IMPROVEMENTS

14.01 Improvements by Landlord NONE.

14.02 Improvements by Tenant. All improvements undertaken by Tenant shall be paid for in full by Tenant. Landlord shall have no responsibility to make any such payments for any improvements.

#### ARTICLE 15. CASUALTY AND EMINENT DOMAIN

15.01 Substantial Taking; Termination. In the event that the entire Premises or any substantial part thereof, shall be taken by any exercise of the right of eminent domain or shall receive any direct or consequential or substantial damages for which Landlord or Tenant or either of them shall be entitled to compensation by reason of anything lawfully done in pursuance of any public or other authority during the Term, then this Lease shall terminate at the election of Landlord, which election may be made notwithstanding Landlord's entire interest may not have been divested. If, in the sole judgment of Tenant, such taking or damage renders

the Premises unusable, uneconomical or burdensome for Tenant's business operations after such taking, Tenant shall have the right, effective when its possession or use is disturbed, to terminate this Lease by notice in writing to Landlord delivered within thirty (30) days of the first day on which Tenant's possession is so disturbed. At the option of Tenant, it may take appropriate legal or regulatory actions in order to prevent or minimize any taking by eminent domain or any other action that would render the Premises unusable, uneconomical or burdensome for Tenant's business operations. Any damages by reason of eminent domain or anything done in pursuance of any public or other authority shall be allocated equitably between Landlord and Tenant.

15.02 Termination by Tenant. If the Premises shall be substantially damaged by fire or other casualty such that Tenant reasonably determines that the Premises are unusable for the Tenant's business operations, then Tenant may terminate this Lease as of the date of the occurrence of such damage by written notice thereof to Landlord within thirty (30) days after the date of such damage, in which event this Lease shall terminate on the date set forth in such notice, and Landlord shall allow Tenant a fair diminution of payment of any Impositions from and after the date of such damage to the date of such termination of this Lease to the extent the Premises are unusable for the Tenant's business operations hereunder.

15.03 Landlord's Obligations; Abatement of Impositions Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such taking or damage or the repair thereof, provided that Landlord uses reasonable efforts to minimize inconvenience and disruption to Tenant during such repair or restoration, except that (i) Landlord shall allow Tenant a fair diminution of the payment of any Impositions during the time and to the extent the Premises are unusable for the Tenant's business operations, and (ii) in the event of a partial taking, a just proportion of Rent, similarly determined, shall be abated for the remainder of the Term.

## ARTICLE 16.

### ASSIGNMENTS AND SUBLEASES OF TENANT'S INTERESTS ARE ALLOWED

16.01 Assignment and Sublease If Tenant wishes to assign this Lease or sublease or assign all or any portion of the Premises, Tenant shall so notify Landlord in writing. Such notice shall include (i) the name of the proposed assignee, licensee or sublessee, (ii) a description of the use of the Premises by such sublessee, licensee or assignee, and (iii) such financial information concerning the proposed assignee, licensee or sublessee as Landlord may reasonably require.

(b) Upon the consummation of an assignment, license or sublease, (i) Tenant shall deliver to Landlord a fully executed copy of said assignment, license or sublease, and (ii) after any such assignment, license or sublease, Tenant shall remain primarily liable to Landlord hereunder (which liability shall be joint and several with the assignee or sublessee). Tenant shall give Landlord written documentation of any improvements to be made to the Premises by any assignee or sublessee, that substantially differ from the improvements made or to be made by the Tenant.

(c) Tenant shall not be entitled to enter into any assignment, license or sublease, or to request Landlord's consent thereto, during the continuance of an Event of Default hereunder by Tenant.

(d) Any assignment, license or sublease entered into pursuant to this Section 16.01 shall be subject to all of the terms and provisions of this Lease, including without limitation this Section 16.01. If Tenant enters into any such assignment, license or sublease, Landlord may, at any time and from time to time after the occurrence of an Event of Default hereunder, collect Impositions from such assignee or sublessee, and apply the net amount collected against Tenant's obligations hereunder.

#### ARTICLE 17. DEFAULT PROVISIONS

17.01 Events of Default. If any one or more of the following events (herein called "Events of Default") shall happen:

(a) If default shall be made in the due and punctual payment of any Impositions or other sums payable under this Lease or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after notice from Landlord to Tenant specifying the items in default; or

(b) If the leasehold hereby created shall be taken on execution, or by other process of law, and such taking is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if any assignment shall be made of Tenant's property for the benefit of creditors; or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of Tenant's assets by a court of competent jurisdiction, and such appointment is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if a petition is filed by Tenant under any bankruptcy or insolvency law; or if a petition is filed against Tenant under any bankruptcy or insolvency law and the same shall not be dismissed within sixty (60) days from the date upon which it is filed; or a lien or other involuntary encumbrance is filed against Tenant's leasehold (or against the Premises or any building thereon or part thereof based on a claim against Tenant) and, as to a lien under MGL chapter 254, is not discharged within the period set forth in Section 8.01 or, as to any other lien or encumbrance, is not discharged or bonded within thirty (30) days after the filing thereof; or

(c) If default shall be made by either party in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease provided other than those referred to in paragraphs (a) or (b) of this Section for a period of thirty (30) days after notice from the non-defaulting party to the defaulting party

specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, the defaulting party fails to proceed within the last mentioned thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with diligence (it being intended in connection with a default not susceptible of being cured with diligence within the last mentioned thirty (30) day period that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence);

then and in any such event the non-defaulting party at any time thereafter may give written notice to the defaulting party specifying such event or events of default and stating that this Lease and the Term hereby demised shall expire and terminate on a date not earlier than the Termination Date as defined in Article 11, and the Term and all rights of the defaulting party under this Lease, shall expire and terminate unless prior to the Termination Date the event or events of default shall have been cured, and the defaulting party shall remain liable as hereinafter provided. Landlord acknowledges, if it is the defaulting party, that Tenant would suffer irreparable harm which would be difficult to ascertain and quantify and for which immediate remedies at law would be inadequate and that Tenant shall be entitled to equitable relief therefor, including without limitation specific performance and temporary, preliminary and permanent injunctive relief, in addition to any and all other rights and remedies available to it at law or in equity.

17.02 Surrender. Upon any such expiration or termination of this Lease, but subject to the provisions of Article 11 above, Tenant shall, as of the Termination Date, quit and peacefully surrender the Premises to Landlord, and Landlord, upon or at any time after such Termination Date, may without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income from the same.

17.03 Relet. At any time or from time to time after any such Termination Date, but subject to the provisions of Article 11 above, Landlord may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its unfettered discretion, may determine and may collect and receive the rents therefore. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

17.04 Remedies.

(a) No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord any Impositions and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and

thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for liquidated and agreed current damages for Impositions and other charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting, after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(b) Tenant shall pay such current damages (herein called "deficiency") to Landlord, and Landlord shall be entitled to recover from Tenant each deficiency as the same shall arise.

(c) At any time after any such expiration or termination, in lieu of collecting any further annual deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the value of the then fair and reasonable rental value of the Premises for the same period, minus any such annual deficiencies previously recovered from Tenant.

17.05 No Waiver. No failure by either party to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

17.06 Injunction Relief. In the event of any breach or threatened breach by either party of any of the agreements, terms, covenants or conditions contained in this Lease, the other party shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

17.07 Reimbursement of Landlord's Expenses. Either party shall pay the other party's reasonable expenses, including reasonable attorneys' fees, incurred by the other party in enforcing any obligations of a defaulting party under this Lease.

17.08 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or

all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 18.  
TENANT'S OPTION TO PURCHASE  
INTENTIONALLY LEFT BLANK ARTICLE 19

SIGNS

19.01 Signs. Tenant shall be permitted to place one or more signs on the Premises subject to Landlord's consent that will not be unreasonably withheld, conditioned or delayed.

ARTICLE 19.  
INVALIDITY OF PARTICULAR PROVISIONS

19.01 Separability. If any term or provisions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 20.  
NOTICES

20.01 Notices. Any and all disapprovals, objections, offers or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be deemed to have been duly given, delivered or served if and when sent by registered or certified mail, return receipt requested or by overnight courier with tracking and receipt service, addressed if to the Tenant to:

One Hundred Forty Realty Trust  
7 EDA Avenue  
Carver, MA 02330  
Attn: Jon Delli Priscoli

or to such other address as Tenant may from time to time designate by written notice to Landlord, or if to Landlord addressed to:

Grafton & Upton Railroad Company  
42 Westboro Road  
North Grafton, MA 01536  
Attn: Michael R. Milanoski

ARTICLE 21.  
COVENANT OF QUIET ENJOYMENT

21.01 Quiet Enjoyment. Tenant, upon paying the Fixed Rent other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by Landlord or anyone claiming by, through or under Landlord as such, subject, however, to the exceptions, reservations and conditions of this Lease.

ARTICLE 22.  
NO RENT ABATEMENT

22.01 No Abatement. Except as in this Lease otherwise expressly provided, no abatement, diminution or reduction of rent and other charges shall be claimed by or allowed to Tenant, or any person claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to the Premises, by virtue or because of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations or for any other cause or reason; provided that this provision shall not apply with respect to circumstances resulting from (i) Landlord's breach of its covenant of quiet enjoyment, (ii) a violation of Legal Requirements by reason of Hazardous Materials existing on the Premises on the date on which the 2008 Lease was executed, other than the conditions disclosed to Tenant as referred to in Section 8.01, or (iii) the gross negligence or willful misconduct of Landlord.

ARTICLE 23.  
ESTOPPEL CERTIFICATES

23.01 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten days after request by Landlord, certify by written instrument, duly executed, acknowledged and delivered, to Landlord, or any other person, firm, or corporation specified by Landlord:

- (a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;
- (b) whether or not, to the best knowledge of the person executing the certificate on behalf of Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of Tenant to be performed or complied with, and, if so, specifying the same;
- (c) the dates, if any, to which the Fixed Rent and other charges hereunder have been paid;
- (d) the date of expiration of the current Term; and
- (e) the Fixed Rent then payable under this Lease.



ARTICLE 24.  
WAIVER OF JURY TRIAL AND COUNTERCLAIMS

24.01 Waiver. The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Lease or any of its provisions, any negotiations in connection therewith, or Tenant's use or occupation of the Premises.

ARTICLE 25.  
CONSENT OF LANDLORD

25.01 Consents. Notwithstanding anything contained elsewhere in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against Landlord for money damages by reason of any reasonable refusal, reasonable withholding or reasonable delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance or injunction to enforce any such requirement.

ARTICLE 26.  
NO WAIVER

26.01 No Waiver. No acceptance by Landlord of a lesser sum than the Fixed Rent or Additional Rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

ARTICLE 27.  
DEPOSIT

27.01 Deposit. Tenant has deposited sufficient consideration with Landlord to bind this Lease.

ARTICLE 28.  
INTEGRATION; NO ORAL MODIFICATION; GOVERNING LAW

28.01 Integration. All prior understandings and agreements between the parties are merged within this agreement, which alone fully and completely sets forth the understanding of the parties; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the party against whom enforcement of the change or termination is sought.

28.02 Governing Law. This Lease Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

ARTICLE 29.  
SUBORDINATION

29.01 Lease Subordinate. This Lease is and shall be subject and subordinate to any mortgage now or hereafter on the Premises, and to all advances under any such mortgage and to all renewals, amendments, extensions and consolidations thereof, provided that the holder of such mortgagee's interest enters into a non-disturbance and attornment agreement with Tenant which provides that in the event that such mortgagee succeeds to Landlord's interest hereunder, then, provided that Tenant is not in default hereunder beyond the cure period provided in this Lease, such party shall recognize and be bound by the terms of this Lease. In the event that the holder of any mortgage succeeds to Landlord's interest in the Premises or any portion thereof, Tenant hereby agrees to attorn to such mortgagee. In confirmation of such subordination, Tenant shall execute and deliver promptly any certificate in recordable form that Landlord or any mortgagee may reasonably request. Notwithstanding the foregoing provisions of this Section, the holder of any mortgage on the Premises may at any time subordinate its mortgage to this Lease by written notice to Tenant.

ARTICLE 30.  
COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES

30.01 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, and any successors and assigns.

ARTICLE 31.  
RECORDING OF NOTICE OF LEASE

31.01 Recording. Landlord and Tenant mutually agree that a notice of this Lease may be recorded with the appropriate recording office in the state in which the Premises are located.

ARTICLE 32.  
CAPTIONS AND TABLE OF CONTENTS

32.01 References. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

32.02 Table of Contents. The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

ARTICLE 33.  
FORCE MAJEURE

33.01 Force Majeure. Neither Landlord nor Tenant shall be deemed to be in default hereunder (and the time for performance of any of their respective obligations hereunder other than the payment of money shall be postponed) for so long as the performance of such obligation

is prevented by strike, lock-out, act of God, absence of materials or any other matter not reasonably within the control of the party which must perform the obligation (collectively, "Force Majeure").

ARTICLE 34.  
CONSTRUCTION

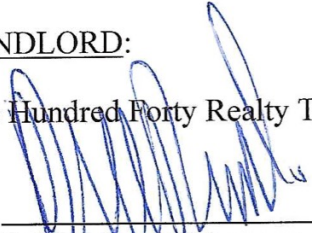
34.01 Construction. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term Landlord whenever used herein, shall mean only the owner at the time of Landlord's interest herein, and no covenant or agreement of Landlord, express or implied, shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any agent, fiduciary, shareholder, officer, director or partner of Landlord, and the liability of Landlord, in any event, shall be limited to Landlord's interest in the Premises. Unless repugnant to the context, "Landlord" and "Tenant" mean the person or persons, natural or corporate, named above as Landlord and as Tenant respectively, and their respective heirs, executors, administrators, successors and assigns.

This LEASE is made between One Hundred Forty Realty Trust, a Massachusetts Trust, with offices at 7 EDA Avenue, Carver, MA 02330 ("Landlord") and the Grafton & Upton Railroad Company, a Massachusetts corporation with offices at 42 Westboro Road, North Grafton, Massachusetts 01536 ("Tenant").

EXECUTED as an instrument under seal as of the date first above written.

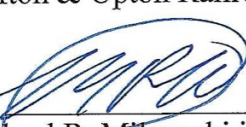
LANDLORD:

One Hundred Forty Realty Trust

By:   
Jon DelliPriscoli, Manager, duly authorized,  
of One Hundred Forty Realty Trust, a  
Massachusetts Trust

TENANT:

Grafton & Upton Railroad Company

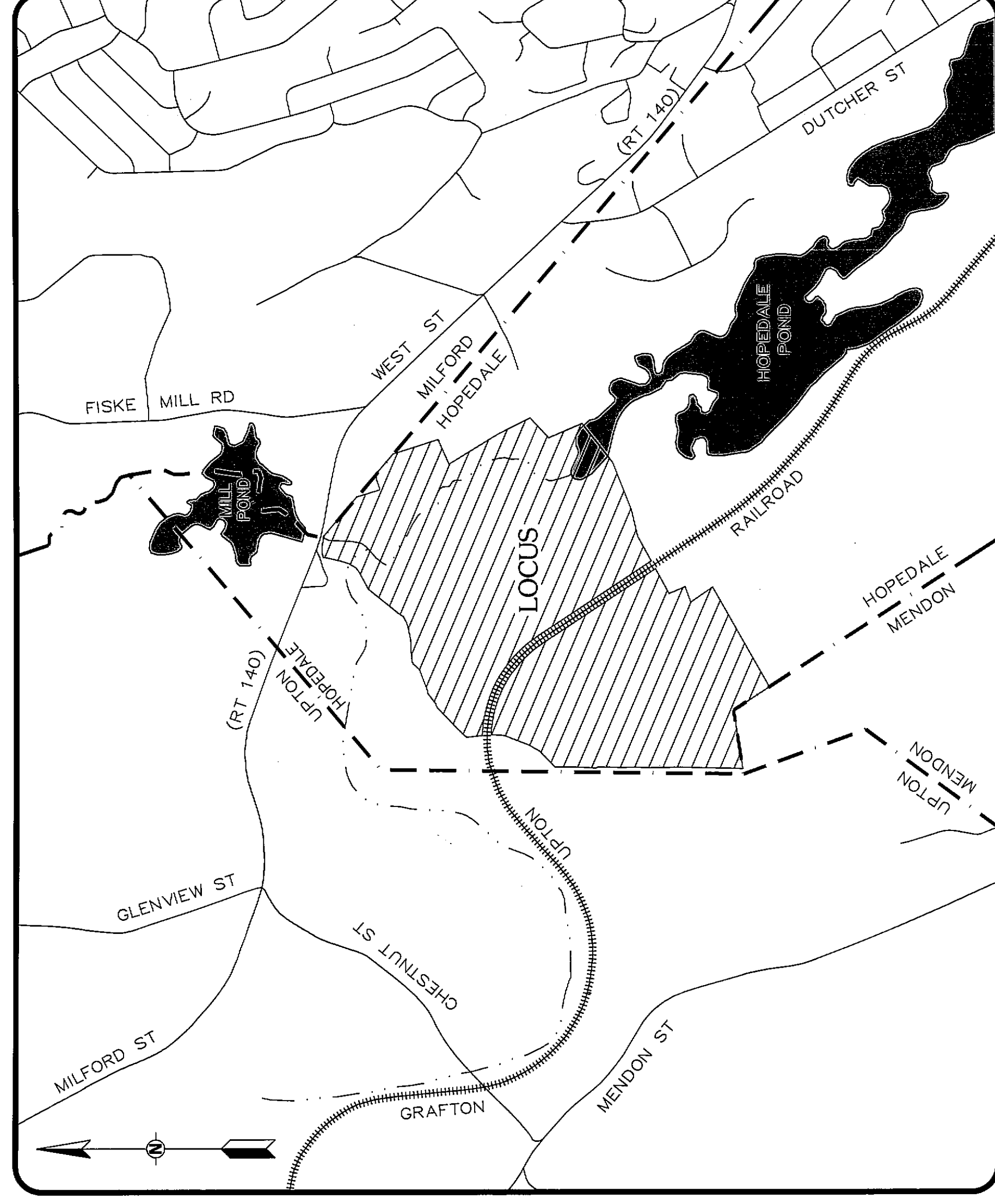
By:   
Michael R. Milanoski its President duly  
authorized

**EXHIBIT I**

Plan of Land, Grafton and Upton Railroad,  
364 West Street, Hopedale MA, Existing Boundary

# PLAN OF LAND GRAFTON & UPTON RAILROAD

364 WEST STREET  
(WORCESTER COUNTY)  
HOPEDALE, MASSACHUSETTS



**ASSESSORS REFERENCES**

ASS. PARCEL ID: 2-5-0  
(TRACTS 1, 2, 3, 4, & 5)  
ASS. PARCEL ID: 3-1-0  
(18 AC. TRACT)

**WORCESTER COUNTY**

**PLAN REFERENCES**

PB 826 PL 85 PB 352 PL 81  
PB 817 PL 4 PB 338 PL 92  
PB 788 PL 85 PB 226 PL 113  
PB 782 PL 3 PB 183 PL 63  
PB 674 PL 52 PB 169 PL 46  
PB 480 PL 59 PB 13 PL 73

**HOPEDALE TOWN RECORD**

**PLAN REFERENCES**

1960 HOPEDALE ASSESSOR'S MAP  
1949 HOPEDALE TOWN BOUNDARY  
PLAN BY R. SMETHURST  
1915 HOPEDALE ASSESSOR'S MAP

**RAILROAD**

1909 GRAFTON & UPTON  
RAILROAD PLAN  
BY R.E. ALLEN & SON

**OWNER**

ONE HUNDRED FORTY REALTY TRUST  
42 WESTBORO ROAD  
NORTH GRAFTON, MA 01536

**DEED REFERENCES**

DEED BK 65363 PAGE 65  
(TRACTS 1 & 2 & 18 AC. TRACT)  
DEED BK 73222 PAGE 181  
(TRACTS 3, 4, & 5)

**LIBRARY OF CONGRESS**

1904 PLAN OF LAND BY THE PARK  
COMMISSIONERS OF HOPEDALE  
1870 TOWN MAP OF MILFORD  
BY F.W. BEERS & CO.  
1857 MAP OF WORCESTER COUNTY  
BY H.F. WALLING  
1851 TOWN MAP OF MILFORD  
BY O. HARKNESS  
1851 TOWN MAP OF UPTON  
BY H.F. WALLING  
1830 TOWN MAP OF MENDON  
BY NEMELL NELSON

**PARCEL LINE TABLE**

Line #	Length	Direction
L1	611.32	N01° 10' 56"E
L2	190.60	N00° 43' 30"W
L3	86.96	N00° 48' 48"W
L4	121.33	N01° 28' 22"E
L5	158.71	N00° 23' 50"W
L6	207.24	N01° 18' 13"E
L7	73.76	N04° 41' 04"E
L8	137.72	N02° 40' 48"E
L9	180.94	N00° 10' 59"W
L10	213.37	N45° 50' 41"E
L11	104.02	N30° 29' 59"E
L12	42.98	N24° 10' 06"E
L13	39.26	N19° 26' 48"E
L14	93.41	N21° 30' 38"E
L15	75.06	N21° 39' 14"E
L16	44.94	N09° 49' 09"E
L17	93.19	N01° 27' 44"E
L18	83.13	N05° 10' 36"W
L19	148.17	N05° 57' 57"W
L20	47.28	N40° 01' 39"E

**PARCEL LINE TABLE**

Line #	Length	Direction
L21	98.54	N44° 34' 16"E
L22	257.96	N48° 19' 28"E
L23	36.94	N72° 25' 40"E
L24	113.81	N52° 37' 15"E
L25	27.23	N75° 50' 35"E
L26	225.22	N69° 13' 17"E
L27	75.37	N44° 01' 10"E
L28	34.27	N60° 51' 44"E
L29	94.33	N66° 01' 19"E
L30	122.29	N66° 41' 04"E
L31	110.05	N77° 13' 17"E
L32	42.99	N74° 14' 55"E
L33	69.44	N61° 46' 09"E
L34	66.27	N34° 20' 25"E
L35	85.76	N39° 16' 01"E
L36	270.37	N39° 00' 48"E
L37	182.46	N61° 20' 45"E
L38	55.91	N53° 44' 19"E
L39	73.35	N37° 21' 50"E
L40	85.92	N16° 41' 40"E

**PARCEL LINE TABLE**

Line #	Length	Direction
L41	115.29	N13° 54' 01"E
L42	58.03	N10° 38' 22"E
L43	38.36	S78° 12' 06"E
L44	24.17	N49° 50' 37"W
L45	271.20	S78° 53' 24"E
L46	238.25	S79° 47' 16"E
L47	286.02	S73° 39' 46"E
L48	66.00	N46° 35' 09"E
L49	232.77	S16° 57' 24"E
L50	109.93	N72° 13' 36"E
L51	41.66	N77° 14' 36"E
L52	29.90	S49° 50' 37"E
L53	34.75	S49° 50' 37"E
L54	52.24	S18° 21' 23"E
L55	209.16	S17° 27' 17"E
L56	187.45	S18° 07' 53"E
L57	14.70	S45° 45' 29"W
L58	82.80	S61° 19' 22"W
L59	165.00	S23° 13' 37"E
L60	157.42	S70° 28' 28"W

**PLAN NOTES**

- THE PROPERTY LINES AND EXISTING CONDITIONS SHOWN HEREON ARE THE RESULT OF AN ON-THE-GROUND INSTRUMENT SURVEY PERFORMED BY LIGHTHOUSE LAND SURVEYING LLC BETWEEN MARCH AND APRIL 2021. SURVEY TRAVERSE POINTS 2, 19, AND 50 WERE OBSERVED WITH A CARLSON BRX4+ GPS RECEIVER. STATIC OBSERVATIONS WERE PERFORMED ON MARCH 22, 2021. POSITIONS WERE OBTAINED FROM NGS OPUS SOLUTIONS.
- HORIZONTAL DATUM:**  
MASSACHUSETTS STATE PLANE - MAINLAND ZONE NAD83 (2011)  
EPOCH 2010.00 - US FEET
- VERTICAL DATUM:**  
NORTH AMERICAN VERTICAL DATUM OF 1988 (GEOID 12E) - US FEET
- ALL ON-THE-GROUND OBSERVATIONS WERE PERFORMED USING LEICA TS12 (3") ROBOTIC TOTAL STATIONS. THE LEGAL STATUS OF THE STREETS AND/OR WAYS SHOWN HEREON, WHETHER THEY ARE PUBLIC OR PRIVATE, WAS NOT MADE PART OF THIS SURVEY.
- CARPENTER ROAD IS AN ANCIENT WAY OF VARIABLE WIDTH RANGING FROM 1 ROD TO 2 RODS WIDE AND BOUNDED BY INTERMITTENT STONEWALLS ON BOTH SIDES. THE WAY IS DESCRIBED IN DEEDS DATING BACK TO 1844 (SEE DB 387 PG 630) AND ILLUSTRATED ON MAPS AND PLANS DATED BACK TO 1830 (SEE TOWN OF HOPEDALE & LIBRARY OF CONGRESS PLAN REFERENCES).
- OWNERS NAMES SHOWN HEREON ARE BASED UPON ASSESSORS INFORMATION OBTAINED AS OF THE DATE OF THE SURVEY. IT DOES NOT REPRESENT A CERTIFICATION OF TITLE NOR DOES IT GUARANTEE THE OWNERSHIP OF LOCUS OR ABUTTING PROPERTIES.
- SEVERAL FOOTPATHS CROSS THE PROPERTY LINE AT VARIOUS LOCATIONS AS ILLUSTRATED HEREIN. NO EVIDENCE WAS FOUND IN THE PUBLIC RECORD OF ANY RIGHTS OF WAY.

**PARCEL CURVE TABLE**

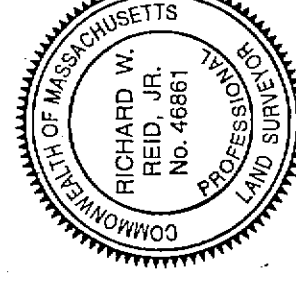
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	157.03	388.39	23° 06' 22"	S89° 45' 17"E	155.971
C2	83.98	388.39	12° 21' 26"	S72° 30' 49"W	83.818
C3	241.01	388.39	35° 27' 47"	N84° 04' 00"E	237.183
C4	11.85	2033.00	0° 20' 03"	S75° 03' 08"E	11.854
C5	130.24	2032.87	3° 40' 15"	S77° 03' 17"E	130.222
C6	391.78	1052.00	21° 20' 16"	S54° 24' 04"E	389.520

I CERTIFY TO THE EXISTENCE OF THE FOLLOWING:

THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 250 CMR 6.00.

THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THAT THE LINES OF STREETS AND WAYS ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.



*Richard W. Gailor*  
PROFESSIONAL LAND SURVEYOR  
DATE: JUNE 15, 2021

REVISIONS:

REV #	DATE	DESCRIPTION

DRWN BY: ZRB  
CHK'D BY: PSB  
APRVD BY: RWR

PREPARED BY:  
**EDC** Engineering Design Consultants, Inc.  
32 Turnpike Road  
Southborough, Massachusetts  
(508) 480-0225

PROJECT:  
**GRAFTON & UPTON RAILROAD**  
364 WEST STREET  
(WORCESTER COUNTY)  
HOPEDALE, MASSACHUSETTS

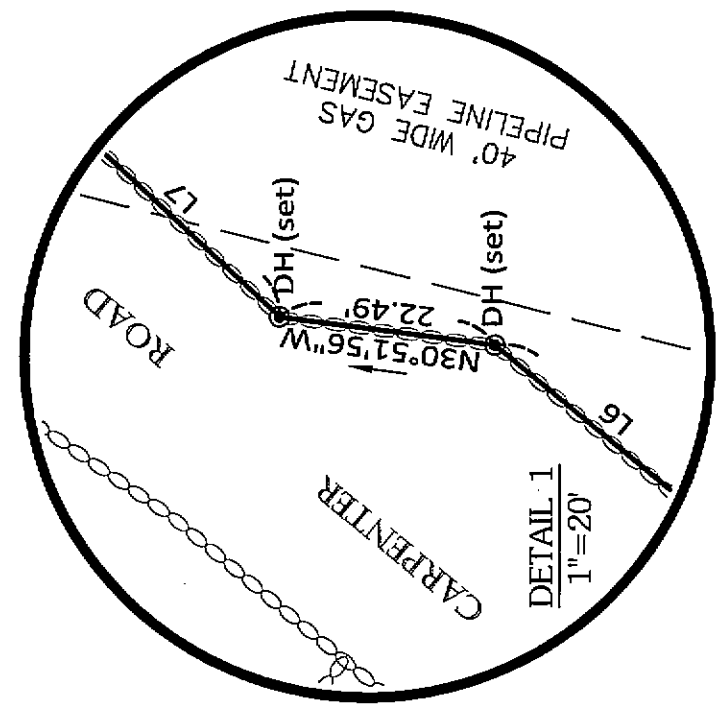
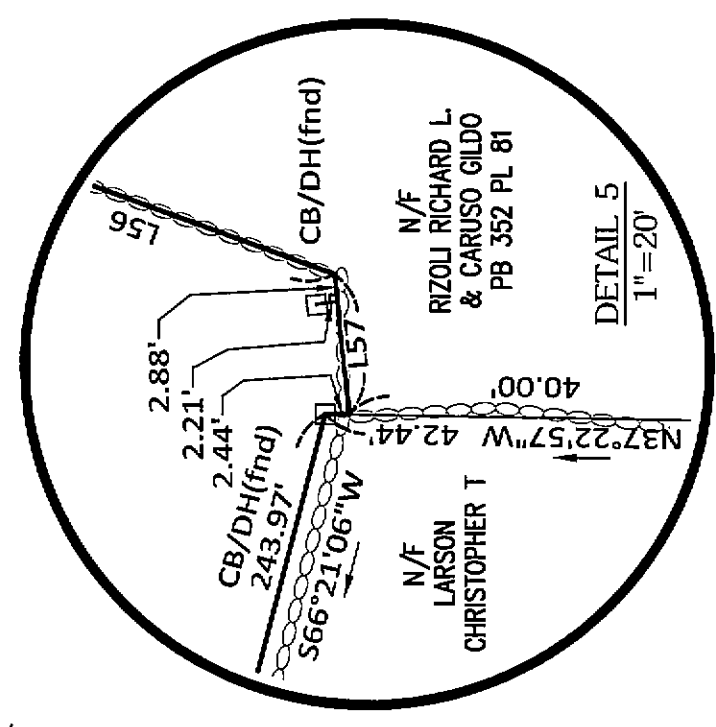
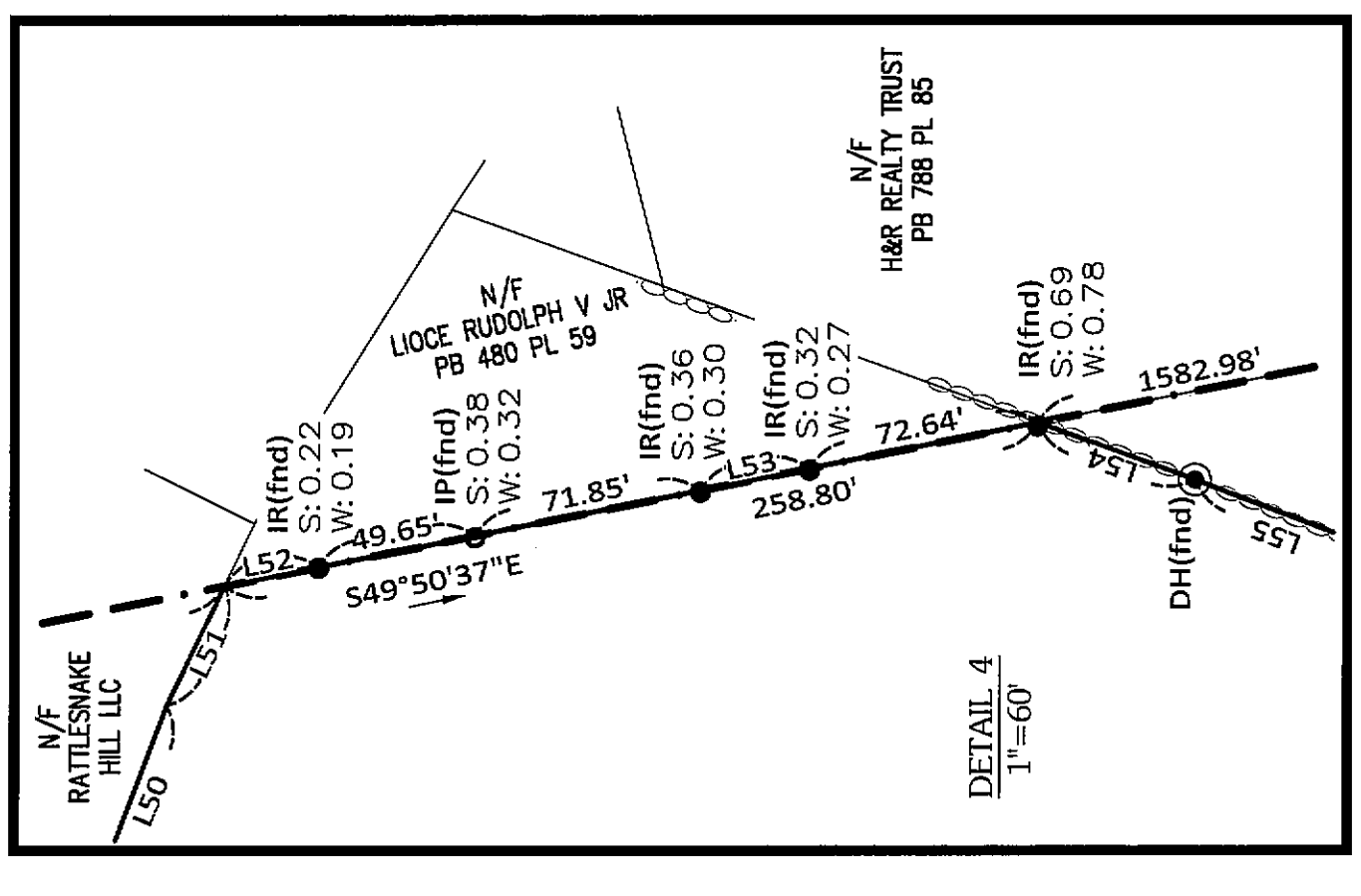
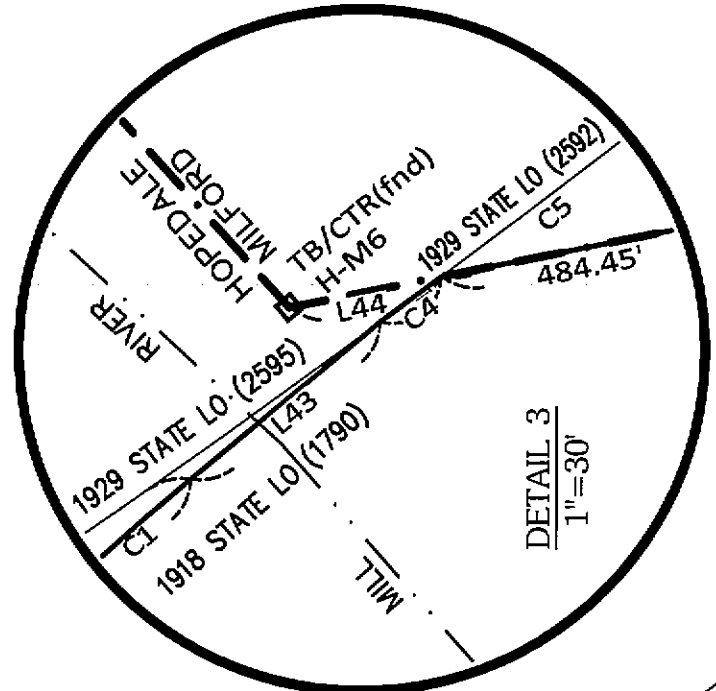
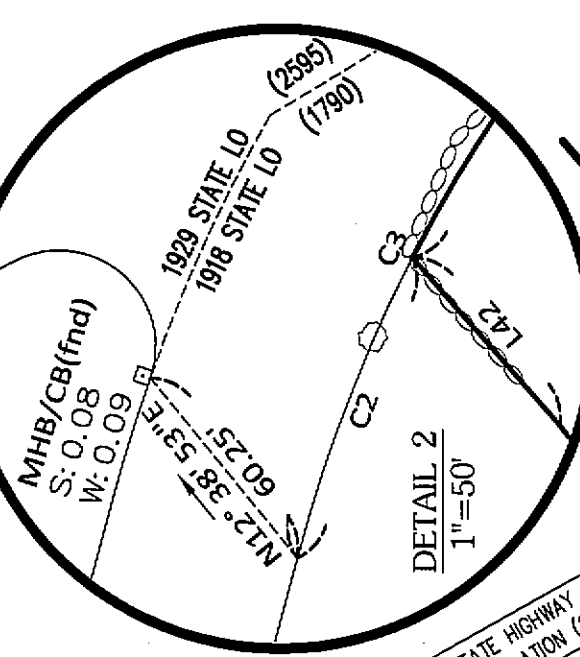
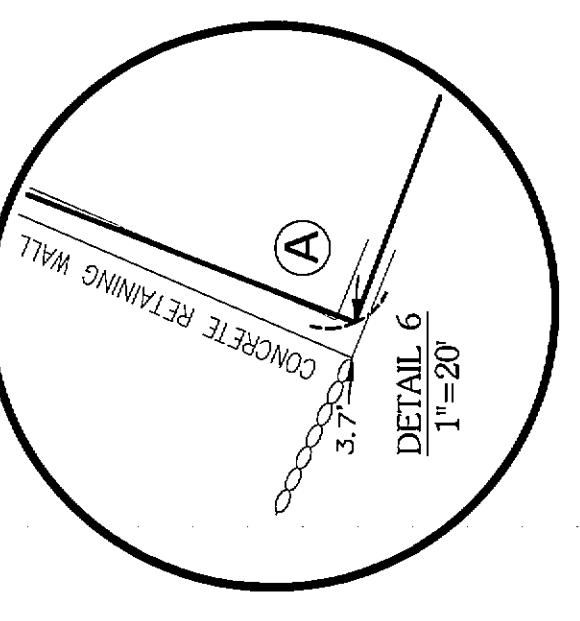
TITLE:  
**EXISTING BOUNDARY  
PLAN OF LAND**

PREPARED FOR:  
Grafton & Upton Railroad Company  
42 Westboro Road  
North Grafton, Massachusetts 01536

DATE: JUNE 15, 2021  
1 OF 2  
EDC PROJECT NUMBER  
3659

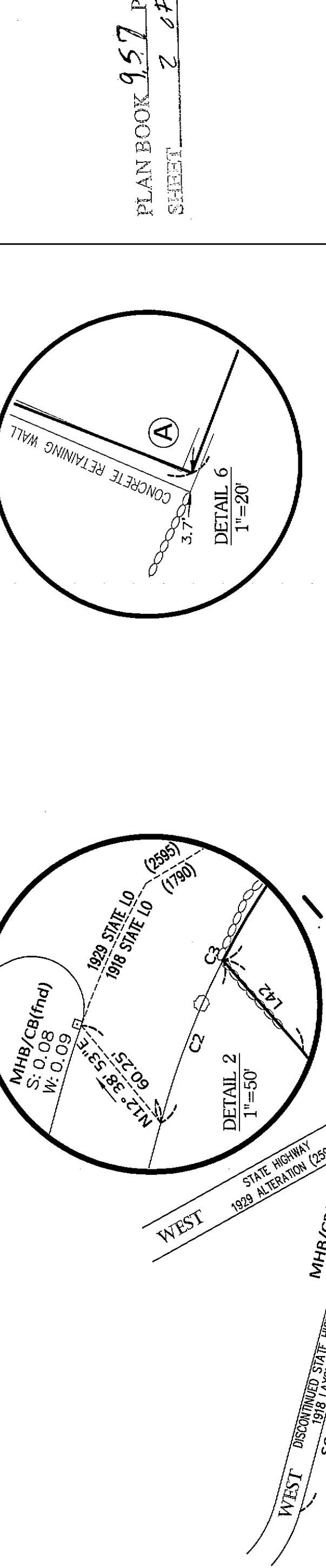
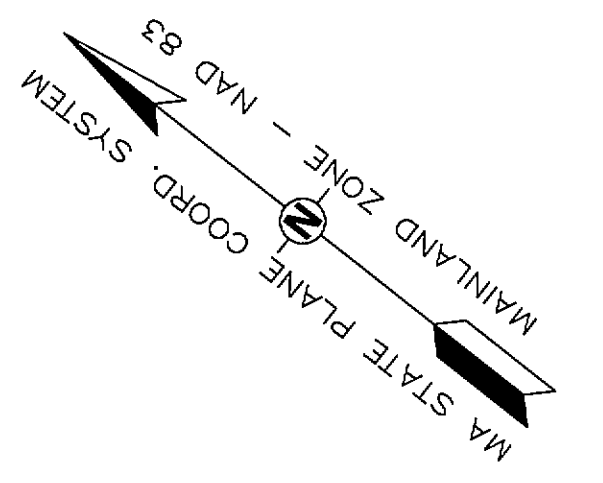
PLAN BOOK 957 PLAN 18  
SHEET 2 OF 2

REGISTRY USE ONLY

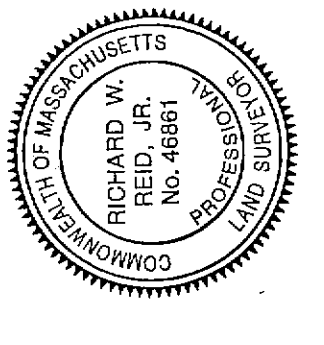


LIST OF POSSIBLE ENCROACHMENTS

- CS/DH(fnd) CONCRETE BOUND W/ DRILL HOLE FOUND
- CS/IR(fnd) CONCRETE BOUND W/ IRON ROD FOUND
- CS/NL(fnd) CONCRETE BOUND W/ NAIL FOUND
- DH(fnd) DRILL HOLE FOUND
- IP(fnd) DRILL HOLE SET
- IR(fnd) IRON PIPE FOUND
- MHB(fnd) IRON ROD FOUND
- SB/DH(fnd) MASS HIGHWAY BOUND FOUND
- TB/CTR(fnd) STONE BOUND W/ DRILL HOLE FOUND
- TB/DH(fnd) TOWN BOUND CENTER FOUND
- TB/DH(fnd) TOWN BOUND W/ DRILL HOLE FOUND



I CERTIFY TO THE EXISTENCE OF THE FOLLOWING:  
THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 250 CMR 6.00.  
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THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.



Richard W. Gidd  
PROFESSIONAL LAND SURVEYOR

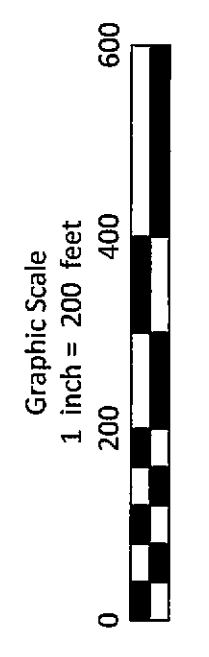
DATE: JUNE 15, 2021

DATE: JUNE 15, 2021  
2 OF 2  
EDC PROJECT NUMBER 3659

EXISTING BOUNDARY  
PLAN OF LAND  
GRAFTON & UPTON RAILROAD  
364 WEST STREET  
(WORCESTER COUNTY)  
HOPEDALE, MASSACHUSETTS

PREPARED FOR:  
Grafton & Upton Railroad Company  
42 Westboro Road  
North Grafton, Massachusetts 01536

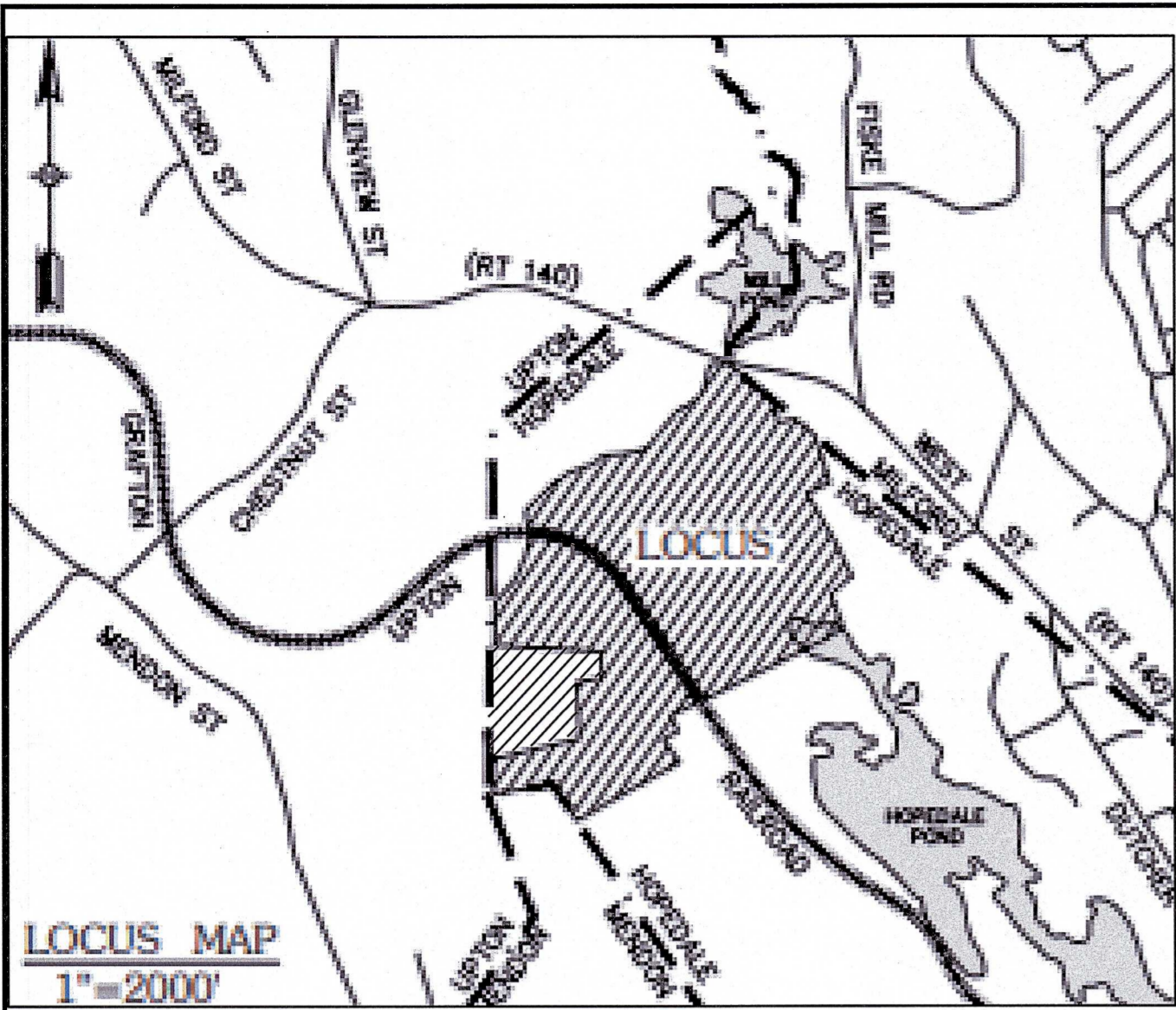
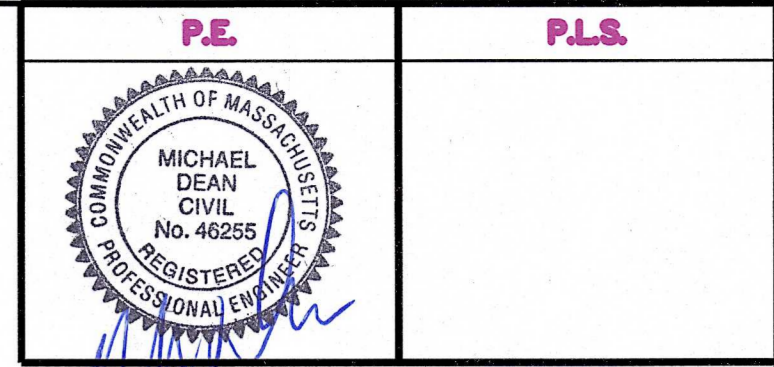
PREPARED BY:  
Engineering Design Consultants, Inc.  
32 Turnpike Road  
Southborough, Massachusetts  
(508) 480-0225



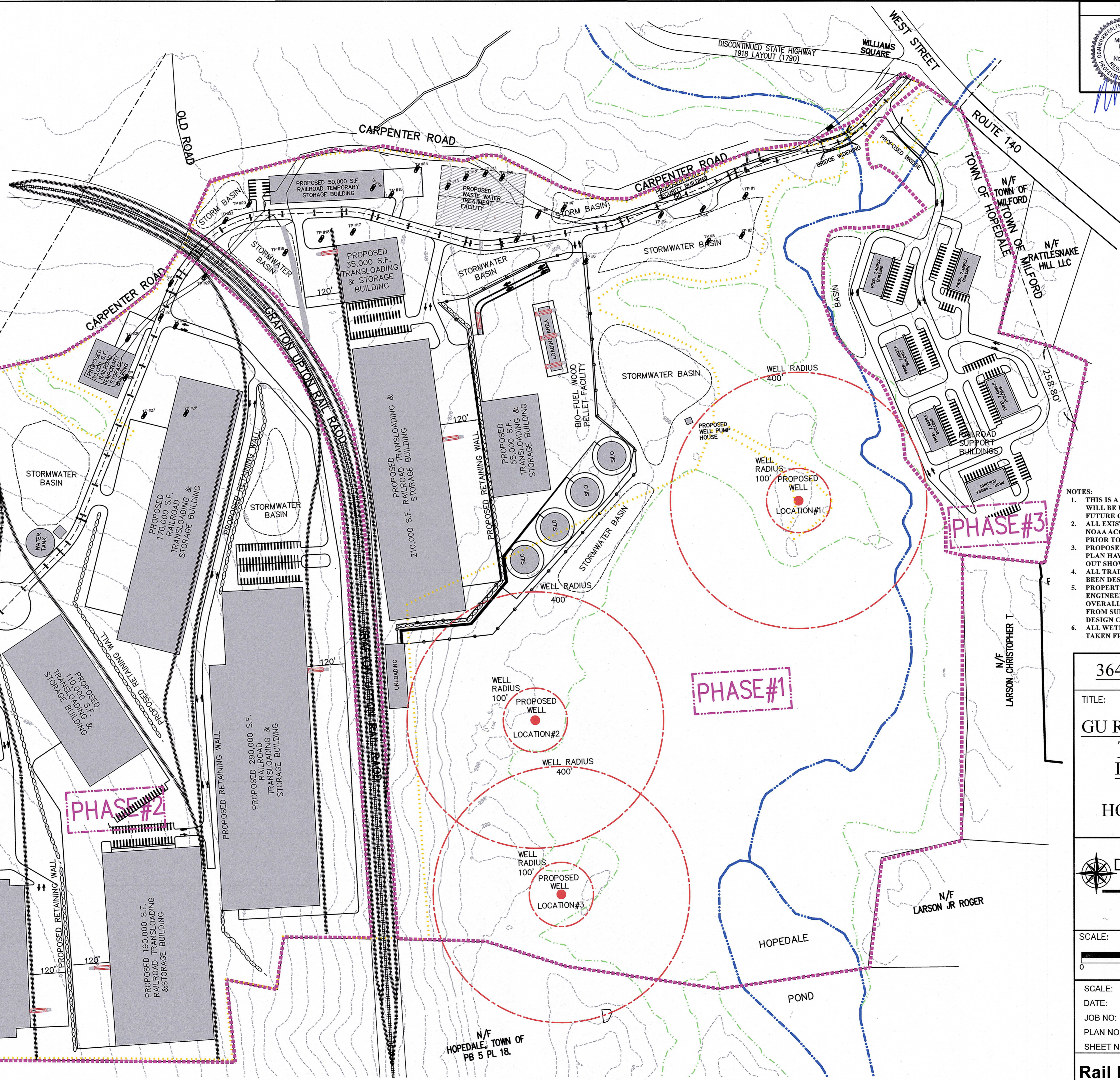
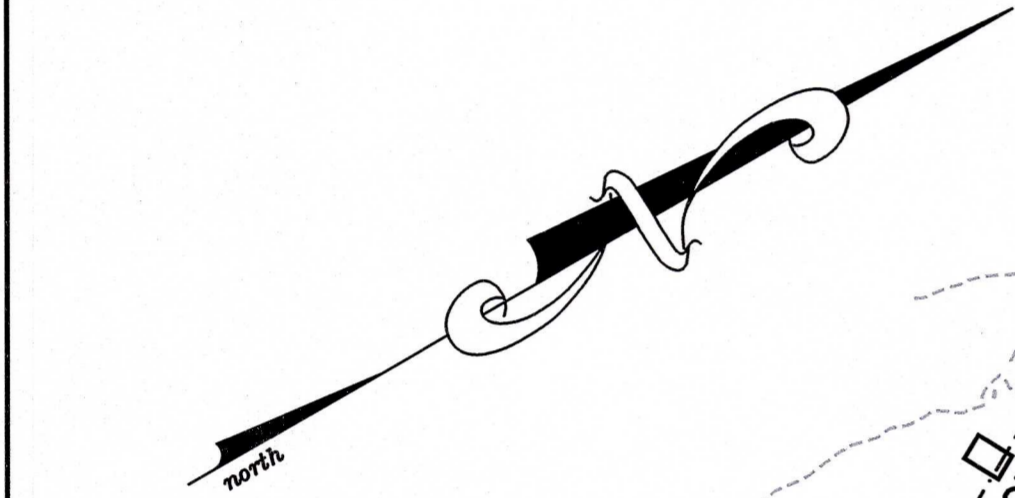
REVISIONS:	DATE	DESCRIPTION

DRAWN BY: ZSB  
CHK'D BY: FSB  
APPROV'D BY: RWR

## **EXHIBIT 2**



LOCUS MAP



- NOTES:
1. THIS IS A DEVELOPMENT MASTER PLAN THAT WILL BE USED FOR THE FRAMEWORK FOR THE FUTURE CONSTRUCTION OF THE PARCEL.
  2. ALL EXISTING TOPOGRAPHY WAS TAKEN FROM NOAA ACCESS VIEWER AND SHALL BE VERIFIED PRIOR TO START OF DESIGN ON THE PARCEL.
  3. PROPOSED STORMWATER BASINS SHOWN ON THIS PLAN HAVE BEEN SIZED FOR THE TOTAL BUILD OUT SHOWN ON THESE PLANS.
  4. ALL TRAIN RAILS SHOWN ON THIS PLAN HAVE BEEN DESIGNED USING 2.5% SLOPES MAXIMUM. PROPERTY SURVEY HAS BEEN COMPLETED BY ENGINEERING DESIGN CONSULTANTS, INC. AND OVERALL PROPERTY LINES HAVE BEEN TAKEN FROM SURVEY PERFORMED BY ENGINEERING DESIGN CONSULTANTS, INC.
  5. ALL WETLANDS SHOWN ON THIS PLAN HAVE BEEN TAKEN FROM MASSGIS.

364 WEST STREET

TITLE:  
**GU Railroad's Metrowest  
 Transloading &  
 Logistics Center**  
 in  
**HOPEDALE, MA**

**D&L Design Group**  
 115 Water Street • Milford, MA 01757  
 P: (508) 408-2577  
 www.dandlgroup.com

SCALE: 1"=150 FEET

SCALE: AS SHOWN  
 DATE: MAY 21, 2021  
 REV. 7/8/22 REV. 8/1/22  
 JOB NO: J-012  
 PLAN NO: SITE - PLAN  
 SHEET NO: 1 OF 1

**Rail Development Plan**

N/F BLACK BROOK REALTY CORP

N/F HOPEDALE, TOWN OF PB 5 PL 18.

N/F LARSON JR ROGER

N/F LARSON CHRISTOPHER T.

N/F TOWN OF HILLFORD

N/F TOWN OF RATTLESNAKE

N/F HILL LLC

TOWN OF UPTON

TOWN OF HOPEDALE

TOWN OF MENDON

GAS EASEMENT

PROPOSED 1:1 SLOPED AREA

PROPOSED 50,000 S.F. RAILROAD STORAGE BUILDING

PROPOSED 150,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 190,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 170,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 290,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 50,000 S.F. RAILROAD STORAGE BUILDING

PROPOSED 35,000 S.F. TRANSLOADING & STORAGE BUILDING

PROPOSED 50,000 S.F. RAILROAD STORAGE BUILDING

PROPOSED 210,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 55,000 S.F. RAILROAD TRANSLOADING & STORAGE BUILDING

PROPOSED 50,000 S.F. RAILROAD STORAGE BUILDING

PROPOSED WASTE WATER TREATMENT FACILITY

PROPOSED WELL LOCATION #1

PROPOSED WELL LOCATION #2

PROPOSED WELL LOCATION #3

BIO-FUEL WOOD PELLET FACILITY

LOADING AREA

UNLOADING

SECURITY BUILDING

STORMWATER BASIN

STORMWATER BASIN

STORMWATER BASIN

STORMWATER BASIN

STORMWATER BASIN

STORMWATER BASIN

STORMWATER BASIN

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

Plaintiffs )

vs. )

TOWN OF HOPEDALE, THE HOPEDALE )  
SELECT BOARD, by and through its members, )  
GLENDA HAZARD, BERNARD STOCK, )  
and BRIAN KEYES and THE HOPEDALE )  
CONSERVATION COMMISSION by and )  
through its members, BECCA SOLOMON, )  
MARCIA MATTHEWS and DAVID )  
GUGLIELMI )

Defendants )

Case No. 4:22-cv-40080-ADB

**AFFIDAVIT OF RONALD DANA**

Now comes Ronald Dana, who on oath deposes and says as follows:

1. I am the principal of and executive officer of a group of companies, including, Dana Transport, Inc. (“Dana Transport”) and Grafton Upton Railcare, LLC (“GU Railcare”). I have personal knowledge of the facts set forth in this Affidavit.

2. I formed GU Railcare in 2011 to provide transloading services for and on behalf of Grafton & Upton Railroad Company at its railyard in Upton. GU Railcare has performed these transloading services for and on behalf of G&U since 2011. I am very familiar with and have significant experience in the transloading of material from rail cars through GU Railcare and other entities that I control and operate in the northeast.

3. I am familiar with the lawsuit commenced on behalf of Michael Milanoski in Suffolk County Superior Court in January 2023 against Jon Delli Priscoli.

4. One of my companies – Dana Transport - is the unidentified third party in the Suffolk County lawsuit who is seeking to purchase the Grafton & Upton Railroad Company and other assets and holdings of Jon Delli Priscoli.

5. I am also familiar with the land at 364 West Street in Hopedale, MA, which is owned by One Hundred Forty Realty Trust and leased to Grafton & Upton Railroad Company under a June 30, 2021 Amended and Restated Lease Agreement between One Hundred Forty Realty Trust and Grafton & Upton Railroad Company, a copy of which is attached hereto as Exhibit 1.

6. I am also familiar with the August 1, 2022 Site Plan for the 364 West Street site – entitled “GU Railroad’s Metrowest Transloading & Logistics Center in Hopedale, MA” dated August 1, 2022, a true and accurate copy of which is attached hereto as Exhibit 2.

7. If I am successful in purchasing the stock of Grafton & Upton Railroad Company through Dana Transport or through another controlled entity, the Grafton and Upton Railroad Company intends to develop the 364 West Street property consistent with the framework illustrated in the attached Plan and to operate a state-of-the-art rail transportation and transloading facility at that location, similar to the rail transportation and transloading facility operated in Upton.

Signed under the penalties of perjury this 3<sup>rd</sup> day of February 2023.



Ronald Dana

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to counsel of record for all parties on this 7<sup>th</sup> day of February 2023.

/s/ Donald C. Keavany, Jr.

# **EXHIBIT 1**

## AMENDED AND RESTATED LEASE AGREEMENT

This AMENDED AND RESTATED LEASE AGREEMENT (the “Lease”) is made as of June 30, 2021 by and between One Hundred Forty Realty Trust, a Massachusetts Trust, with offices at 7 EDA Avenue, Carver, MA 02330 (“Landlord”) and Grafton & Upton Railroad Company, a Massachusetts corporation with offices at 42 Westboro Road, North Grafton, Massachusetts 01536 (“Tenant”).

WHEREAS, Landlord and Tenant entered into a Lease Agreement as of October 14, 2020; and

WHEREAS, Landlord and Tenant wish to amend the Lease Agreement and restate it pursuant to and in accordance with the terms and conditions of this Lease;

WHEREAS, in particular, this Lease recognizes that the Premises, as defined below, have increased in size subsequent to the Lease Agreement dated as of October 14, 2020 by reason of a Settlement Agreement and Mutual Release among Landlord, Tenant and the Town of Hopedale, Massachusetts;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1. PREMISES - TERM OF LEASE

1.01 Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described premises (hereinafter called the “Premises”); The land in Hopedale, Worcester County, Massachusetts located on the westerly side of Route 140 thereon shown as plan recorded at the Worcester County Registry of Deeds Plan Book 957, Plan 48 (2-sheets), on June 17, 2021 at 10:18AM, titled Plan of Land, Grafton and Upton Railroad, 364 West Street, Hopedale MA, Existing Boundary Plan of Land prepared by Engineering Design Consultants, Inc on June 15, 2021 containing 194.101 acres of land, more or less, hereinafter referred to as the “Premises” See attached plan in Exhibit I.

1.02 Condition of the Premises. Tenant acknowledges that it has entered into this Lease after a full and complete examination thereof, legal title, their present uses and non-uses, and law, ordinances, and regulations affecting the same and, agrees to accept the same in the same condition in which they or any part thereof now are and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Landlord, except as set forth below, and without recourse to Landlord as to the legal title thereto, the nature, condition or useability thereof, or the use to which the Premises, or any part thereof may be put.

1.03 Term. The “Initial Term” shall commence on October 14, 2020 (the “Commencement Date”) and terminate at midnight on October 14, 2050; provided, however, that this Lease shall remain in full force and effect for subsequent terms (“Renewal Term”) of 3 years each unless Tenant gives Landlord notice at least 180 days' prior to the expiration of the Initial Term or any Renewal Term of an intention to terminate the Lease at the end of the then current

Term. For purposes of this Lease, the phrase “Term” shall mean collectively (a) the Initial Term and (b) any Renewal Term.

ARTICLE 2.  
RENT

2.01 Rent. Tenant shall pay Landlord, without offset or deduction and without previous demand therefore, as items constituting rent (collectively, “Rent”):

- (i) Fixed Rent at the rate of \$3,000.00 per month beginning as of the date on which Tenant completes the installation of the first 2 lengths of track on the Premises for railroad transloading used by Tenant for common carrier rail transportation operations and services, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that such operations and services are or may be subject to the jurisdiction of the Surface Transportation Board (“STB”) and other federal and state agencies (the “Fixed Rent Commencement Date”) through the Initial Term in advance on the first day of each calendar month or portion thereof during the Term.
- (ii) In addition to paying Fixed Rent, the Tenant shall pay the Landlord Bonus Rent based upon railcar traffic transloaded on the Premise as follows: Twenty-Five (\$25.00) Dollars per railcar transloading (“one move only”) at the Premises for a period of Twenty (20) years after the Fixed Rent Commencement by the Tenant

(b) Fixed Rent shall be prorated for any partial month of the Term during which such Rent is due.

2.02 Impositions. Tenant shall pay without notice, and without abatement, deduction or set-off, all Impositions (as defined in Article 3 hereof) and all other reasonable costs, expenses and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of rent.

ARTICLE 3.  
PAYMENT OF TAXES, ASSESSMENTS

3.01 Impositions. Beginning as of the Fixed Rent Commencement Date, Tenant shall pay or cause to be paid (except as explicitly provided in Section 3.02), once first rent is paid per Section 2.01a, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien upon the Premises, or any part thereof or any appurtenance thereto (all such taxes, assessments, water and sewer rents, rates and charges,

levies, license and permit fees and other governmental charges being hereafter referred to as “Impositions”); provided, however, that:

- (a) If, by law, any Imposition may at the option of the taxpayer be paid in installments, Tenant may pay the same in such installments over such period as the law allows, and Tenant shall only be liable for such installments as shall become due during the Term of this Lease, provided that the full amount of all Impositions attributable to the Term shall be paid by Tenant in the event of an earlier termination of this Lease due to a default of Tenant; and
- (b) All Impositions for the municipal fiscal years in which the Term of this Lease shall begin and end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said year as is within the Term hereby demised.
- (c) Tenant shall not be responsible for any Imposition that arises out of a violation of any Legal Requirement or the presence on the Premises of any Hazardous Materials or the violation of any Environmental Law (as such terms are defined in Article 8.02) that existed prior to the execution and delivery of this Lease. Landlord agrees to use reasonable efforts to minimize the disruption of Tenant’s business operations as the result of work that may be performed on the Premises to remediate any such violations.

Solely for the purpose of determining Tenant’s obligation to pay real estate taxes under this Lease, the Premises shall be deemed to include the entire parcel of land on which the Premises are located containing 194 acres more or less.

Unless Landlord exercises its right to require Tenant to make deposits to pay Impositions under Section 3.03, Landlord shall promptly forward all tax bills and other governmental invoices to Tenant so as to enable Tenant to meet its obligations hereunder in a timely manner.

3.02 Landlord’s Taxes; Substitute Taxes. Nothing herein contained shall require the Tenant to pay (i) municipal, state or federal income taxes (if any) assessed against Landlord; or (ii) municipal, state or federal capital levy, gift, estate, succession, inheritance or transfer taxes of Landlord; or (iii) corporation excess profits or franchise taxes imposed upon any corporate owner of the fee of the Premises; or (iv) any income, profits, or revenue tax, assessment or charge imposed upon the rent payable by Tenant under this Lease, provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the commencement of the Term hereof shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, Impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise on the rents received therefrom, or measured by or based in whole or in part upon the Premises and imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based (“Substitute Taxes”), shall be deemed to be included within the term “Impositions” for the purposes hereof. Tenant shall pay and discharge all Substitute Taxes as herein provided in respect of the payment of Impositions to the extent that such

Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions. Tenant shall, in addition to the foregoing, pay any new tax of a nature not presently in effect, but which may be hereafter levied, assessed, or imposed on the Premises or on Landlord as owner of the Premises, if such tax shall be based on or arise out of the ownership, use or occupation of the Premises. For the purpose of computing Tenant's liability for such type of tax, the Premises shall be deemed the only property of Landlord. Tenant shall be entitled to receive the benefit of any TIF (tax increment financing) plan with respect to the Premises that accrues during the Term of the Lease.

3.03 Payments to Landlord. So long as Tenant pays the Impositions in a timely manner and fulfills its other obligations hereunder, Tenant may make such payments directly to the municipality or other entity to which Impositions are due and payable. After an Event of Default hereunder by Tenant, if Landlord so requires, Tenant shall deposit with Landlord, monthly with each payment of Fixed Rent, one-twelfth of such amount as Landlord reasonably estimates will be required to pay all taxes, betterments, assessments and other governmental liens against the Premises before the same become due. Landlord shall not be deemed a trustee with respect to such deposits and shall not be required to keep said deposits separate from its general accounts or to pay interest thereon to Tenant unless required by law. If at any time Landlord reasonably determines such deposits are or will be insufficient to discharge the amounts actually required to pay such taxes, betterments, assessments and liens as may be due, any deficiency shall be promptly deposited by Tenant with Landlord. Tenant shall transmit to Landlord all bills for such taxes, betterments, assessments and liens as soon as received. Should the amount deposited with Landlord by Tenant in any year exceed the amount required, such excess shall be applied to escrow payments for the succeeding year.

3.04 Receipts. Unless required to make monthly deposits under Section 3.03, Tenant shall furnish to Landlord within thirty days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment thereof.

3.05 Abatements; Contests by Tenant. Tenant shall be privileged to seek a reduction in the valuation of the Premises assessed for tax purposes and to contest in good faith by appropriate proceedings, at Tenant's expense, the amount or validity in whole or in part of any Imposition, provided that

- (a) Tenant shall provide Landlord with security reasonably satisfactory to Landlord to assure payment of contested items (which at Landlord's reasonable discretion may mean making deposits under Section 3.03 which would enable Landlord to pay the contested items in full);
- (b) Tenant shall immediately pay to Landlord any additional amounts needed to enable Landlord to pay such contested item or items if the protection of the Premises or of Landlord's interest therein from any lien or claim shall, in the reasonable judgment of Landlord, require such payment; and
- (c) Landlord shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall



require that such proceedings be brought by or in the name of Landlord. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless Landlord from any such reasonable costs and expenses.

Subject to the foregoing, and without cost to it, Landlord shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any valuation or Imposition and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

3.06 Abatements by Landlord; Allocations. Landlord shall have a right to seek a reduction in the valuation of the Premises assessed for tax purposes and to prosecute any action or proceeding theretofore commenced by Tenant, if such assessed valuation or valuations shall in whole or in part relate and pertain to any period of time subsequent to the expiration or termination of this Lease or property of Landlord that includes the Premises. Tenant shall be entitled to any refund of any Imposition and penalties or interest thereon received by Landlord which have been paid by Tenant, or which have been paid by Landlord but previously reimbursed in full by Tenant.

#### ARTICLE 4. SURRENDER

4.01 Yield Up. Except as provided in Article 11 or elsewhere to the contrary in this Lease, Tenant shall, as of the Termination Date as defined in Article 11 of this Lease, surrender and deliver up the Premises to the possession and use of Landlord without delay and in good order, condition and repair (excepting only fire or casualty and reasonable wear and tear). The Premises shall at that time be free and clear of all leases and occupancies. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term or created or suffered by Landlord.

4.02 Fixtures. Except as provided in Article 11 or elsewhere to the contrary in this Lease, where furnished by or at the expense of Tenant, any buildings, transloading facilities, track and other rail facilities and all trade fixtures, business equipment, furniture and personal property installed on the Premises by Tenant or any sublessee ("Tenant's Property") and any Alterations designated for removal by Landlord in accordance with Section 7.05 shall be removed by Tenant prior to the Termination Date; provided that Tenant shall restore any damage caused by such removal. In the event the Premises are not restored in accordance with the preceding sentence, Tenant shall pay all Landlord's costs of restoring such damage to comply with the preceding sentence.

4.03 Abandoned Property. Any personal property of Tenant or any sublessee or occupant which shall remain in the Premises after the termination of this Lease and the removal of Tenant or such occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such sublessee or occupant and either may be retained by

Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord shall give written notice to Tenant to such effect, such property shall be removed by Tenant at Tenant's sole cost and expense.

4.04 Extension to Remove. If this Lease shall terminate pursuant to Article 15 hereof, then, notwithstanding Sections 4.02 and 4.03 hereof Tenant shall have a reasonable time after the Termination Date (not exceeding thirty (30) days) to remove any property which it shall otherwise be entitled to remove pursuant to Section 4.02 hereof.

4.05 No Liability. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any occupant following termination of this Lease, unless due to the gross negligence or willful and wrongful acts of Landlord, its employees or agents.

4.06 Holding Over. If Tenant occupies the Premises after the Termination Date without having entered into a new lease thereof with Landlord or having reached some other agreement with Landlord to continue Tenant's occupation, Tenant shall be a Tenant-at-sufferance, subject to all of the terms and provisions of this Lease. Such a holding over, even if with the consent of Landlord, shall not constitute an extension or renewal of this Lease.

4.07 Survival. The provisions of this Article shall survive any termination of this Lease.

## ARTICLE 5. INSURANCE

5.01 All Risk Casualty Insurance. Tenant, at its sole cost and expense, shall keep in full force and effect casualty insurance on the buildings and other improvements on the Premises in an amount at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage and extended to include breakdown of boilers, machinery and electrical equipment. The insurance shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction. Such insurance shall include an agreed amount provision. The replacement cost of the buildings shall be determined at least once every thirty-six (36) months by the agreement of Landlord and Tenant. If Landlord and Tenant are unable to so agree, the replacement cost shall be determined at the expense of the Tenant by an appraiser who shall be mutually and reasonably acceptable to Landlord and Tenant.

During any construction or alteration of the Premises, Tenant shall also keep in full force and effect all risk builder's risk insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Landlord may reasonably require.

5.02 Liability Insurance. Tenant, at its sole cost and expense, shall maintain:

- (a) for the mutual benefit of Landlord and Tenant, general public liability insurance against claims for personal injury, death, and property damage, occurring upon, in or about the Premises, and on, in or about any adjoining

sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least \$5,000,000 for any one accident and \$2,000,000 for injury to any one individual and \$1,000,000 for damage to property;

(b) such liability insurance may be in such greater or lesser limits as may hereafter be reasonably determined in accordance with Section 5.07, but in no event less than such limits as are from time to time customarily carried with respect to similar properties where the Premises are located;

(c) such liability insurance as may be mutually agreed upon by the Landlord and Tenant to cover the Tenant's intended railroad and transloading operations to be developed on the Premises, and

(d) such other insurance and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are customarily insured against in the case of similar buildings where the Premises are located due regard being, or to be, given to height, type and construction.

5.03 Insurance Carriers, Policies. All insurance provided for in this Article 5 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in the state where the Premises are located. Upon the execution of this Lease, and thereafter not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this Article 5, duplicate originals of the policies bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord.

5.04 No Separate Insurance Except with respect to the insurance required by subdivision (a) of Section 5.02 hereof, neither Landlord nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 5 to be furnished by, or which may reasonably be required to be furnished by Tenant unless Landlord and Tenant are included therein as the insured, with loss payable as in this Lease provided. Each party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as in Section 5.03 hereof required.

5.05 Adjustment.

(a) All policies of insurance provided for in Section 5.01 hereof shall name Landlord and Tenant as the insured as their respective interests may appear. The loss, if any, under such policies shall be payable to the Landlord.

(b) All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Tenant or any sublessee shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

5.06 Non-cancellation. Each such policy or certificate therefore issued by the insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be cancelled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to Landlord and to any mortgagee named therein.

5.07 Insurance Limit Changes. Landlord may reasonably require a change in the amounts or limits of the insurance to be maintained hereunder pursuant to Section 5.02 hereof or may reasonably require from Tenant such other insurance as is referred to in Section 5.02(d) hereof; provided that any such additional coverage shall be consistent with amounts, limits or additional insurance as may be required for similar industrial buildings in the I-495 West submarket in which the Premises are located.

5.08 Waiver of Subrogation. To the extent obtainable (even though extra premium may result therefrom), all insurance policies carried by either party covering the Premises, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer to make any claim against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement.

5.09 Waiver of Rights. Landlord and Tenant each hereby waive all claims, causes of action and rights of recovery against the other and their respective partners, agents, officers and employees, for any damage to or destruction of persons, property or business which shall occur on or about the Premises and shall result from any of the perils insured under any and all policies of insurance maintained by Landlord and Tenant, regardless of cause, including the negligence and intentional wrongdoing of either party and their respective agents, officers and employees but only to the extent of recovery, if any, under such policy or policies of insurance; provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.

## ARTICLE 6.

### LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

6.01 Performance by Landlord. If Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article 3 hereof, or to take out, pay for, maintain or deliver any of the insurance policies or certificates provided for in Article 5 hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed pursuant to this Lease, then Landlord may, but shall be under no obligation to:

- (a) pay any Imposition payable by Tenant pursuant to the provisions of Article 3 hereof, or
- (b) take out, pay for and maintain any of the insurance policies provided for in Article 5 hereof, or
- (c) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided,

and may enter upon the Premises (after one (1) day's notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

6.02 Reimbursement. All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord, including reasonable attorneys' fees, in connection with the performance of any such act, together with interest thereon at two (2) percent per annum in excess of the then current prime rate as established by the Wall Street Journal (the "Prime Rate") from the date of such payment or incurring by Landlord of such cost and expense, shall constitute Impositions payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. If Landlord shall exercise its rights under Section 6.01 to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such Impositions to Landlord upon demand.

6.03 Entry. During the progress of any work in the Premises which may under the provisions of this Article 6 be performed by Landlord, Landlord may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment; provided that Landlord shall use reasonable efforts to minimize any inconvenience or disruption to Tenant. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby.

ARTICLE 7.  
REPAIRS AND MAINTENANCE OF THE PREMISES;  
UTILITIES; ALTERATIONS; OTHER EXPENSES.

7.01 Repairs and Maintenance.

(a) Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises (including all improvements now or hereafter erected thereon), all sidewalks, curbs and entrances adjoining the same and shall keep the Premises in the same condition as they now are, except for normal wear and tear or damage from fire or casualty or a Taking, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, including repairs to the HVAC system and other building service equipment. All repairs made by Tenant shall be at least equal in quality and class to existing conditions.

7.02 Cleaning; Snow Removal. Tenant shall put, keep and maintain all portions of the Premises and the sidewalks and curbs adjoining the same in a clean and orderly condition, free of rubbish, snow, ice and unlawful obstructions.

7.03 No Liability. Landlord shall in no event be required to make any alterations, rebuildings, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

7.04 Utilities. Tenant shall pay, as Impositions, directly to the utility provider all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises and service inspections made therefore, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of Landlord (“Utility Charges”).

7.05 Alterations. Tenant and any of its sublessees, assignees or licensees shall be entitled to make any and all alterations, improvements, repairs, etc., including without limitation the construction of rail facilities and buildings and the installation of transloading equipment, to the Premises in its sole determination. No approvals from Landlord are required. Tenant shall cause each contractor and subcontractor to carry worker’s compensation insurance in statutory amounts covering all of their respective employees and comprehensive public liability insurance in amounts reasonably satisfactory to Landlord (such insurance to be written by companies reasonably satisfactory to Landlord and insuring Tenant and Landlord as well as the contractor and subcontractors). Tenant shall pay promptly when due the entire cost of such work. Tenant shall not cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Premises, and shall discharge or bond any such liens which may be so filed or recorded not later thirty (30) days after completion of the work and in any event not later the ninety (90) days after the filing or recording of a notice of contract. All such work shall be performed in a good and workmanlike manner and in compliance with all legal requirements and the provisions of all applicable insurance policies. Tenant shall indemnify and hold Landlord harmless from and against any and all third party suits, demands, causes of action, claims, losses, debts, liabilities, damages, penalties or judgments, including, without limitation, reasonable attorneys’ fees, arising from injury to any person or property occasioned by or growing out of such work (such indemnity shall survive the expiration or termination of this Lease) unless caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

ARTICLE 8.  
COMPLIANCE WITH LAWS, ORDINANCES, ETC.

8.01 Legal Requirements. Throughout the Term of this Lease, Tenant shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks and curbs adjoining the same or to the use or manner of use of the Premises or the owners, tenants or occupants thereof, whether or not such law, ordinance, rule, regulation or requirement shall affect the interior or exterior of any buildings or interfere with the use and enjoyment of the Premises, and shall be responsible, at Tenant’s expense, to make Alterations required to correct any violations that are not expressly made the responsibility of the Landlord hereunder or that existed prior to the execution and delivery of this Lease. Landlord understands and acknowledges that pursuant to Article 11.01 the Premises may be used for any lawful purpose and will be used by Tenant for rail transportation purposes in connection with and support of Tenant’s existing and future rail transportation service, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that certain of these activities or uses may be subject to local or state laws,

regulations, ordinances, rules or judicial or regulatory proceedings and that Tenant may seek to preclude the applicability or enforceability and any pre-approval or permitting requirements of any such laws, regulations, ordinances, rules or judicial or regulatory jurisdiction or decisions by reliance on the doctrine of federal preemption. Tenant will hold Landlord harmless on account of any such uses that result in preemption of local and state regulatory authorities and processes (“Legal Requirements”).

8.02 Hazardous Materials. Tenant shall not generate, store or use any “Hazardous Materials” (as hereinafter defined) in or on the Premises except in compliance with any and all applicable Legal Requirements, or dispose of Hazardous Materials from the Premises to any other location except a properly approved disposal facility and then only in compliance with any and all Legal Requirements regulating such activity, nor permit any occupant of the Premises to do so. As used in this Lease, “Hazardous Materials” means and includes any chemical, substance, waste, material, gas or emission which is radioactive or deemed hazardous, toxic, a pollutant, or a contaminant under any statute, ordinance, by-law, rule, regulation, executive order or other administrative order, judgment, decree, injunction or other judicial order of or by any governmental authority, now or hereafter in effect, relating to pollution or protection of human health or the environment. As used herein, the term “Hazardous Material” means any hazardous, radioactive or toxic substance, material or waste or petroleum derivative which is or becomes regulated by any Environmental Law (as defined below). The term “Hazardous Material” includes, without limitation, any material or substance which is (i) designated as a “hazardous substance” pursuant to Section 1311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (iii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601), or (iv) defined as “hazardous substance” or “oil” under Chapter 21E of the General Laws of Massachusetts (collectively “Environmental Laws”). If, at any time during the Term, any governmental authority requires testing to determine whether there has been any release of Hazardous Materials by Tenant or anyone claiming by, through or under Tenant, then Tenant shall reimburse Landlord upon demand, as Additional Rent, for the reasonable costs thereof. Tenant shall execute affidavits, certifications and the like, as may be reasonably requested by Landlord from time to time concerning Tenant’s knowledge and belief concerning the presence of Hazardous Materials in or on the Premises. Landlord reserves the right to enter the Premises at reasonable times (provided twenty-four (24) hours’ notice is given to Tenant, except in case of emergency) to inspect the same for Hazardous Materials. Tenant shall indemnify, defend, and hold harmless Landlord, and the holder of any mortgage on the Premises from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys’ fees and the cost of litigation, arising from or relating to the breach by Tenant or anyone claiming by, through or under Tenant of the provisions of this Section 8.02 and shall immediately discharge or cause to be discharged any lien imposed upon the Premises in connection with any such claim. The provisions of this Section 8.02 shall survive the expiration or termination of this Lease. Landlord shall indemnify, defend, and hold harmless Tenant from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys’ fees and the cost of litigation, arising from or relating to actions taken or conditions existing on the Premises on or before the

Commencement Date in violation of the laws and regulations referred to hereinabove in this Section.

8.03 Insurance Requirements. Tenant shall likewise observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises if such observance or compliance is required by reason of any condition, event or circumstance arising after the commencement of the Term of this Lease. In any case Tenant shall be privileged to substitute policies of other insurance companies, provided such policies meet the requirements of Article 5.

8.04 Contests. Tenant shall have the right, after ten (10) days' prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 8.01 hereof, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurring of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

Subject to the foregoing and without cost to it, Landlord shall execute and deliver all appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement and further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

#### ARTICLE 9. DISCHARGE OF LIENS

9.01 Tenant Responsibilities. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises, the underlying fee, or any part thereof as a result of any action by Tenant, Tenant, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise in accordance with Section 8.01. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, if such lien shall continue for five (5) days after notice from Landlord to Tenant, but shall not be obligated to, discharge the same either by



paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects upon another fifteen (15) days notice from Landlord to Tenant, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of two (2%) percent per annum in excess of the then prevailing Prime Rate from the respective dates of Landlord's making of the payment or incurring of the reasonable cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

9.02 No Consent. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof.

ARTICLE 10.  
NO WASTE

10.01 Prohibition. Tenant shall not do or suffer any strip or waste or damage, or injury to the Premises or the underlying fee or any part thereof.

ARTICLE 11.  
USE OF PROPERTY

11.01 Tenant's business operations. The Premises may be used by Tenant for any lawful purpose. Landlord acknowledges and agrees that the Premises will be used by Tenant for common carrier rail transportation operations and services, including but not limited to the loading, unloading, transloading and temporary storage of materials of every type and kind and that such operations and services are or may be subject to the jurisdiction of the Surface Transportation Board ("STB") and other federal and state agencies. Notwithstanding any other provision of this Lease, Landlord (a) shall not, except with the prior written consent of Tenant, take any actions that would interfere with, adversely affect or disrupt Tenant's rail operations or service, (b) shall not take or permit any action, including any action to sell, transfer, assign or encumber the Premises in any manner that would interfere with, disrupt or adversely affect such rail transportation, service or operations, except with the prior written consent of Tenant, (c) shall not, without the prior written consent of Tenant, remove, retire or alter any buildings, facilities, equipment, track and other rail facilities if the effect would be to interfere with, adversely affect or disrupt Tenant's rail operations or service, (d) shall permit Tenant or its sublessees, licensees, assignees or customers to construct, install and own buildings, facilities, equipment, track or other rail facilities on the Premises, and to remove or recover the value of any such buildings, facilities, equipment, track or other rail facilities in the event that they can no longer be used or accessed by any such sublessee, licensee, assignee or customer, (e) acknowledges and agrees that the Termination Date of this Lease shall not occur and Tenant shall be permitted to continue to occupy and use the Premises for rail transportation purposes unless and until the STB or any other governmental agency with jurisdiction has relieved Tenant

of its common carrier rail service obligations or authorized Tenant to abandon or discontinue its rail operations and service on the Premises and (f) shall permit Tenant to sublease, assign, license or permit occupation of portions of the Premises for rail transportation related businesses and activities and for the construction, installation and maintenance of buildings, facilities, equipment and other property related to or used in connection with rail transportation. For purposes of this Article 11, the consent of Tenant may be given or withheld for any reason in the sole judgment of Tenant.

ARTICLE 12.  
ENTRY ON PREMISES BY LANDLORD

12.01 Permission. Tenant shall permit Landlord and its authorized representatives, upon reasonable prior notice to Tenant, to enter the Premises at all reasonable times for the purpose of inspecting the Premises for compliance with the covenants and obligations of this Lease and to exercise any of its rights hereunder which require such entry; provided, however, that any such inspection shall not unreasonably interfere with rail operations of Tenant.

ARTICLE 13.  
INDEMNIFICATION

13.01 Indemnification Tenant shall indemnify and save Landlord harmless against and from all liabilities, obligations, damages, penalties, third party claims, costs, charges and reasonable expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term of this Lease:

- (a) any work or thing done in or on the Premises or any part thereof by Tenant or any party other than Landlord;
- (b) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof including any sidewalk or curb to the extent part of the Premises;
- (c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;
- (d) any accident, injury or damage to any person or property occurring in or on the Premises or any part thereof, including any sidewalk or curb to the extent part of the Premises; or
- (e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any third party claim arising out of any of the occurrences from which Tenant is required, pursuant to the preceding paragraph, to indemnify and save Landlord harmless against, Tenant upon written notice from Landlord shall at Tenant's expense defend such action or proceeding using legal

counsel reasonably satisfactory to Landlord. If Tenant has supplied Landlord with insurance policies covering any of the aforementioned risks no claim shall be made against Tenant unless and until the insurer shall fail or refuse to defend and/or pay all or any part thereof. Notwithstanding the foregoing, to the extent necessary to preserve its rights, Landlord shall have the right to make claim, institute legal proceedings, or otherwise seek redress against Tenant prior to the expiration of any statute of limitations or other period or limitation limiting the time or manner in which Landlord may seek redress regardless of whether any insurer is responding or not. Notwithstanding the foregoing, no indemnification shall be provided by Tenant if the underlying damage, injury, or loss was caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

Landlord shall protect, indemnify, and hold the Tenant harmless from and against any and all loss, claims, liability or reasonable costs (including court costs and reasonable attorneys' fees) incurred by reason of any damage to any property (including but not limited to property of the Tenant) or any injury (including but not limited to death) to any person in or about the Premises to the extent such injury or damage shall be caused by or arise from any gross negligence or willful misconduct by Landlord or his employees or agents.

Landlord shall protect and ensure Tenant's access to the Premises consistent with Landlord's deeded easements for right to travel in common through each and every right of way to the Premises. Furthermore Landlord acknowledges the public safety easement for fire protection water furnished to the Premises and will protect the Tenant from any interference with the transmission of such fire protection water by any third party.

The foregoing provision of this Article (as well as any other provisions dealing with indemnity and the like by Tenant of Landlord) shall be deemed to be modified in each case by the insertion in the appropriate place of the language: "except as otherwise provided in M.G.L. c. 186, Section 15."

#### ARTICLE 14. IMPROVEMENTS

14.01 Improvements by Landlord NONE.

14.02 Improvements by Tenant. All improvements undertaken by Tenant shall be paid for in full by Tenant. Landlord shall have no responsibility to make any such payments for any improvements.

#### ARTICLE 15. CASUALTY AND EMINENT DOMAIN

15.01 Substantial Taking; Termination. In the event that the entire Premises or any substantial part thereof, shall be taken by any exercise of the right of eminent domain or shall receive any direct or consequential or substantial damages for which Landlord or Tenant or either of them shall be entitled to compensation by reason of anything lawfully done in pursuance of any public or other authority during the Term, then this Lease shall terminate at the election of Landlord, which election may be made notwithstanding Landlord's entire interest may not have been divested. If, in the sole judgment of Tenant, such taking or damage renders

the Premises unusable, uneconomical or burdensome for Tenant's business operations after such taking, Tenant shall have the right, effective when its possession or use is disturbed, to terminate this Lease by notice in writing to Landlord delivered within thirty (30) days of the first day on which Tenant's possession is so disturbed. At the option of Tenant, it may take appropriate legal or regulatory actions in order to prevent or minimize any taking by eminent domain or any other action that would render the Premises unusable, uneconomical or burdensome for Tenant's business operations. Any damages by reason of eminent domain or anything done in pursuance of any public or other authority shall be allocated equitably between Landlord and Tenant.

15.02 Termination by Tenant. If the Premises shall be substantially damaged by fire or other casualty such that Tenant reasonably determines that the Premises are unusable for the Tenant's business operations, then Tenant may terminate this Lease as of the date of the occurrence of such damage by written notice thereof to Landlord within thirty (30) days after the date of such damage, in which event this Lease shall terminate on the date set forth in such notice, and Landlord shall allow Tenant a fair diminution of payment of any Impositions from and after the date of such damage to the date of such termination of this Lease to the extent the Premises are unusable for the Tenant's business operations hereunder.

15.03 Landlord's Obligations; Abatement of Impositions Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such taking or damage or the repair thereof, provided that Landlord uses reasonable efforts to minimize inconvenience and disruption to Tenant during such repair or restoration, except that (i) Landlord shall allow Tenant a fair diminution of the payment of any Impositions during the time and to the extent the Premises are unusable for the Tenant's business operations, and (ii) in the event of a partial taking, a just proportion of Rent, similarly determined, shall be abated for the remainder of the Term.

#### ARTICLE 16.

#### ASSIGNMENTS AND SUBLEASES OF TENANT'S INTERESTS ARE ALLOWED

16.01 Assignment and Sublease If Tenant wishes to assign this Lease or sublease or assign all or any portion of the Premises, Tenant shall so notify Landlord in writing. Such notice shall include (i) the name of the proposed assignee, licensee or sublessee, (ii) a description of the use of the Premises by such sublessee, licensee or assignee, and (iii) such financial information concerning the proposed assignee, licensee or sublessee as Landlord may reasonably require.

(b) Upon the consummation of an assignment, license or sublease, (i) Tenant shall deliver to Landlord a fully executed copy of said assignment, license or sublease, and (ii) after any such assignment, license or sublease, Tenant shall remain primarily liable to Landlord hereunder (which liability shall be joint and several with the assignee or sublessee). Tenant shall give Landlord written documentation of any improvements to be made to the Premises by any assignee or sublessee, that substantially differ from the improvements made or to be made by the Tenant.

(c) Tenant shall not be entitled to enter into any assignment, license or sublease, or to request Landlord's consent thereto, during the continuance of an Event of Default hereunder by Tenant.

(d) Any assignment, license or sublease entered into pursuant to this Section 16.01 shall be subject to all of the terms and provisions of this Lease, including without limitation this Section 16.01. If Tenant enters into any such assignment, license or sublease, Landlord may, at any time and from time to time after the occurrence of an Event of Default hereunder, collect Impositions from such assignee or sublessee, and apply the net amount collected against Tenant's obligations hereunder.

#### ARTICLE 17. DEFAULT PROVISIONS

17.01 Events of Default. If any one or more of the following events (herein called "Events of Default") shall happen:

(a) If default shall be made in the due and punctual payment of any Impositions or other sums payable under this Lease or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after notice from Landlord to Tenant specifying the items in default; or

(b) If the leasehold hereby created shall be taken on execution, or by other process of law, and such taking is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if any assignment shall be made of Tenant's property for the benefit of creditors; or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of Tenant's assets by a court of competent jurisdiction, and such appointment is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if a petition is filed by Tenant under any bankruptcy or insolvency law; or if a petition is filed against Tenant under any bankruptcy or insolvency law and the same shall not be dismissed within sixty (60) days from the date upon which it is filed; or a lien or other involuntary encumbrance is filed against Tenant's leasehold (or against the Premises or any building thereon or part thereof based on a claim against Tenant) and, as to a lien under MGL chapter 254, is not discharged within the period set forth in Section 8.01 or, as to any other lien or encumbrance, is not discharged or bonded within thirty (30) days after the filing thereof; or

(c) If default shall be made by either party in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease provided other than those referred to in paragraphs (a) or (b) of this Section for a period of thirty (30) days after notice from the non-defaulting party to the defaulting party

specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, the defaulting party fails to proceed within the last mentioned thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with diligence (it being intended in connection with a default not susceptible of being cured with diligence within the last mentioned thirty (30) day period that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence);

then and in any such event the non-defaulting party at any time thereafter may give written notice to the defaulting party specifying such event or events of default and stating that this Lease and the Term hereby demised shall expire and terminate on a date not earlier than the Termination Date as defined in Article 11, and the Term and all rights of the defaulting party under this Lease, shall expire and terminate unless prior to the Termination Date the event or events of default shall have been cured, and the defaulting party shall remain liable as hereinafter provided. Landlord acknowledges, if it is the defaulting party, that Tenant would suffer irreparable harm which would be difficult to ascertain and quantify and for which immediate remedies at law would be inadequate and that Tenant shall be entitled to equitable relief therefor, including without limitation specific performance and temporary, preliminary and permanent injunctive relief, in addition to any and all other rights and remedies available to it at law or in equity.

17.02 Surrender. Upon any such expiration or termination of this Lease, but subject to the provisions of Article 11 above, Tenant shall, as of the Termination Date, quit and peacefully surrender the Premises to Landlord, and Landlord, upon or at any time after such Termination Date, may without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income from the same.

17.03 Relet. At any time or from time to time after any such Termination Date, but subject to the provisions of Article 11 above, Landlord may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its unfettered discretion, may determine and may collect and receive the rents therefore. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

17.04 Remedies.

(a) No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord any Impositions and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and

thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for liquidated and agreed current damages for Impositions and other charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting, after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(b) Tenant shall pay such current damages (herein called "deficiency") to Landlord, and Landlord shall be entitled to recover from Tenant each deficiency as the same shall arise.

(c) At any time after any such expiration or termination, in lieu of collecting any further annual deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the value of the then fair and reasonable rental value of the Premises for the same period, minus any such annual deficiencies previously recovered from Tenant.

17.05 No Waiver. No failure by either party to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

17.06 Injunction Relief. In the event of any breach or threatened breach by either party of any of the agreements, terms, covenants or conditions contained in this Lease, the other party shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

17.07 Reimbursement of Landlord's Expenses. Either party shall pay the other party's reasonable expenses, including reasonable attorneys' fees, incurred by the other party in enforcing any obligations of a defaulting party under this Lease.

17.08 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or

all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 18.  
TENANT'S OPTION TO PURCHASE  
INTENTIONALLY LEFT BLANKARTICLE 19

SIGNS

19.01 Signs. Tenant shall be permitted to place one or more signs on the Premises subject to Landlord's consent that will not be unreasonably withheld, conditioned or delayed.

ARTICLE 19.  
INVALIDITY OF PARTICULAR PROVISIONS

19.01 Separability. If any term or provisions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 20.  
NOTICES

20.01 Notices. Any and all disapprovals, objections, offers or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be deemed to have been duly given, delivered or served if and when sent by registered or certified mail, return receipt requested or by overnight courier with tracking and receipt service, addressed if to the Tenant to:

One Hundred Forty Realty Trust  
7 EDA Avenue  
Carver, MA 02330  
Attn: Jon Delli Priscoli

or to such other address as Tenant may from time to time designate by written notice to Landlord, or if to Landlord addressed to:

Grafton & Upton Railroad Company  
42 Westboro Road  
North Grafton, MA 01536  
Attn: Michael R. Milanoski



ARTICLE 21.  
COVENANT OF QUIET ENJOYMENT

21.01 Quiet Enjoyment. Tenant, upon paying the Fixed Rent other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by Landlord or anyone claiming by, through or under Landlord as such, subject, however, to the exceptions, reservations and conditions of this Lease.

ARTICLE 22.  
NO RENT ABATEMENT

22.01 No Abatement. Except as in this Lease otherwise expressly provided, no abatement, diminution or reduction of rent and other charges shall be claimed by or allowed to Tenant, or any person claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to the Premises, by virtue or because of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations or for any other cause or reason; provided that this provision shall not apply with respect to circumstances resulting from (i) Landlord's breach of its covenant of quiet enjoyment, (ii) a violation of Legal Requirements by reason of Hazardous Materials existing on the Premises on the date on which the 2008 Lease was executed, other than the conditions disclosed to Tenant as referred to in Section 8.01, or (iii) the gross negligence or willful misconduct of Landlord.

ARTICLE 23.  
ESTOPPEL CERTIFICATES

23.01 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten days after request by Landlord, certify by written instrument, duly executed, acknowledged and delivered, to Landlord, or any other person, firm, or corporation specified by Landlord:

- (a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;
- (b) whether or not, to the best knowledge of the person executing the certificate on behalf of Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of Tenant to be performed or complied with, and, if so, specifying the same;
- (c) the dates, if any, to which the Fixed Rent and other charges hereunder have been paid;
- (d) the date of expiration of the current Term; and
- (e) the Fixed Rent then payable under this Lease.

ARTICLE 24.  
WAIVER OF JURY TRIAL AND COUNTERCLAIMS

24.01 Waiver. The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Lease or any of its provisions, any negotiations in connection therewith, or Tenant's use or occupation of the Premises.

ARTICLE 25.  
CONSENT OF LANDLORD

25.01 Consents. Notwithstanding anything contained elsewhere in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against Landlord for money damages by reason of any reasonable refusal, reasonable withholding or reasonable delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance or injunction to enforce any such requirement.

ARTICLE 26.  
NO WAIVER

26.01 No Waiver. No acceptance by Landlord of a lesser sum than the Fixed Rent or Additional Rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

ARTICLE 27.  
DEPOSIT

27.01 Deposit. Tenant has deposited sufficient consideration with Landlord to bind this Lease.

ARTICLE 28.  
INTEGRATION; NO ORAL MODIFICATION; GOVERNING LAW

28.01 Integration. All prior understandings and agreements between the parties are merged within this agreement, which alone fully and completely sets forth the understanding of the parties; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the party against whom enforcement of the change or termination is sought.

28.02 Governing Law. This Lease Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

ARTICLE 29.  
SUBORDINATION

29.01 Lease Subordinate. This Lease is and shall be subject and subordinate to any mortgage now or hereafter on the Premises, and to all advances under any such mortgage and to all renewals, amendments, extensions and consolidations thereof, provided that the holder of such mortgagee's interest enters into a non-disturbance and attornment agreement with Tenant which provides that in the event that such mortgagee succeeds to Landlord's interest hereunder, then, provided that Tenant is not in default hereunder beyond the cure period provided in this Lease, such party shall recognize and be bound by the terms of this Lease. In the event that the holder of any mortgage succeeds to Landlord's interest in the Premises or any portion thereof, Tenant hereby agrees to attorn to such mortgagee. In confirmation of such subordination, Tenant shall execute and deliver promptly any certificate in recordable form that Landlord or any mortgagee may reasonably request. Notwithstanding the foregoing provisions of this Section, the holder of any mortgage on the Premises may at any time subordinate its mortgage to this Lease by written notice to Tenant.

ARTICLE 30.  
COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES

30.01 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, and any successors and assigns.

ARTICLE 31.  
RECORDING OF NOTICE OF LEASE

31.01 Recording. Landlord and Tenant mutually agree that a notice of this Lease may be recorded with the appropriate recording office in the state in which the Premises are located.

ARTICLE 32.  
CAPTIONS AND TABLE OF CONTENTS

32.01 References. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

32.02 Table of Contents. The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

ARTICLE 33.  
FORCE MAJEURE

33.01 Force Majeure. Neither Landlord nor Tenant shall be deemed to be in default hereunder (and the time for performance of any of their respective obligations hereunder other than the payment of money shall be postponed) for so long as the performance of such obligation

is prevented by strike, lock-out, act of God, absence of materials or any other matter not reasonably within the control of the party which must perform the obligation (collectively, "Force Majeure").

ARTICLE 34.  
CONSTRUCTION

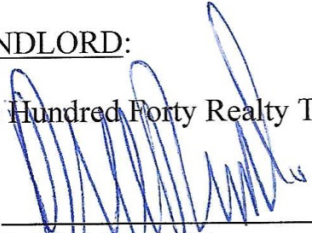
34.01 Construction. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term Landlord whenever used herein, shall mean only the owner at the time of Landlord's interest herein, and no covenant or agreement of Landlord, express or implied, shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any agent, fiduciary, shareholder, officer, director or partner of Landlord, and the liability of Landlord, in any event, shall be limited to Landlord's interest in the Premises. Unless repugnant to the context, "Landlord" and "Tenant" mean the person or persons, natural or corporate, named above as Landlord and as Tenant respectively, and their respective heirs, executors, administrators, successors and assigns.

This LEASE is made between One Hundred Forty Realty Trust, a Massachusetts Trust, with offices at 7 EDA Avenue, Carver, MA 02330 ("Landlord") and the Grafton & Upton Railroad Company, a Massachusetts corporation with offices at 42 Westboro Road, North Grafton, Massachusetts 01536 ("Tenant").

EXECUTED as an instrument under seal as of the date first above written.

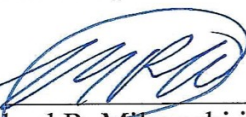
LANDLORD:

One Hundred Forty Realty Trust

By:   
Jon DelliPriscoli, Manager, duly authorized,  
of One Hundred Forty Realty Trust, a  
Massachusetts Trust

TENANT:

Grafton & Upton Railroad Company

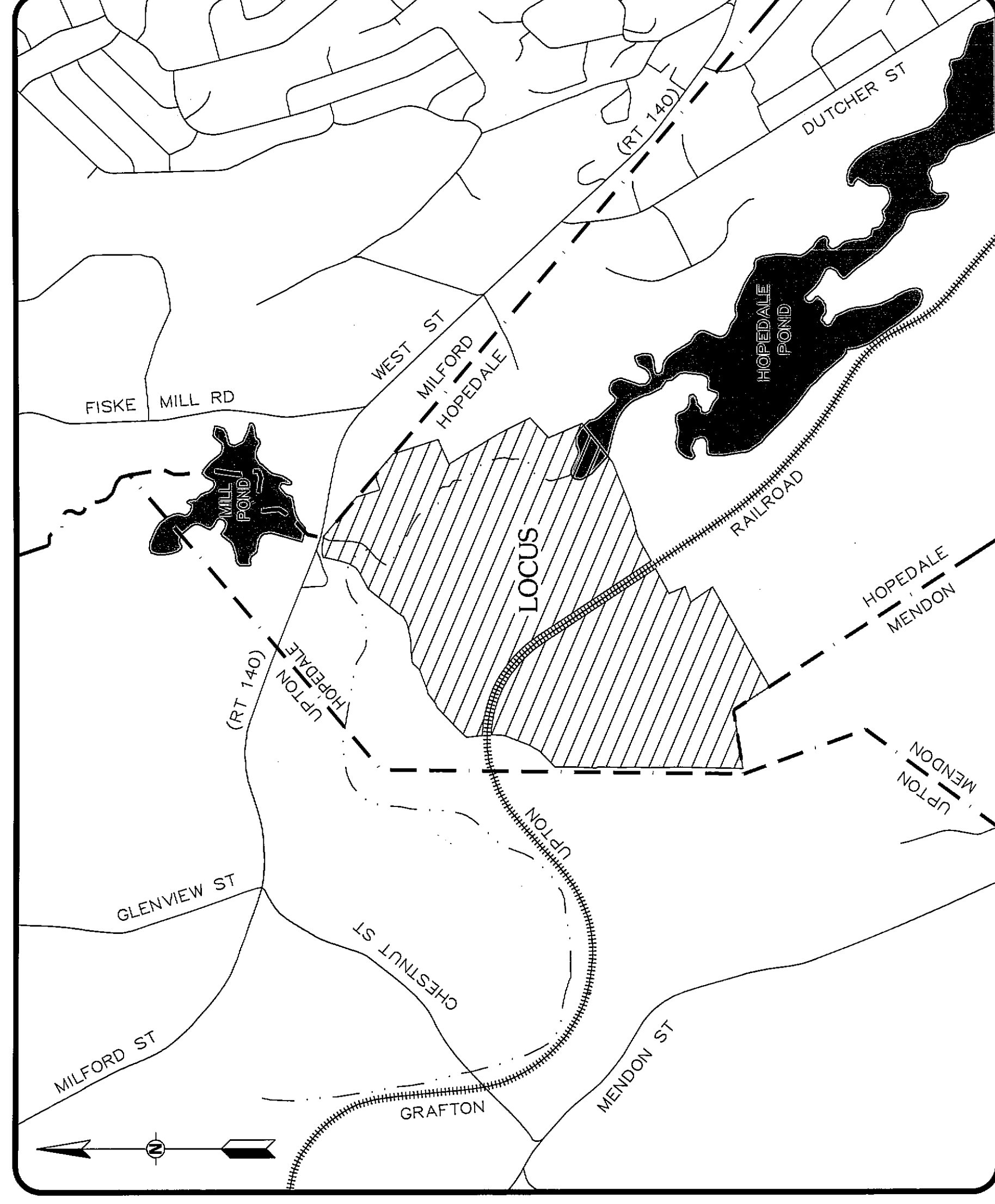
By:   
Michael R. Milanoski its President duly  
authorized

**EXHIBIT I**

Plan of Land, Grafton and Upton Railroad,  
364 West Street, Hopedale MA, Existing Boundary

# PLAN OF LAND GRAFTON & UPTON RAILROAD

364 WEST STREET  
(WORCESTER COUNTY)  
HOPEDALE, MASSACHUSETTS



**ASSESSORS REFERENCES**

ASSESS. PARCEL ID: 2-5-0  
(TRACTS 1, 2, 3, 4, & 5)  
ASSESS. PARCEL ID: 3-1-0  
(18 AC. TRACT)

**WORCESTER COUNTY**

**PLAN REFERENCES**  
PB 826 PL 85 PB 352 PL 81  
PB 817 PL 4 PB 338 PL 92  
PB 788 PL 85 PB 226 PL 113  
PB 782 PL 3 PB 183 PL 63  
PB 674 PL 52 PB 169 PL 46  
PB 480 PL 59 PB 13 PL 73

**HOPEDALE TOWN RECORD**

**PLAN REFERENCES**  
1960 HOPEDALE ASSESSOR'S MAP  
1949 HOPEDALE TOWN BOUNDARY  
PLAN BY R. SMITHURST  
1915 HOPEDALE ASSESSOR'S MAP

**RAILROAD**

**PLAN REFERENCES**  
1909 GRAFTON & UPTON  
RAILROAD PLAN  
BY R.E. ALLEN & SON

**OWNER**

ONE HUNDRED FORTY REALTY TRUST  
42 WESTBORO ROAD  
NORTH GRAFTON, MA 01536

**DEED REFERENCES**

DEED BK 65363 PAGE 65  
(TRACTS 1 & 2 & 18 AC. TRACT)  
DEED BK 73222 PAGE 181  
(TRACTS 3, 4, & 5)

**LIBRARY OF CONGRESS**

**PLAN REFERENCES**  
1904 PLAN OF LAND BY THE PARK  
COMMISSIONERS OF HOPEDALE  
1870 TOWN MAP OF MILFORD  
BY F.W. BEERS & CO.  
1857 MAP OF WORCESTER COUNTY  
BY H.F. WALLING  
1851 TOWN MAP OF MILFORD  
BY O. HARKNESS  
1851 TOWN MAP OF UPTON  
BY H.F. WALLING  
1830 TOWN MAP OF MENDON  
BY NEMELL NELSON

**PARCEL LINE TABLE**

Line #	Length	Direction
L1	611.32	N01° 10' 56"E
L2	190.60	N00° 43' 30"W
L3	86.96	N00° 48' 48"W
L4	121.33	N01° 28' 22"E
L5	158.71	N00° 23' 50"W
L6	207.24	N01° 18' 13"E
L7	73.76	N04° 41' 04"E
L8	137.72	N02° 40' 48"E
L9	180.94	N00° 10' 59"W
L10	213.37	N45° 50' 41"E
L11	104.02	N30° 29' 59"E
L12	42.98	N24° 10' 06"E
L13	39.26	N19° 26' 48"E
L14	93.41	N21° 30' 38"E
L15	75.06	N21° 39' 14"E
L16	44.94	N09° 49' 09"E
L17	93.19	N01° 27' 44"E
L18	83.13	N05° 10' 36"W
L19	148.17	N05° 57' 57"W
L20	47.28	N40° 01' 39"E

**PARCEL LINE TABLE**

Line #	Length	Direction
L21	98.54	N44° 34' 16"E
L22	257.96	N48° 19' 28"E
L23	36.94	N72° 25' 40"E
L24	113.81	N52° 37' 15"E
L25	27.23	N75° 50' 35"E
L26	225.22	N69° 13' 17"E
L27	75.37	N44° 01' 10"E
L28	34.27	N60° 51' 44"E
L29	94.33	N66° 01' 19"E
L30	122.29	N66° 41' 04"E
L31	110.05	N77° 13' 17"E
L32	42.99	N74° 14' 55"E
L33	69.44	N61° 46' 09"E
L34	66.27	N34° 20' 25"E
L35	85.76	N39° 16' 01"E
L36	270.37	N39° 00' 48"E
L37	182.46	N61° 20' 45"E
L38	55.91	N53° 44' 19"E
L39	73.35	N37° 21' 50"E
L40	85.92	N16° 41' 40"E

**PARCEL LINE TABLE**

Line #	Length	Direction
L41	115.29	N13° 54' 01"E
L42	58.03	N10° 38' 22"E
L43	38.36	S78° 12' 06"E
L44	24.17	N49° 50' 37"W
L45	271.20	S78° 53' 24"E
L46	238.25	S79° 47' 16"E
L47	286.02	S73° 39' 46"E
L48	66.00	N46° 35' 09"E
L49	232.77	S16° 57' 24"E
L50	109.93	N72° 13' 36"E
L51	41.66	N77° 14' 36"E
L52	29.90	S49° 50' 37"E
L53	34.75	S49° 50' 37"E
L54	52.24	S18° 21' 23"E
L55	209.16	S17° 27' 17"E
L56	187.45	S18° 07' 53"E
L57	14.70	S45° 45' 29"W
L58	82.80	S61° 19' 22"W
L59	165.00	S23° 13' 37"E
L60	157.42	S70° 28' 28"W

**PLAN NOTES**

- THE PROPERTY LINES AND EXISTING CONDITIONS SHOWN HEREON ARE THE RESULT OF AN ON-THE-GROUND INSTRUMENT SURVEY PERFORMED BY LIGHTHOUSE LAND SURVEYING LLC BETWEEN MARCH AND APRIL 2021. SURVEY TRAVERSE POINTS 2, 19, AND 50 WERE OBSERVED WITH A CARLSON BRX4+ GPS RECEIVER. STATIC OBSERVATIONS WERE PERFORMED ON MARCH 22, 2021. POSITIONS WERE OBTAINED FROM NGS OPUS SOLUTIONS.
- HORIZONTAL DATUM:**  
MASSACHUSETTS STATE PLANE - MAINLAND ZONE NAD83 (2011)  
EPOCH 2010.00 - US FEET
- VERTICAL DATUM:**  
NORTH AMERICAN VERTICAL DATUM OF 1988 (GEOID 12E) - US FEET
- ALL ON-THE-GROUND OBSERVATIONS WERE PERFORMED USING LEICA TS12 (3") ROBOTIC TOTAL STATIONS.
- THE LEGAL STATUS OF THE STREETS AND/OR WAYS SHOWN HEREON, WHETHER THEY ARE PUBLIC OR PRIVATE, WAS NOT MADE PART OF THIS SURVEY.
- CARPENTER ROAD IS AN ANCIENT WAY OF VARIABLE WIDTH RANGING FROM 1 ROD TO 2 RODS WIDE AND BOUNDED BY INTERMITTENT STONEWALLS ON BOTH SIDES. THE WAY IS DESCRIBED IN DEEDS DATING BACK TO 1844 (SEE DB 387 PG 630) AND ILLUSTRATED ON MAPS AND PLANS DATED BACK TO 1830 (SEE TOWN OF HOPEDALE & LIBRARY OF CONGRESS PLAN REFERENCES).
- OWNERS NAMES SHOWN HEREON ARE BASED UPON ASSESSORS INFORMATION OBTAINED AS OF THE DATE OF THE SURVEY. IT DOES NOT REPRESENT A CERTIFICATION OF TITLE NOR DOES IT GUARANTEE THE OWNERSHIP OF LOCUS OR ABUTTING PROPERTIES.
- SEVERAL FOOTPATHS CROSS THE PROPERTY LINE AT VARIOUS LOCATIONS AS ILLUSTRATED HEREIN. NO EVIDENCE WAS FOUND IN THE PUBLIC RECORD OF ANY RIGHTS OF WAY.

**PARCEL CURVE TABLE**

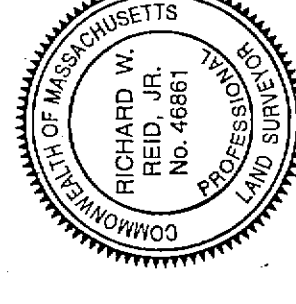
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	157.03	388.39	23° 06' 22"	S89° 45' 17"E	155.971
C2	83.98	388.39	12° 21' 26"	S72° 30' 49"W	83.818
C3	241.01	388.39	35° 27' 47"	N84° 04' 00"E	237.183
C4	11.85	2033.00	0° 20' 03"	S75° 03' 08"E	11.854
C5	130.24	2032.87	3° 40' 15"	S77° 03' 17"E	130.222
C6	391.78	1052.00	21° 20' 16"	S54° 24' 04"E	389.520

I CERTIFY TO THE EXISTENCE OF THE FOLLOWING:

THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 250 CMR 6.00.

THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THAT THE LINES OF STREETS AND WAYS ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.



*Richard W. Gailor*  
PROFESSIONAL LAND SURVEYOR  
DATE: JUNE 15, 2021

REVISIONS:

REV #	DATE	DESCRIPTION
ZRB		
PSB		
RWR		

PREPARED BY:  
**EDC** Engineering Design Consultants, Inc.  
32 Turnpike Road  
Southborough, Massachusetts  
(508) 480-0225

PROJECT:  
**GRAFTON & UPTON RAILROAD**  
364 WEST STREET  
(WORCESTER COUNTY)  
HOPEDALE, MASSACHUSETTS

TITLE:  
**EXISTING BOUNDARY  
PLAN OF LAND**  
PREPARED FOR:  
Grafton & Upton Railroad Company  
42 Westboro Road  
North Grafton, Massachusetts 01536

DATE: JUNE 15, 2021  
1 OF 2  
EDC PROJECT NUMBER  
3659

WORCESTER DISTRICT REGISTRY  
OF DEEDS, WORCESTER, MA

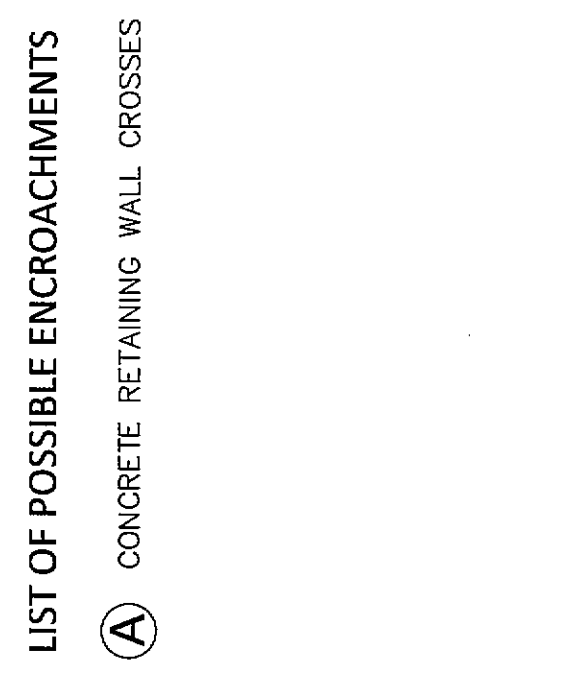
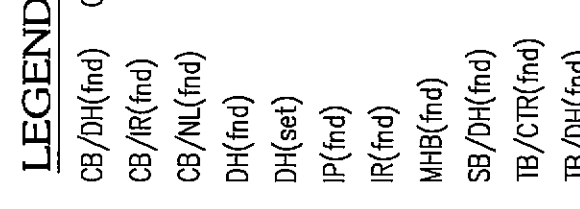
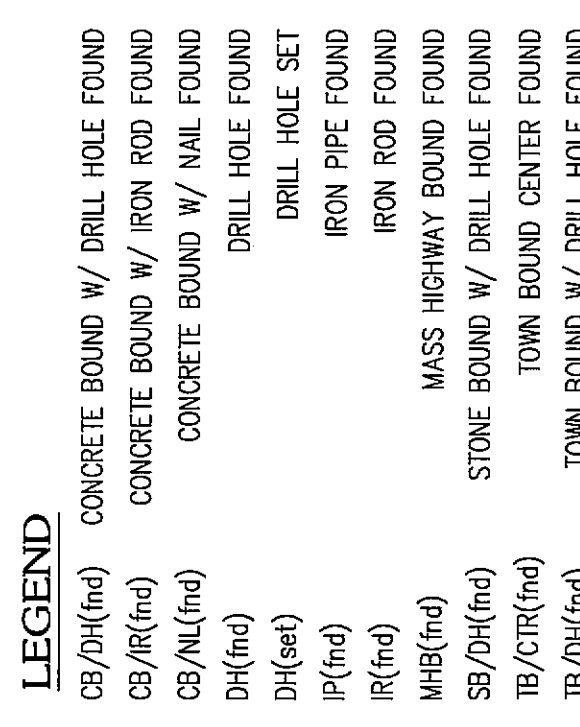
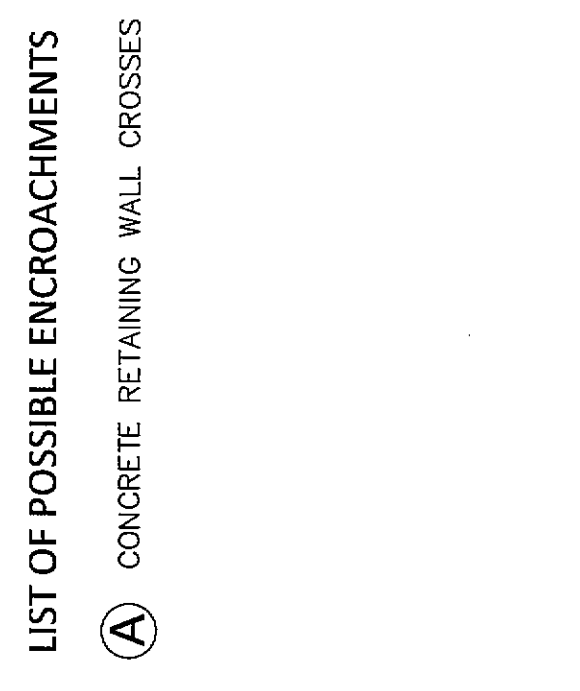
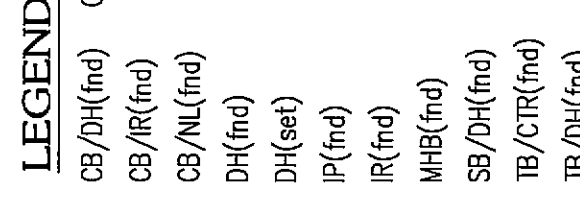
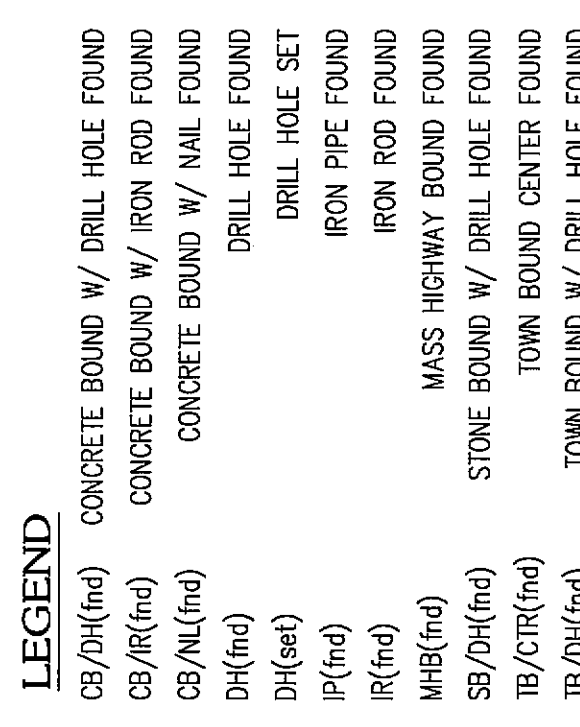
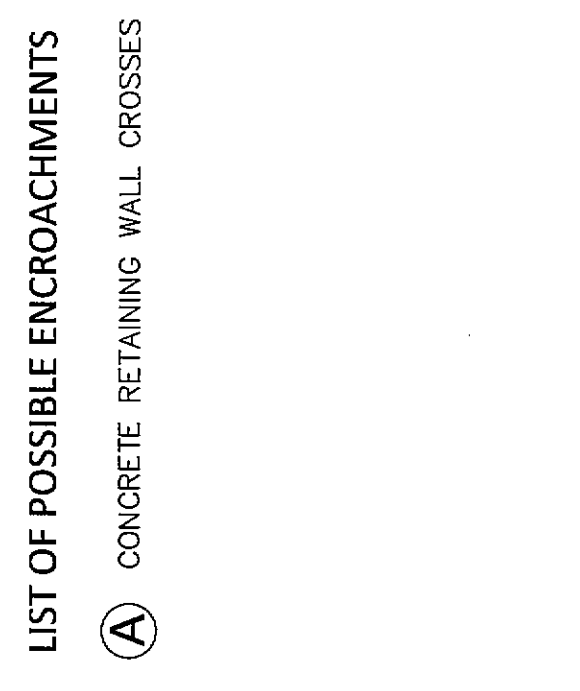
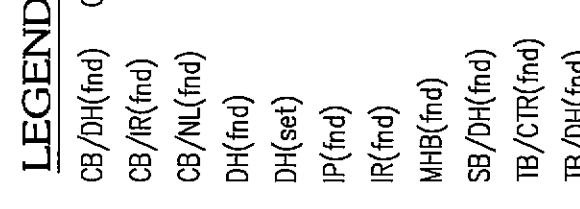
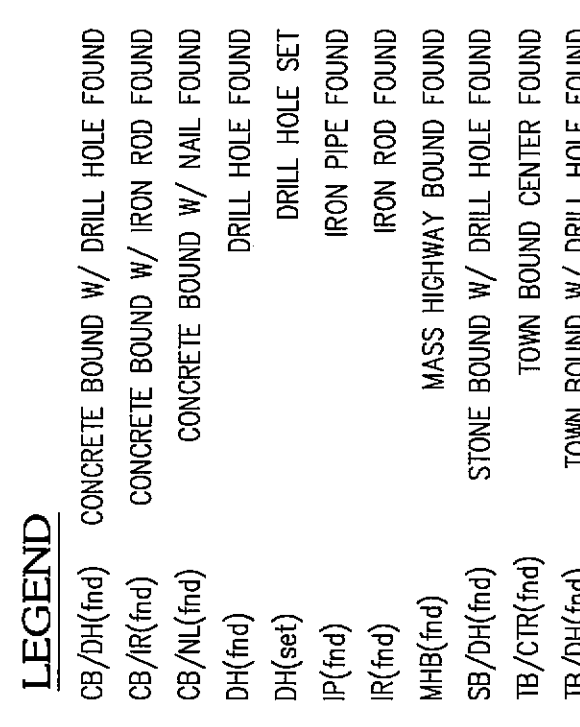
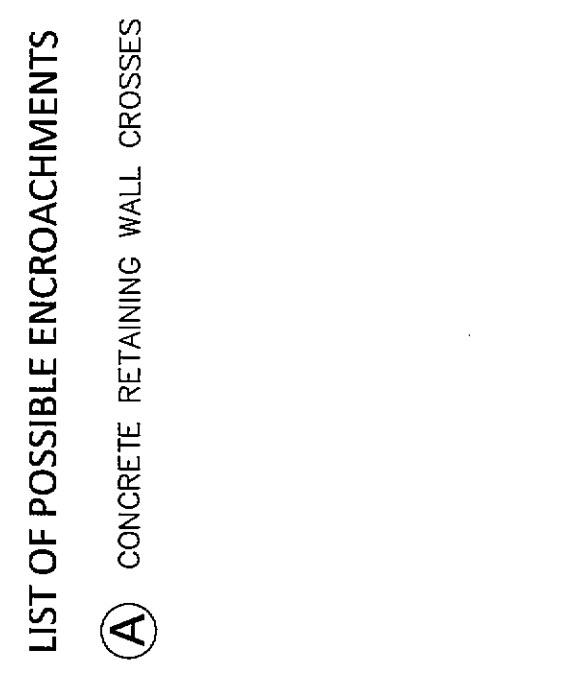
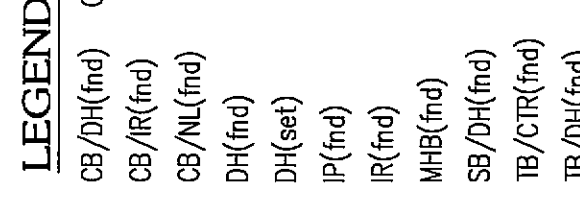
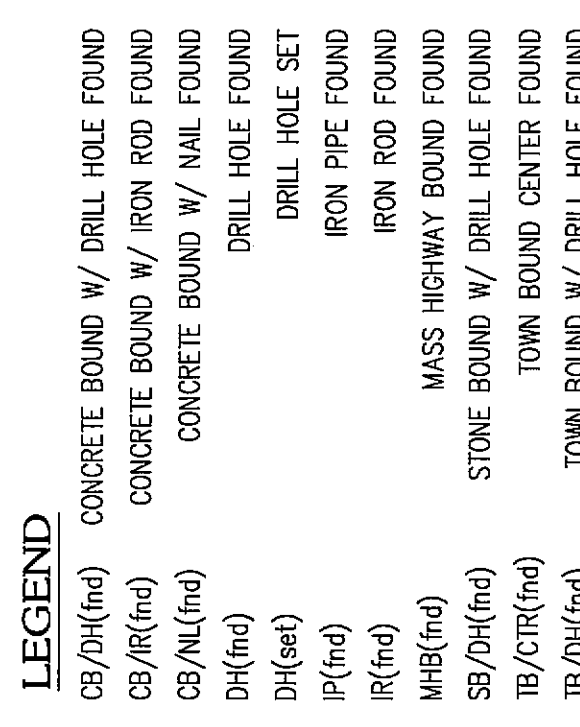
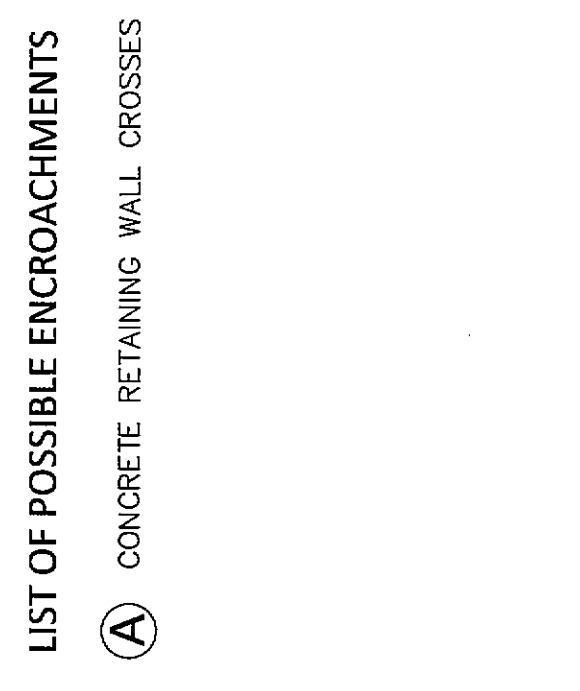
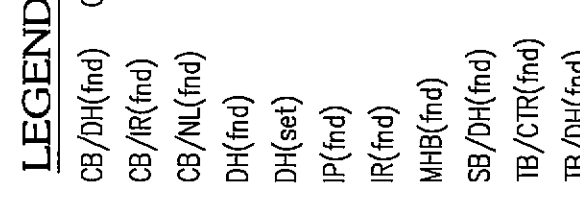
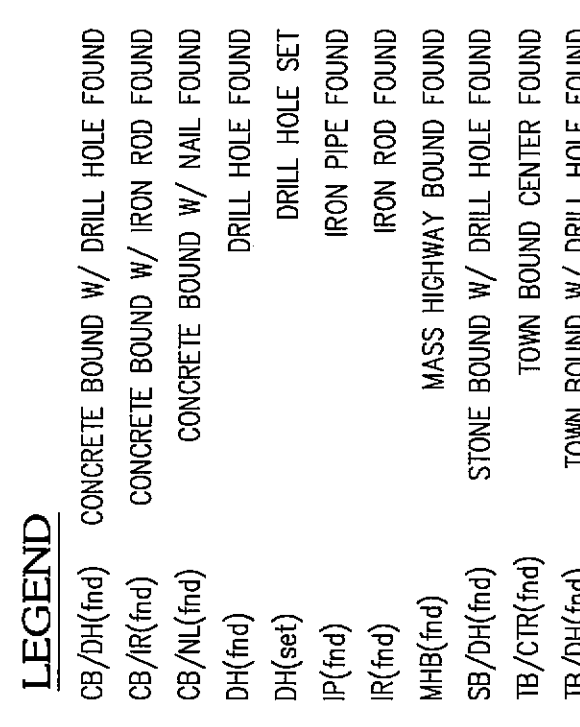
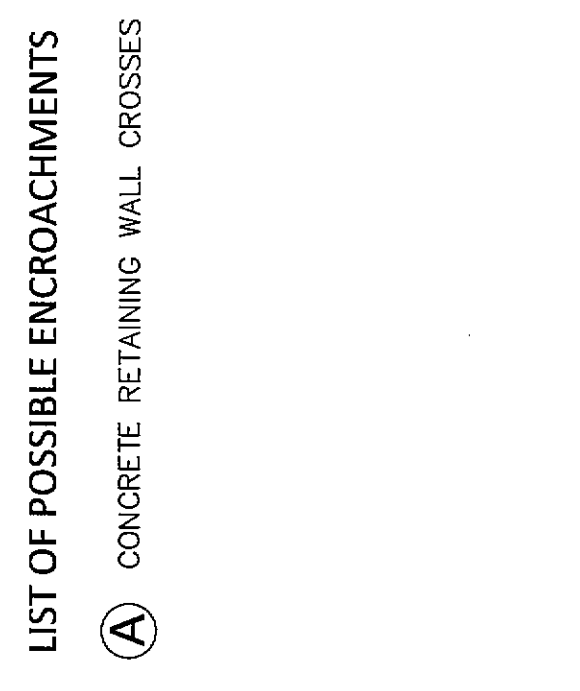
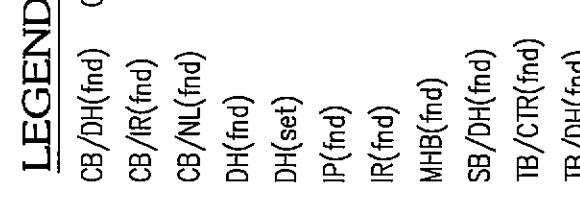
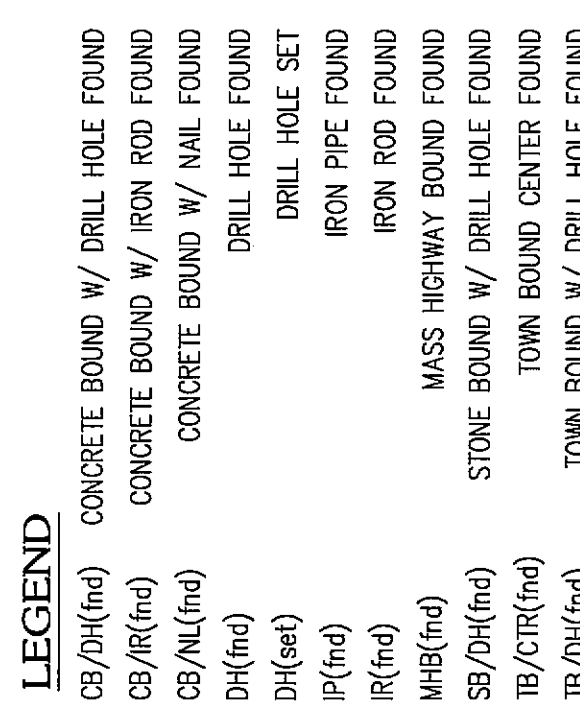
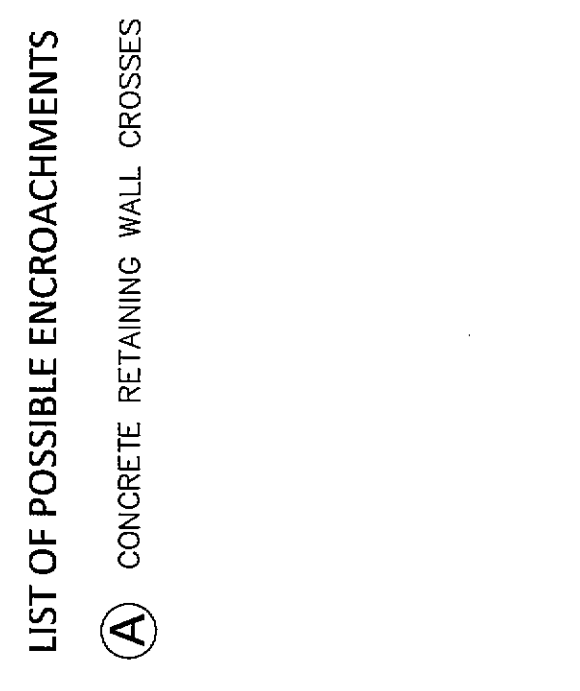
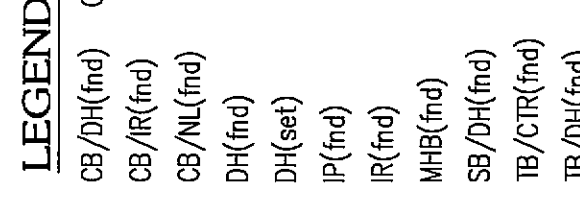
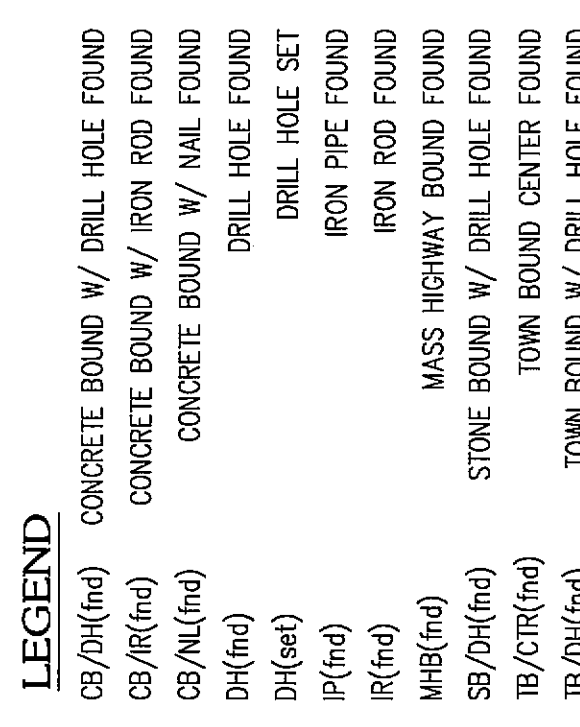
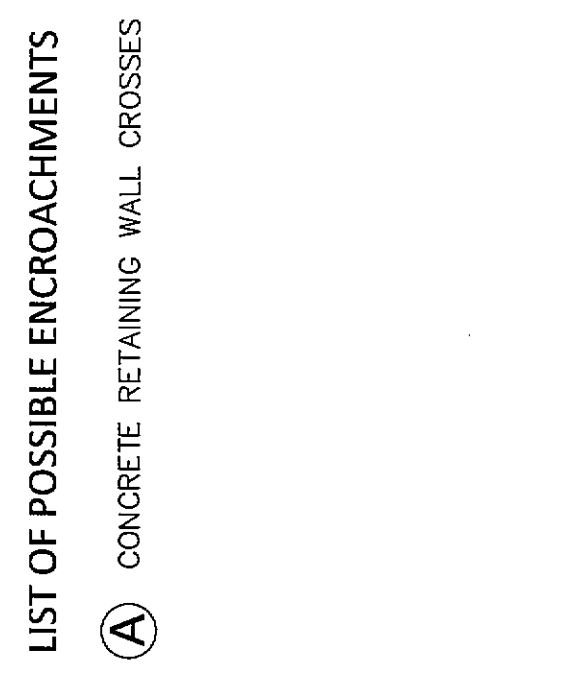
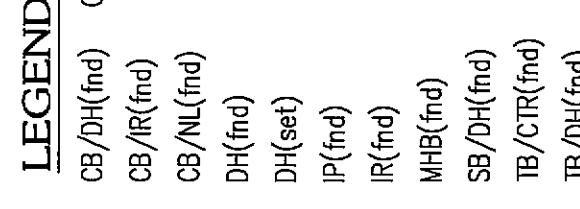
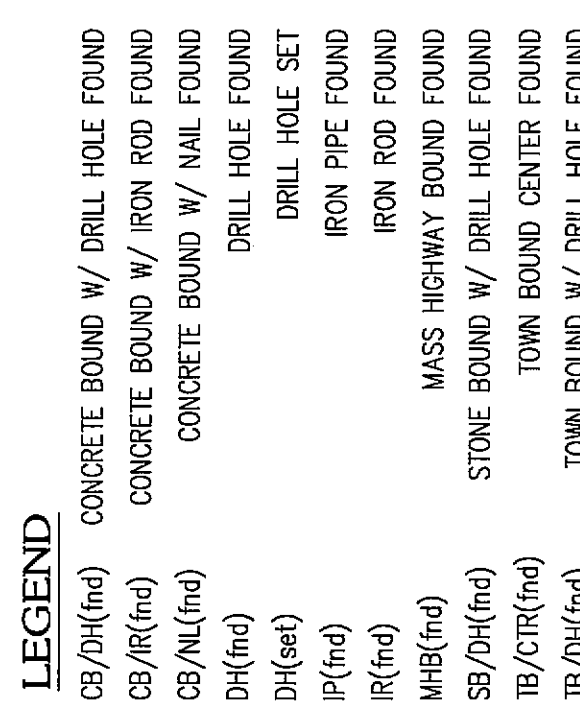
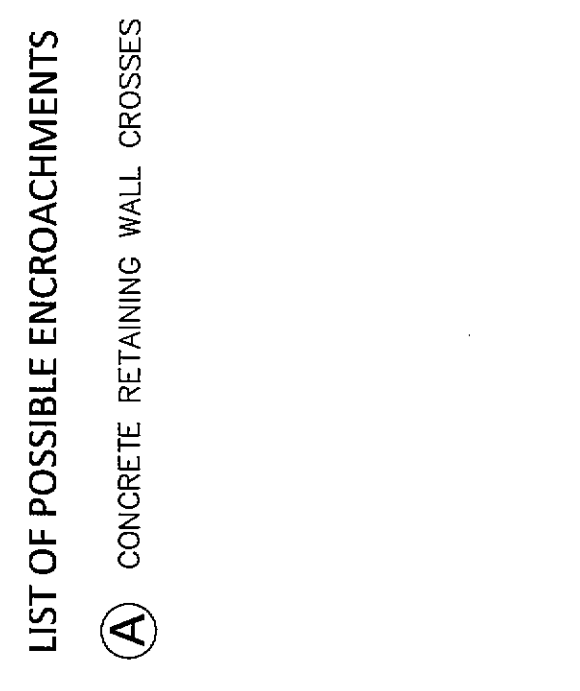
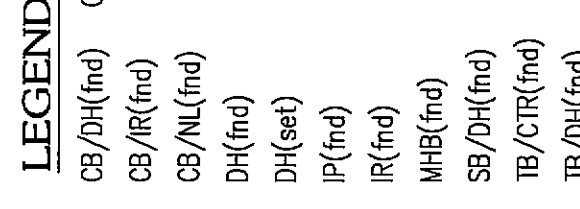
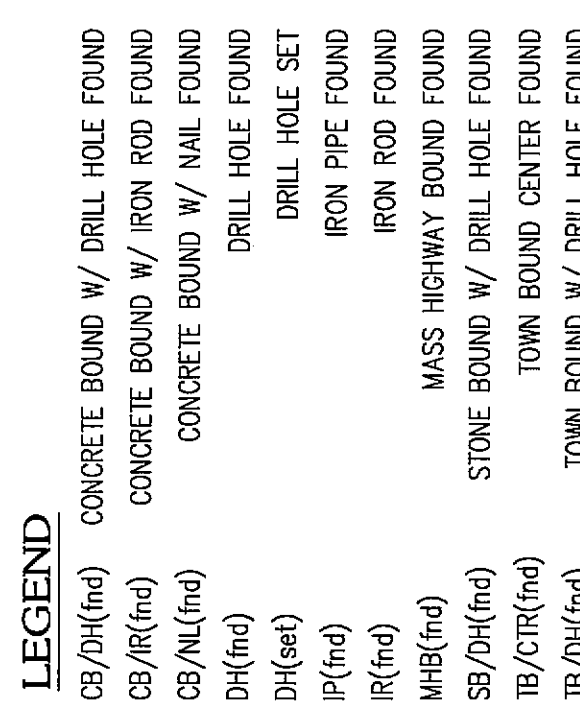
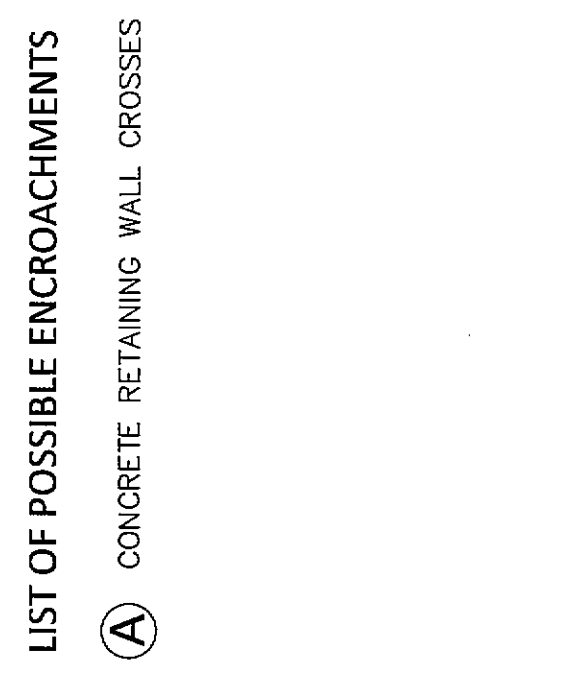
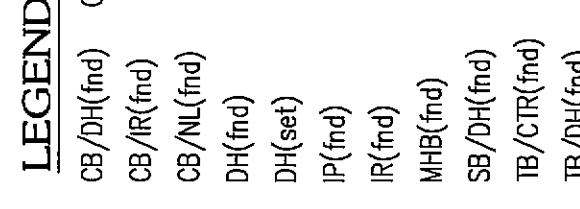
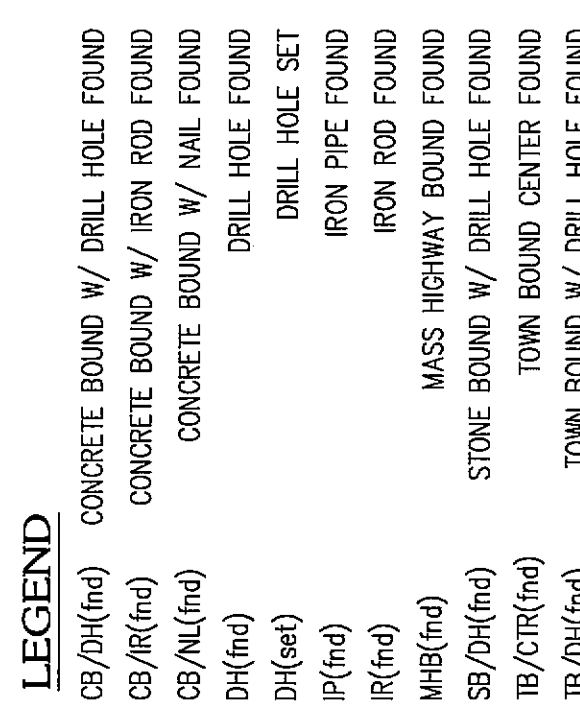
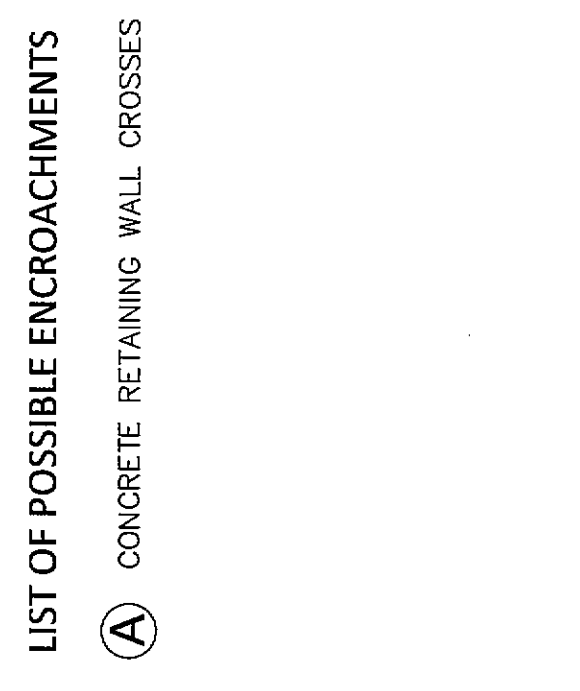
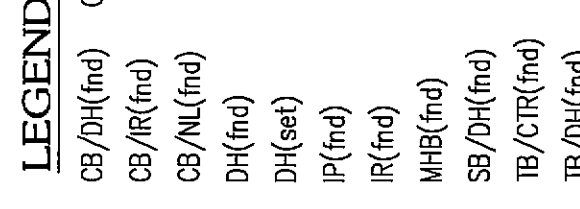
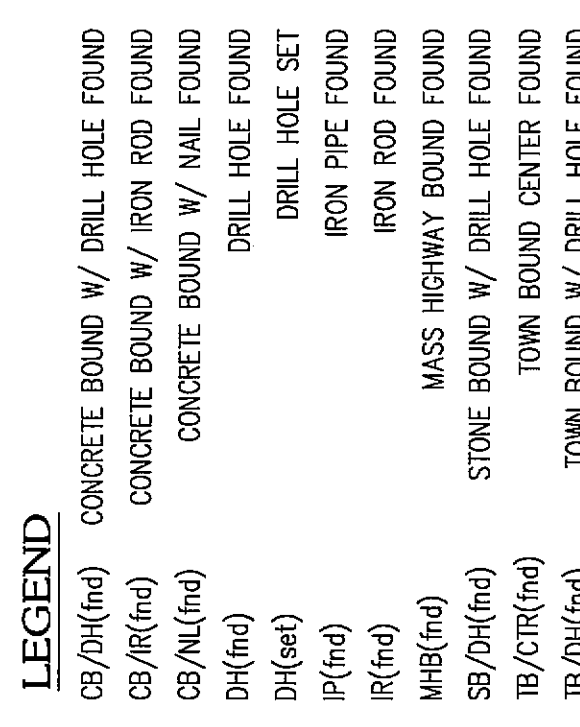
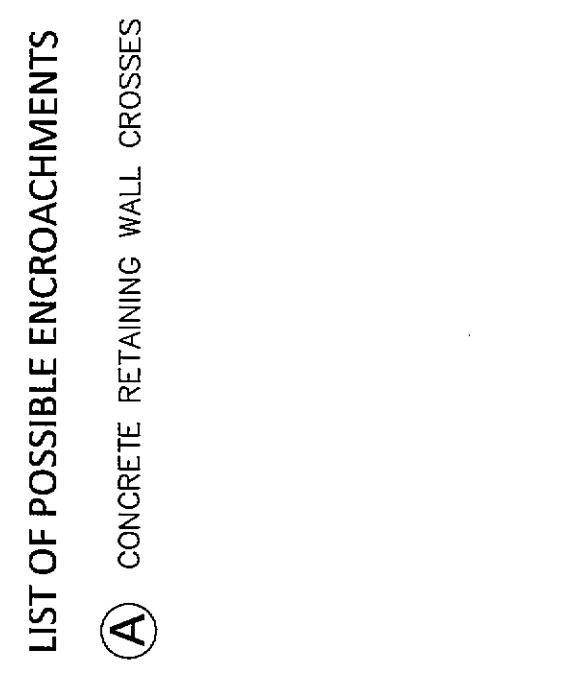
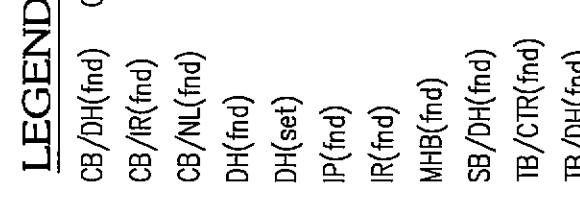
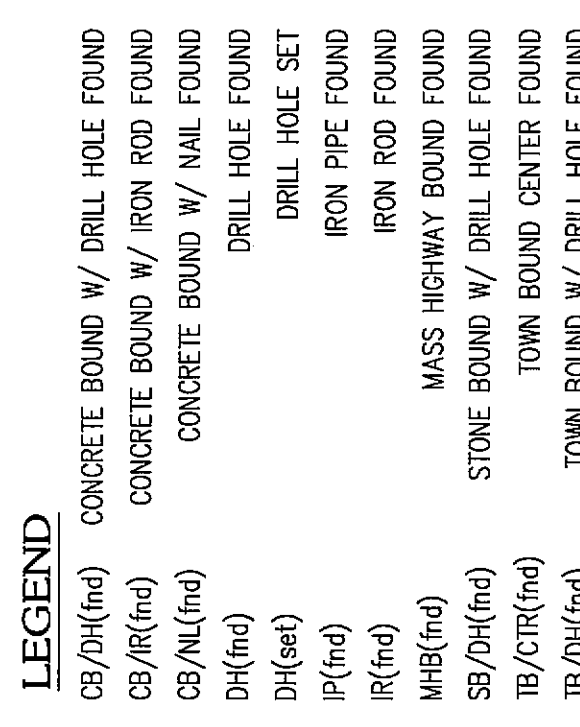
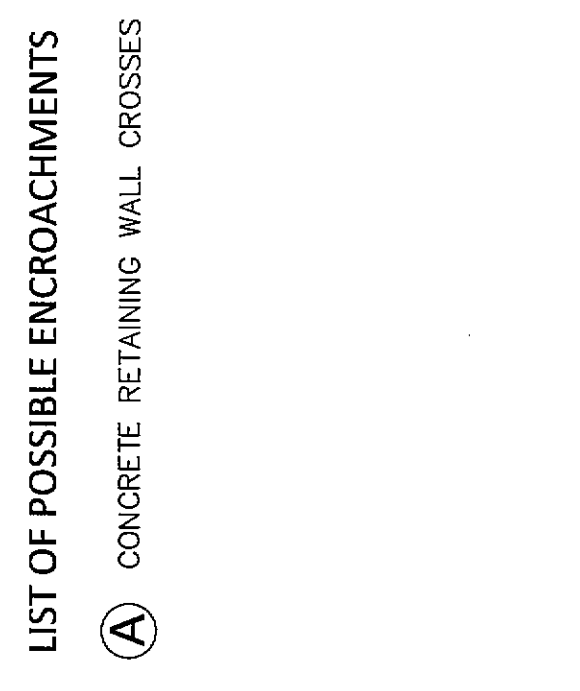
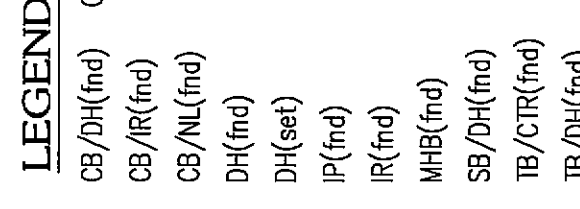
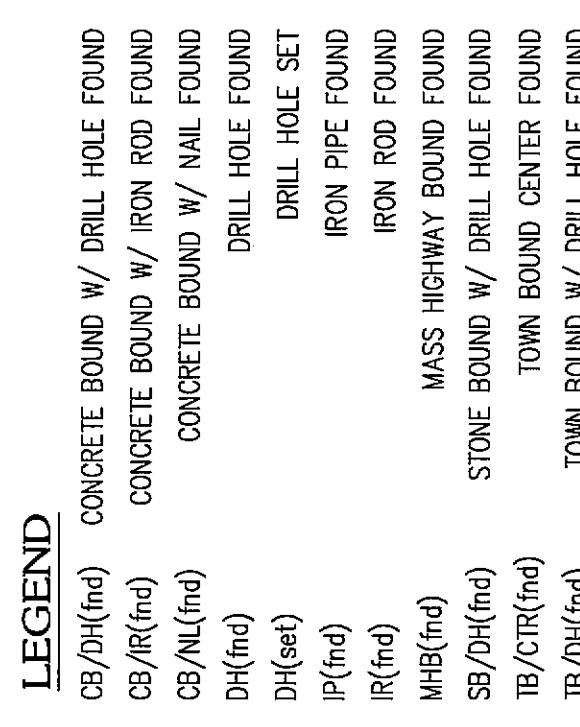
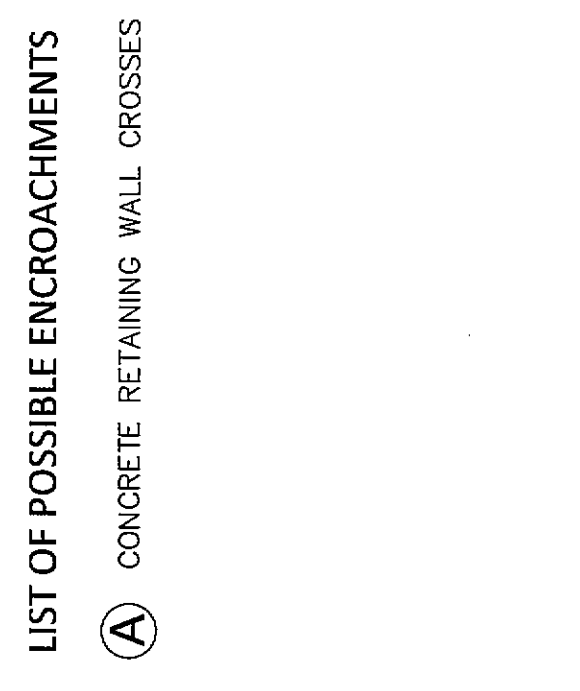
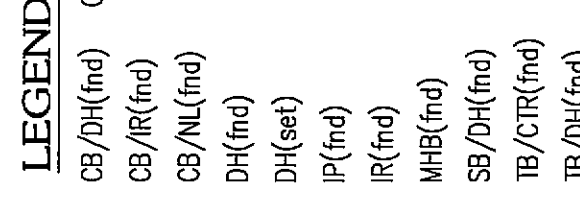
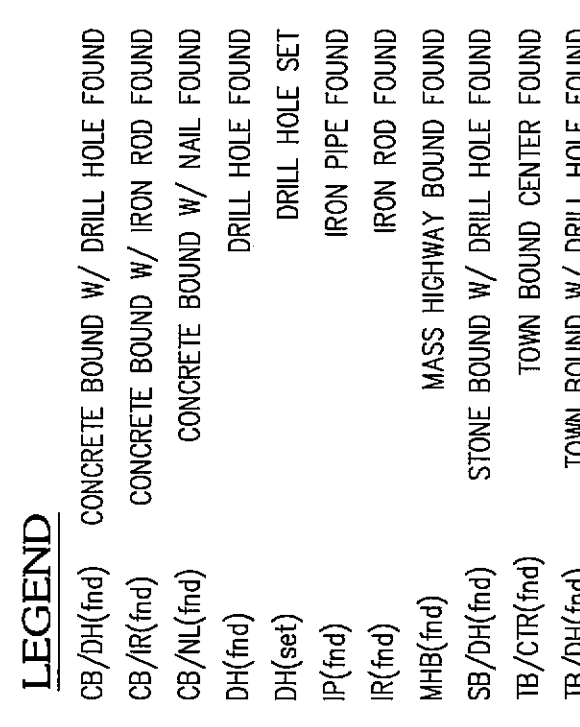
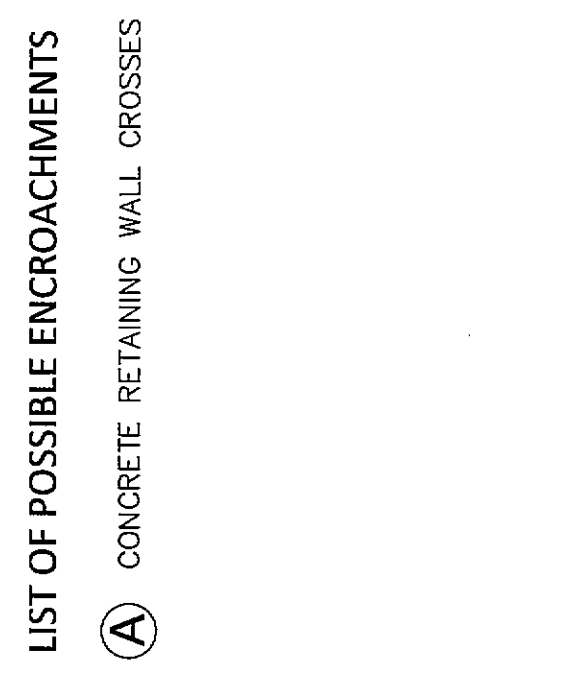
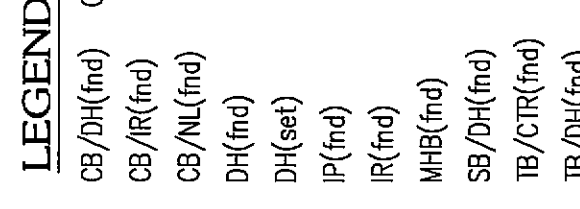
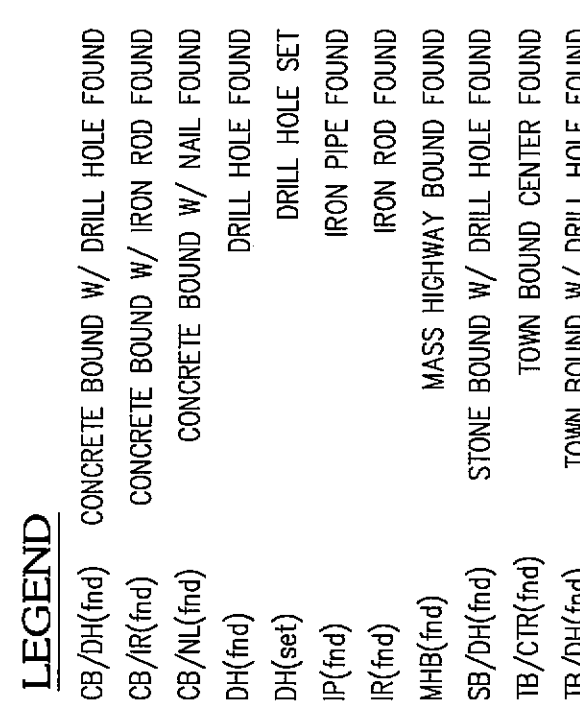
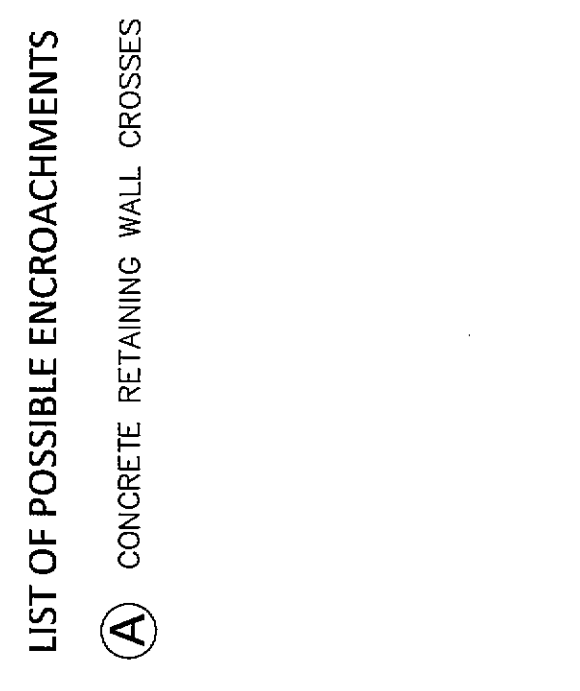
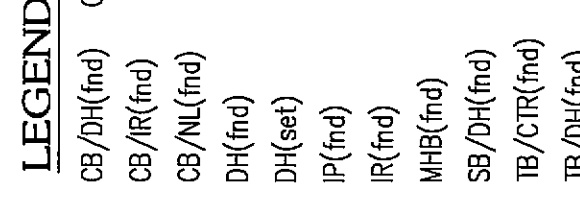
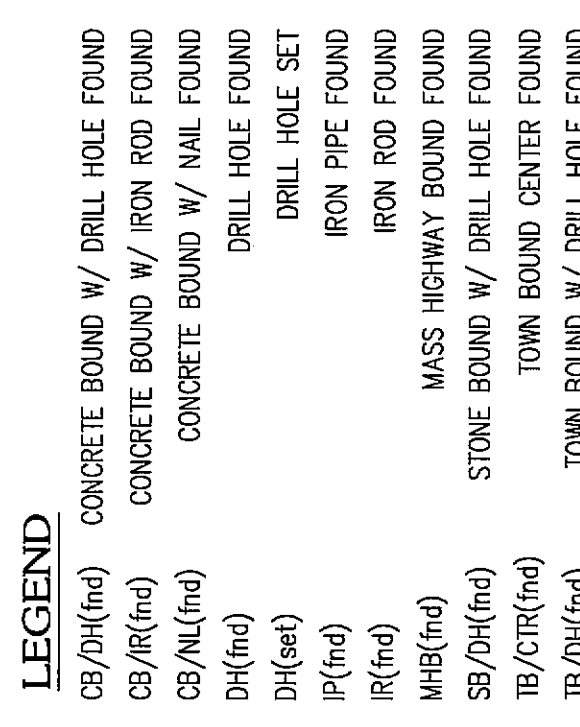
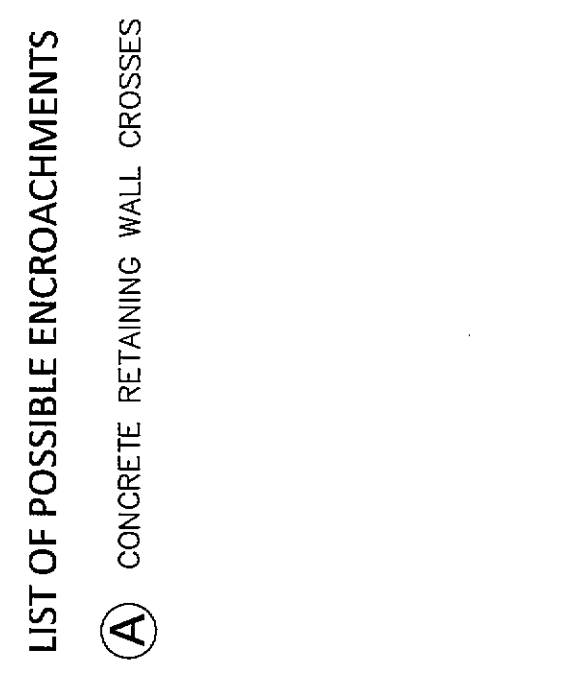
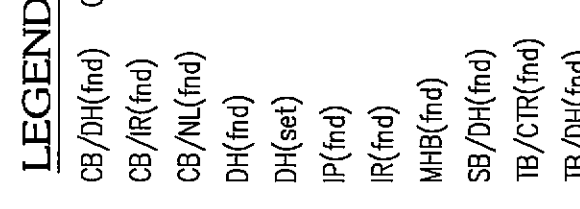
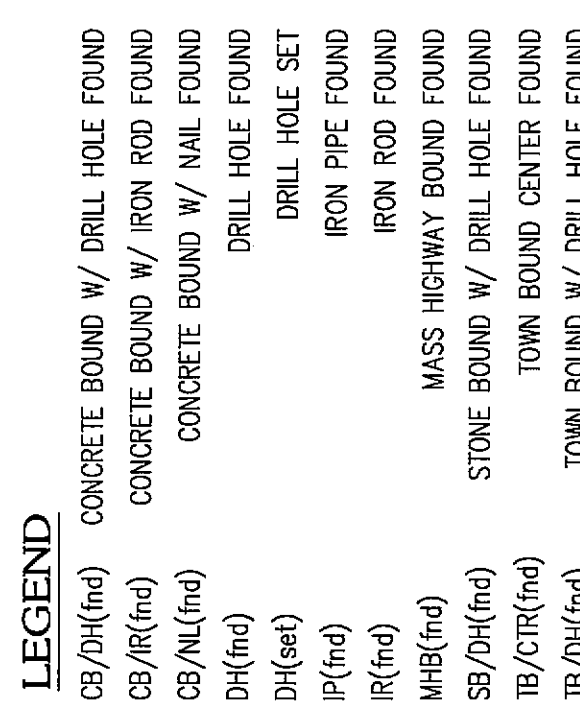
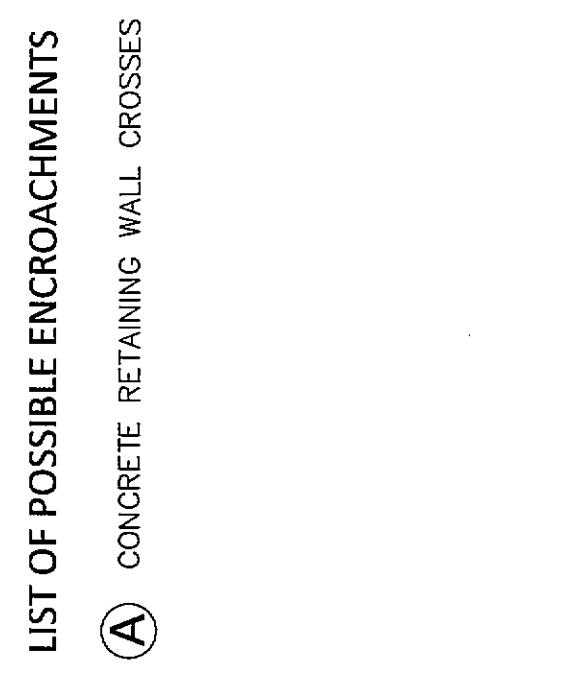
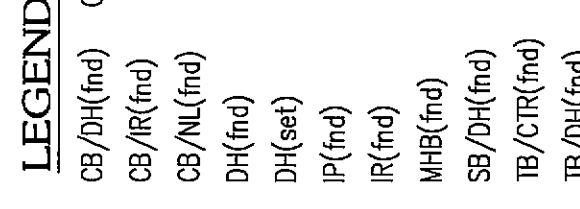
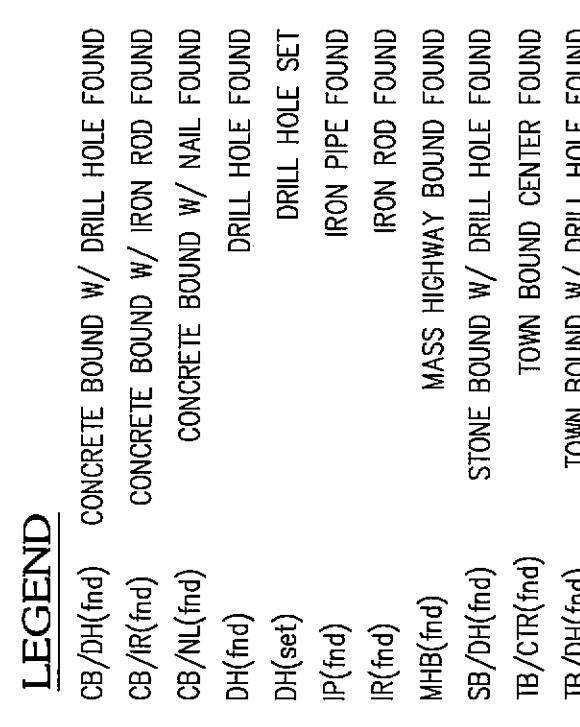
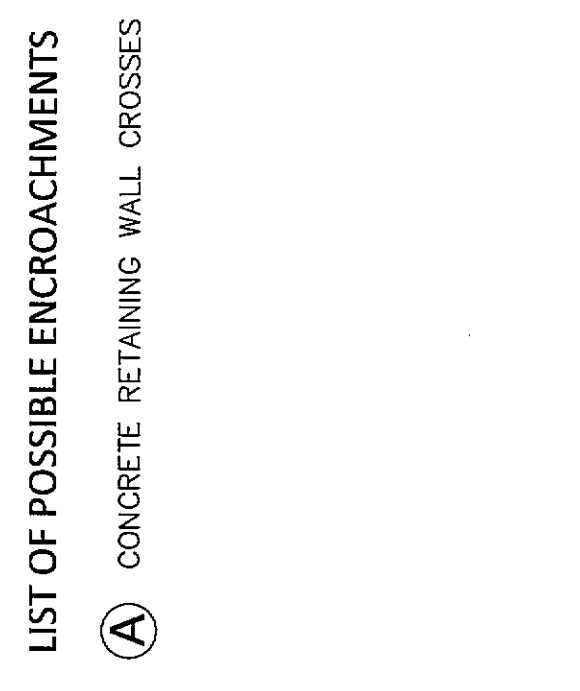
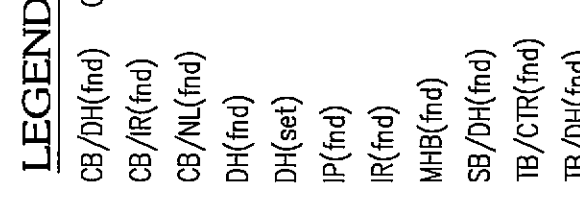
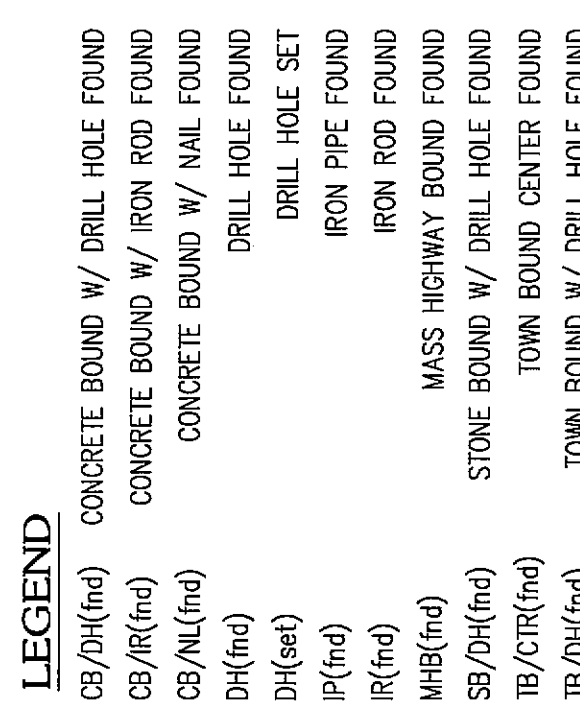
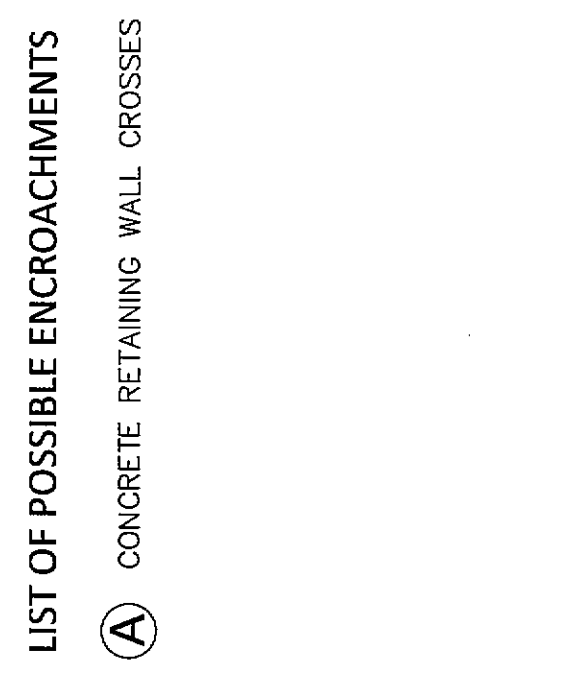
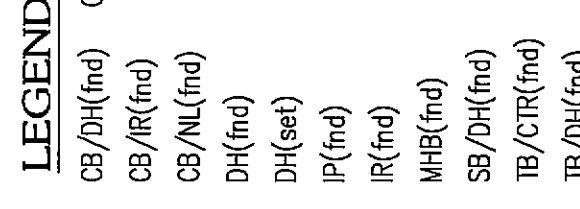
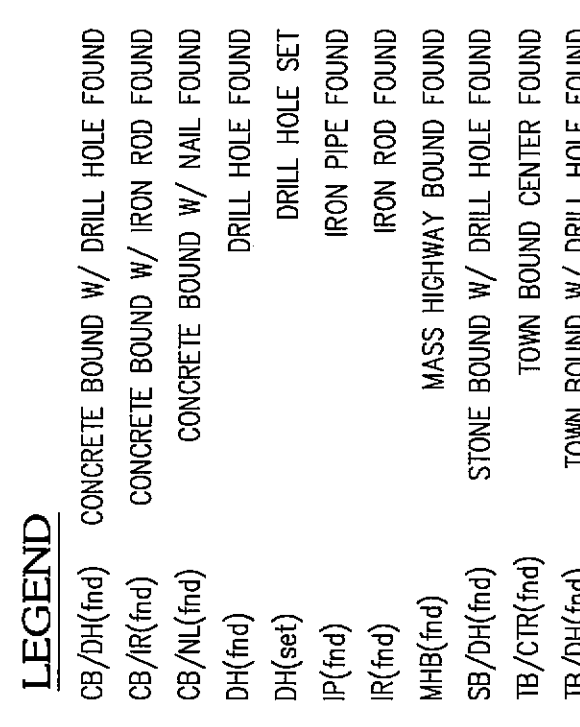
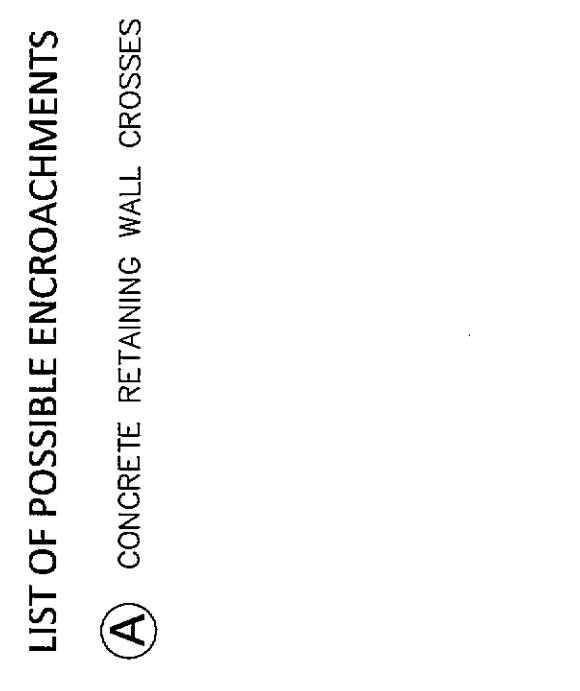
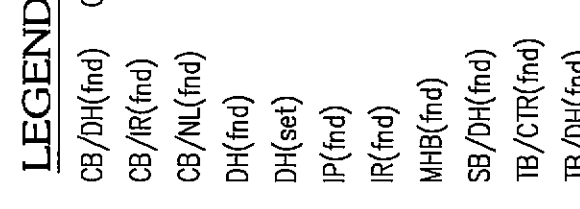
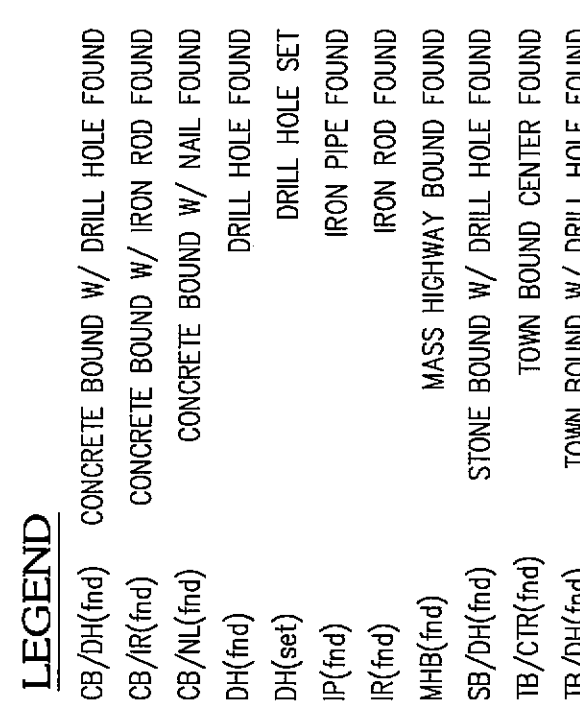
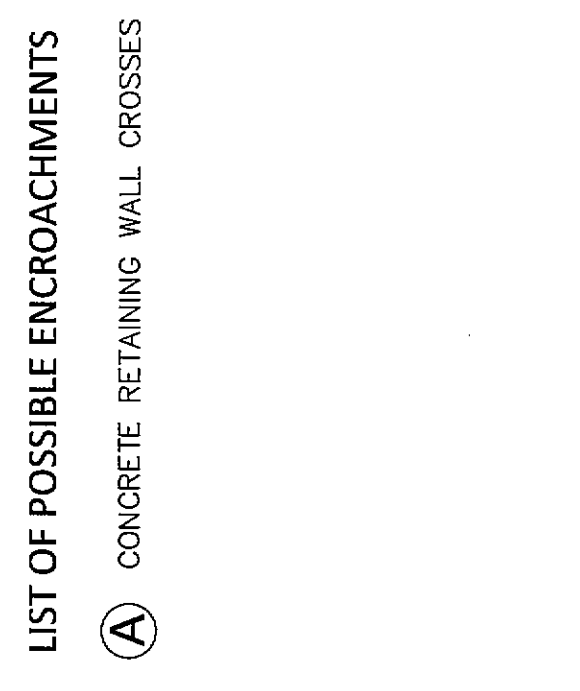
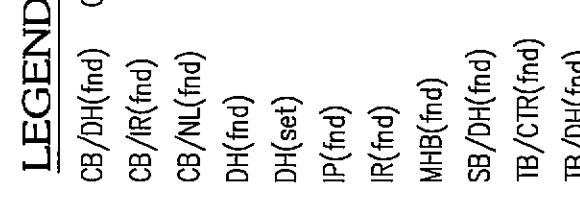
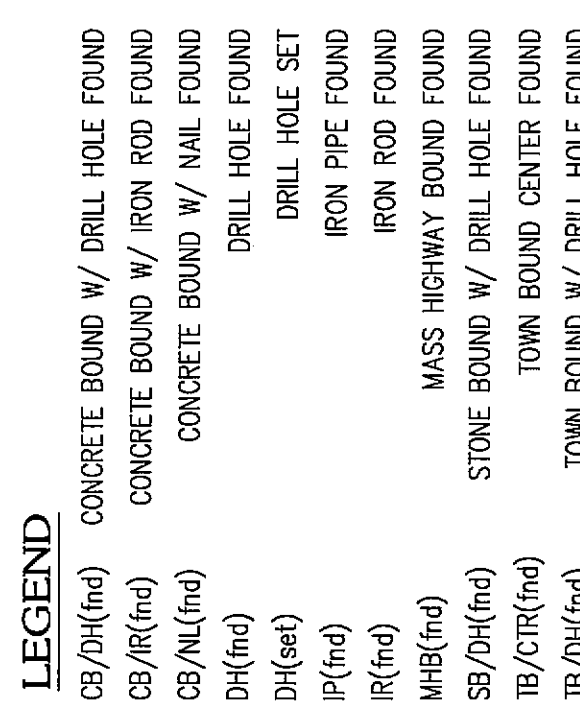
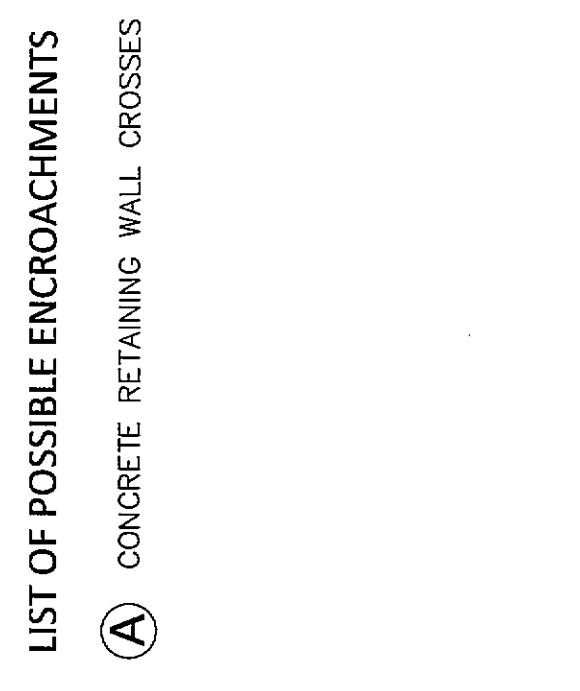
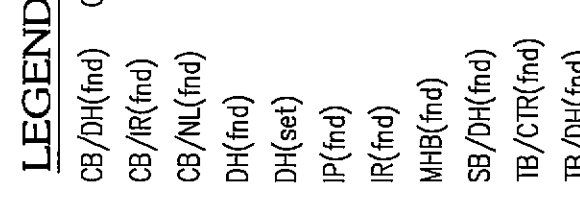
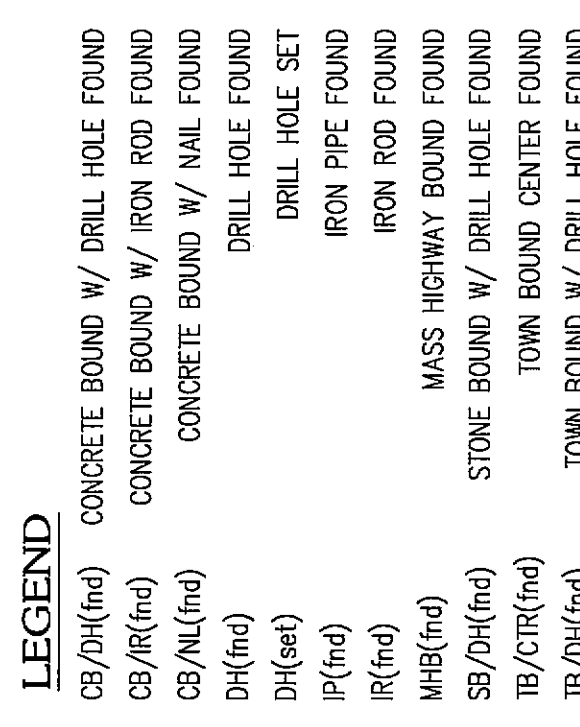
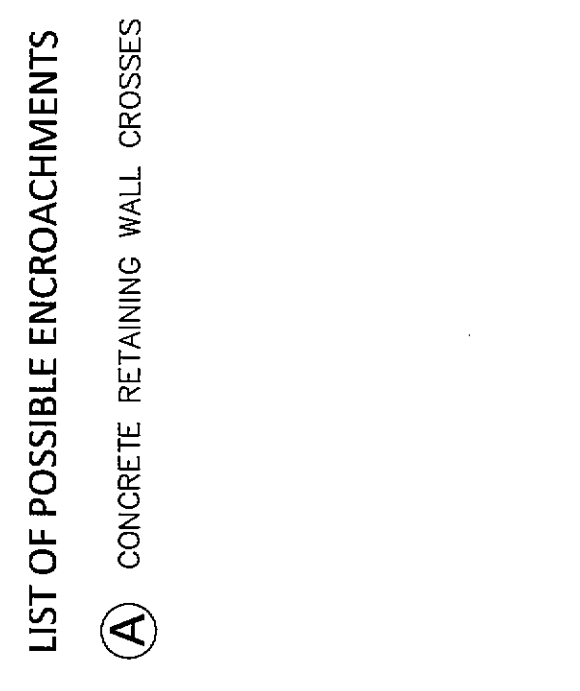
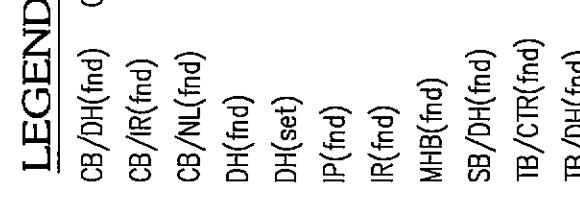
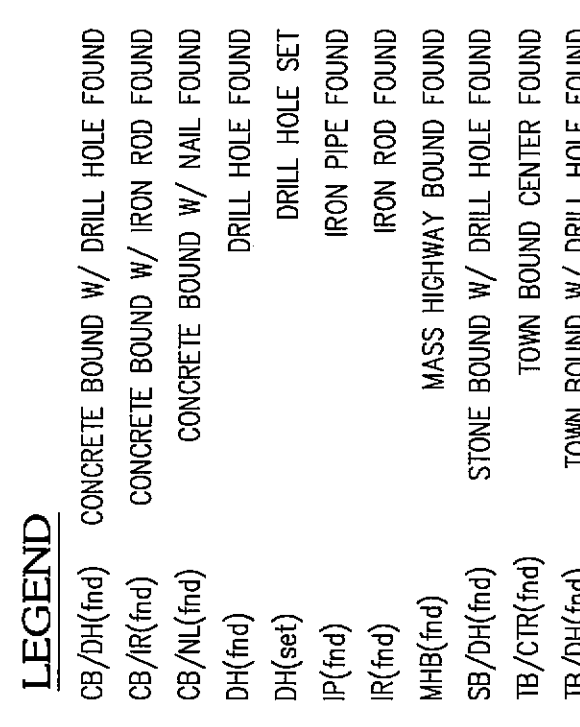
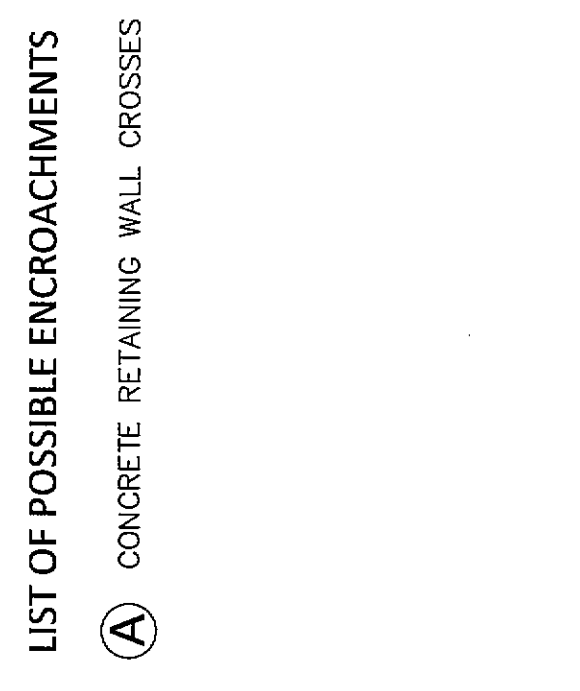
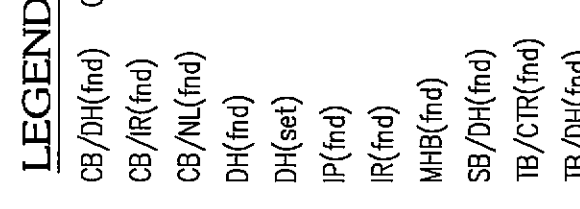
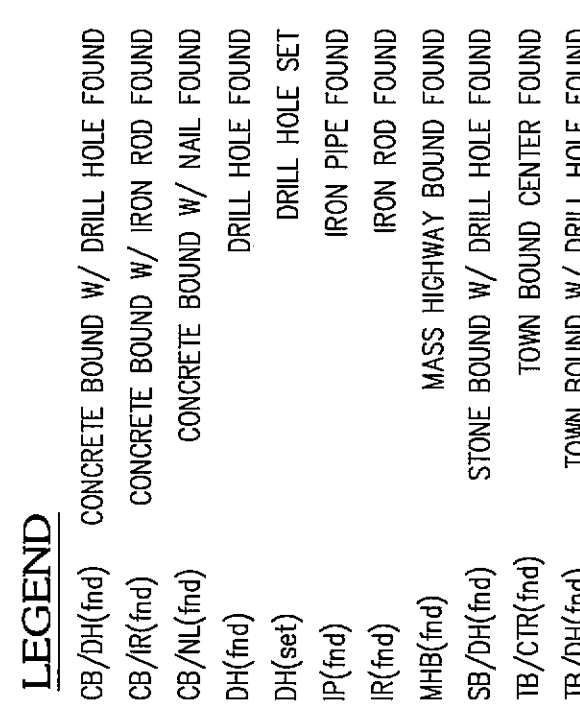
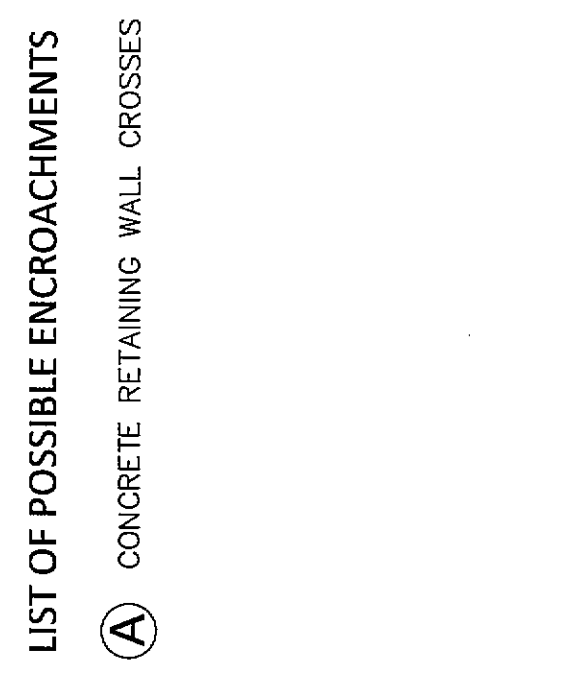
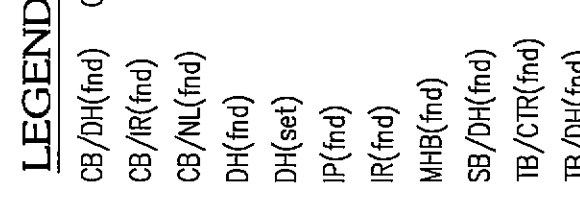
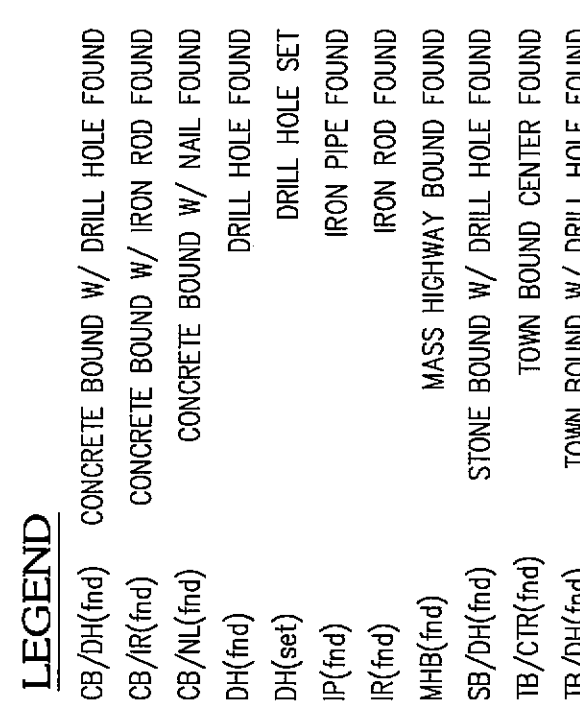
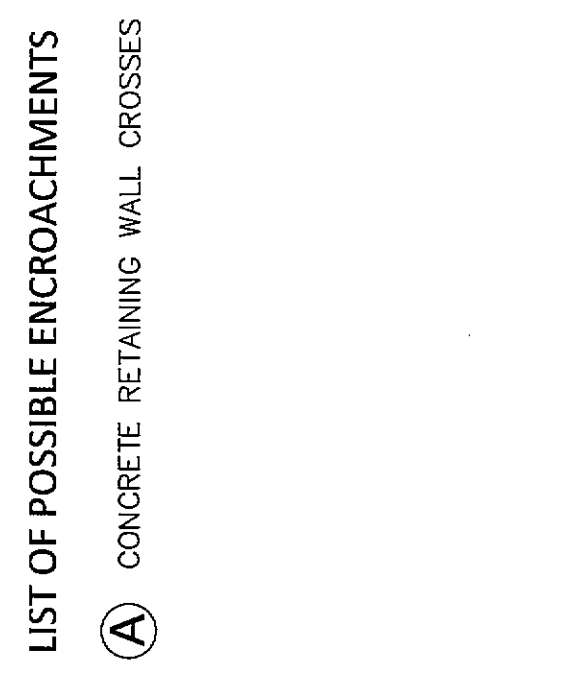
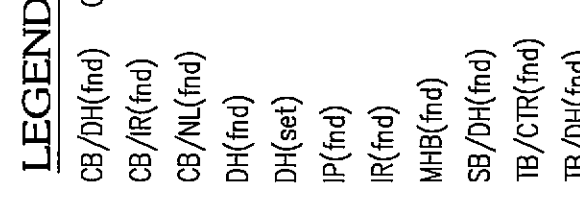
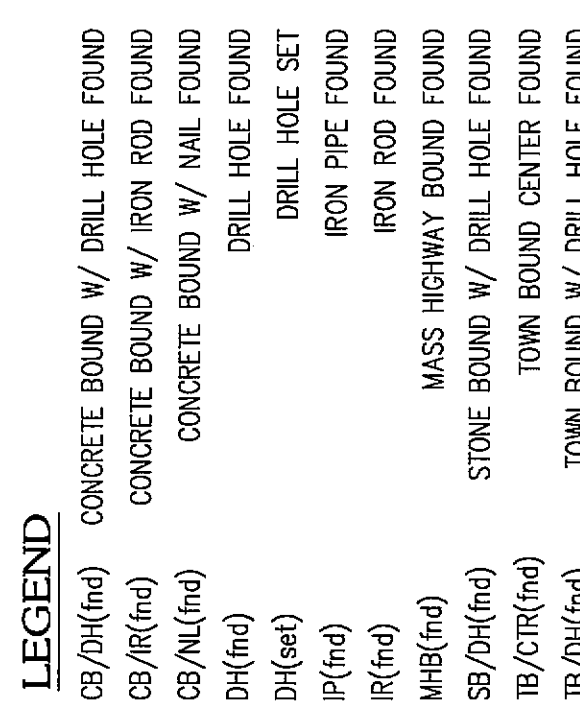
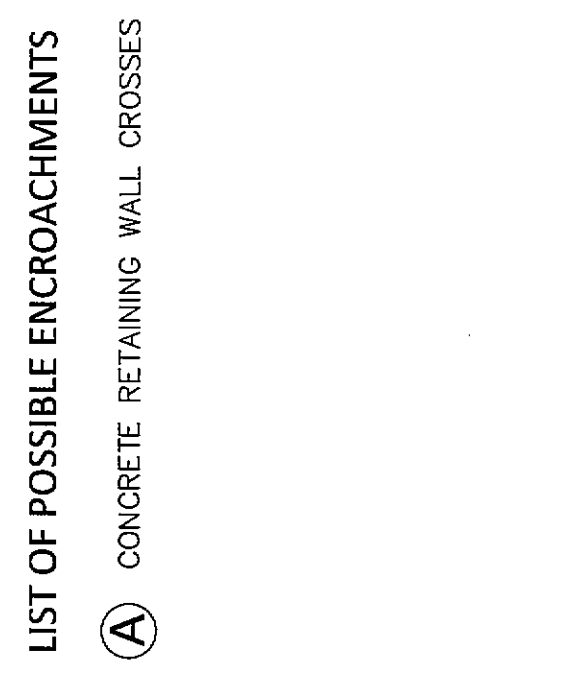
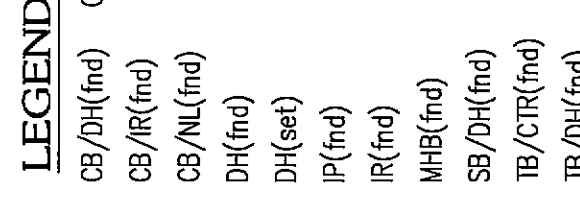
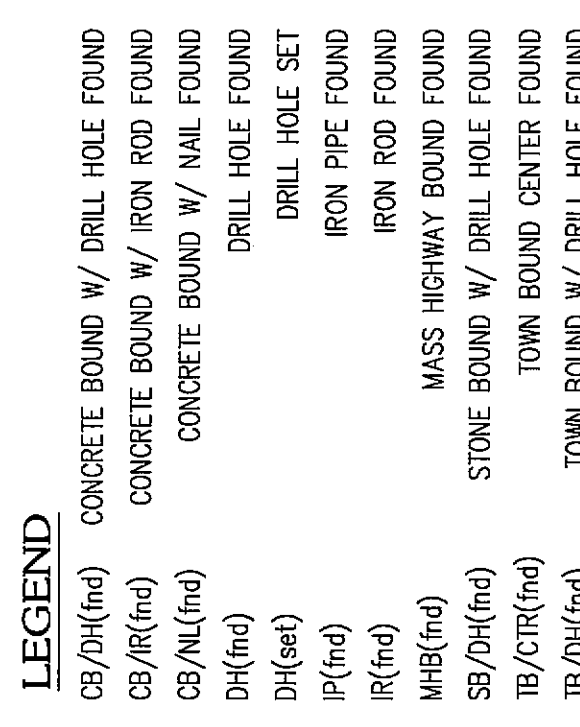
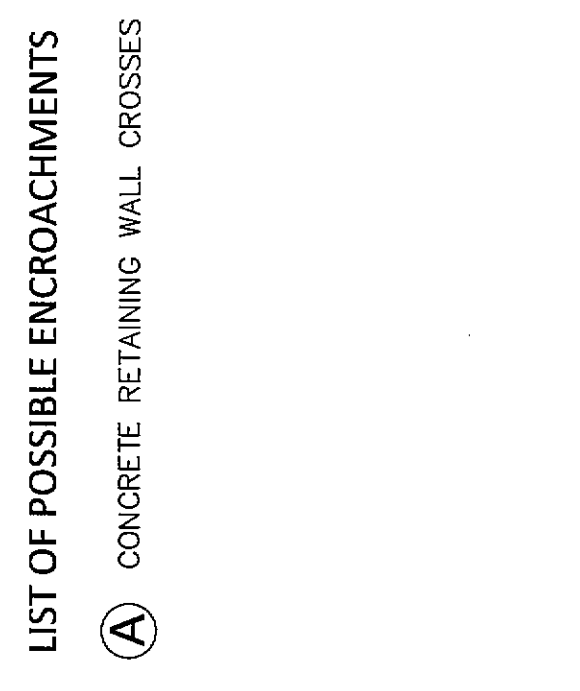
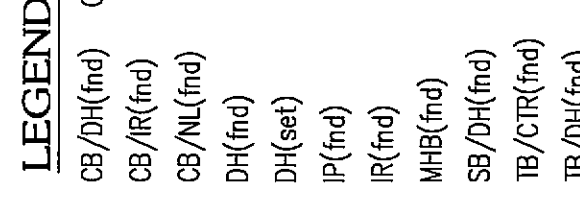
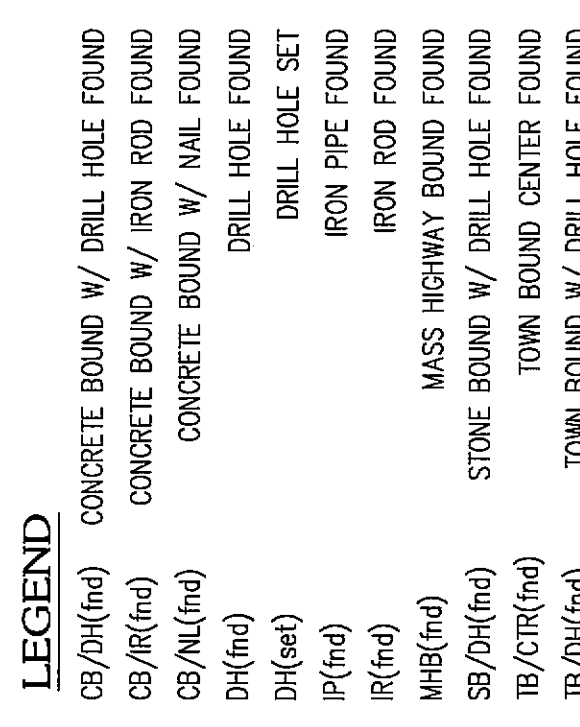
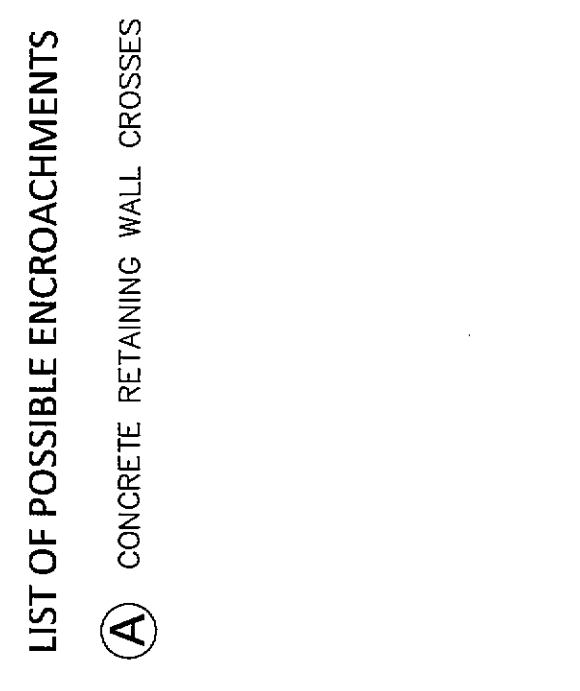
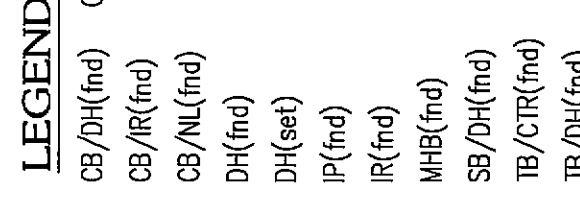
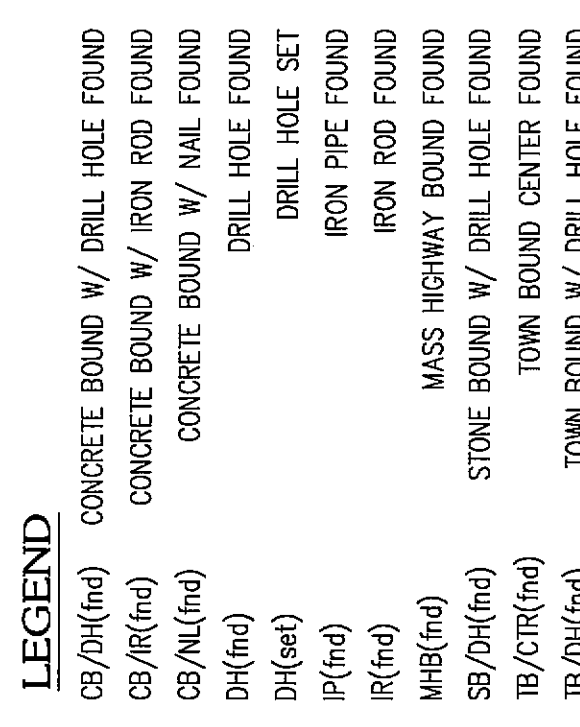
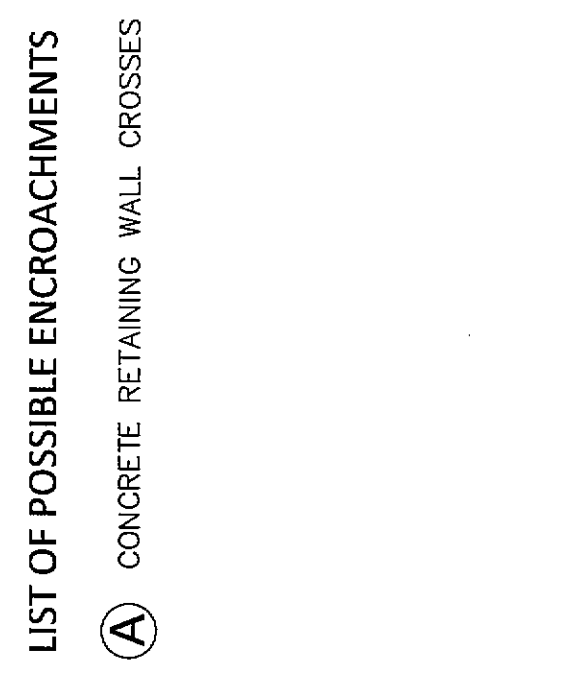
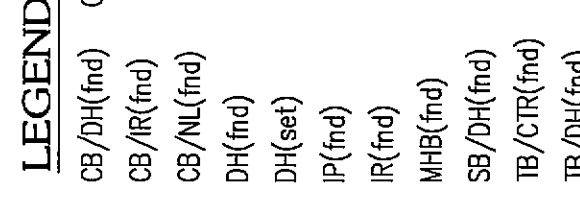
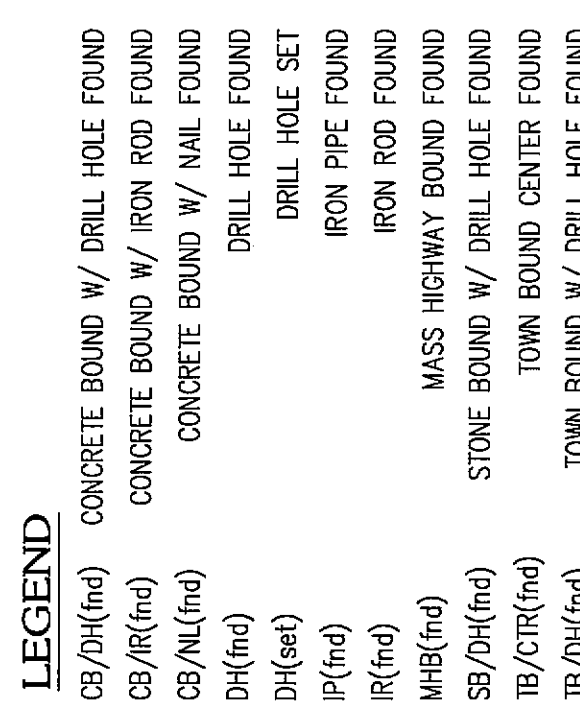
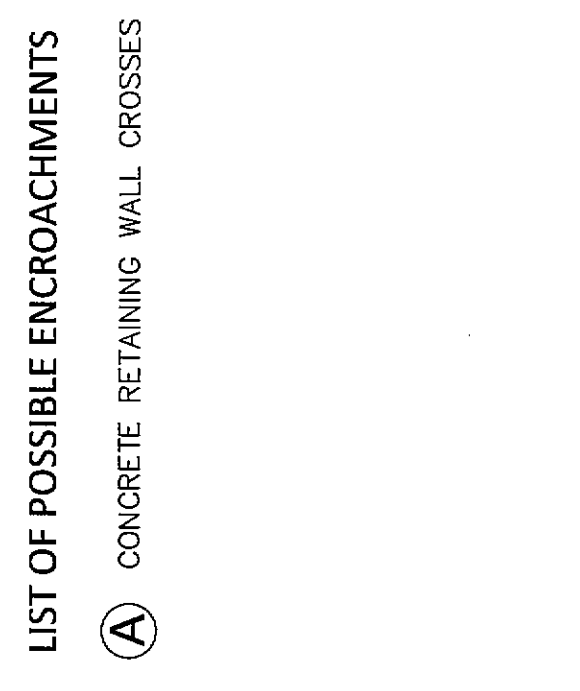
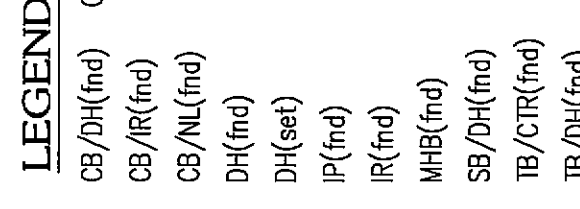
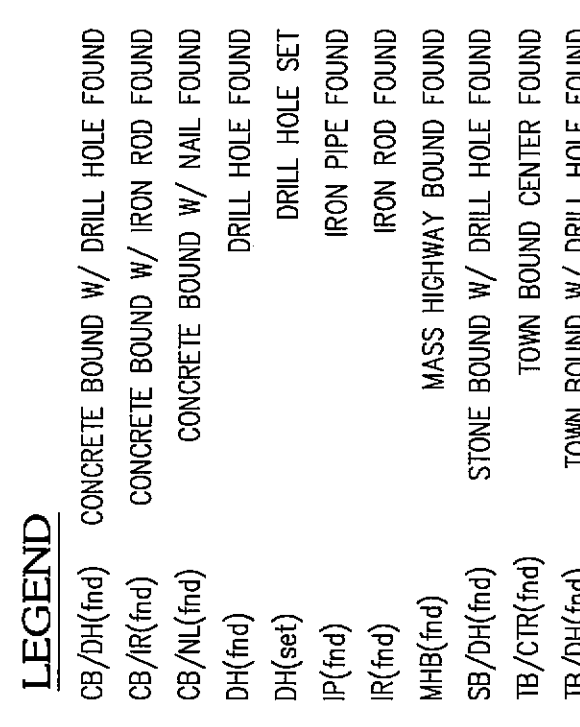
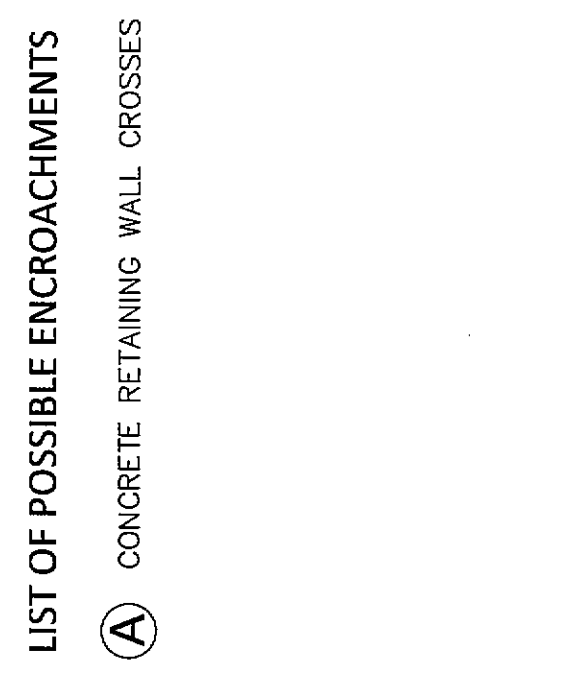
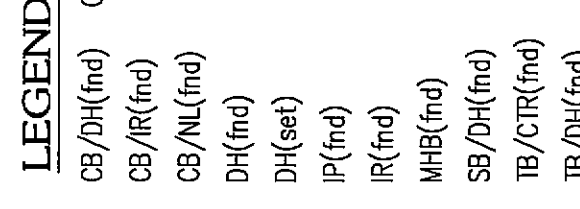
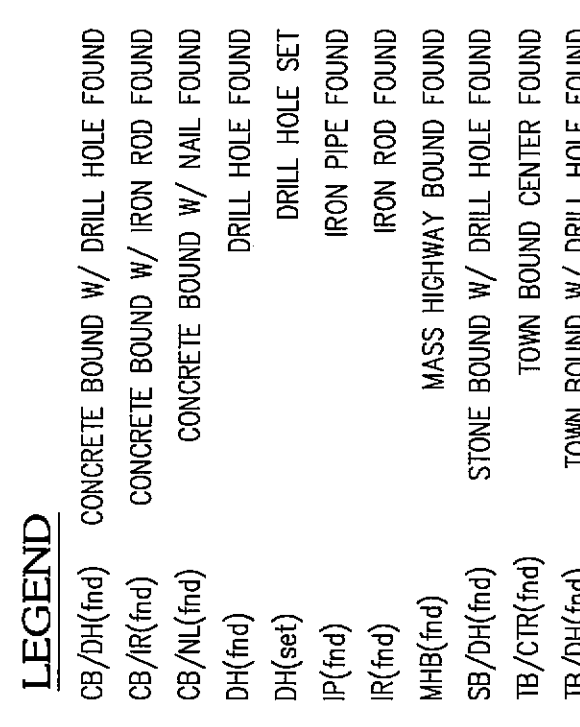
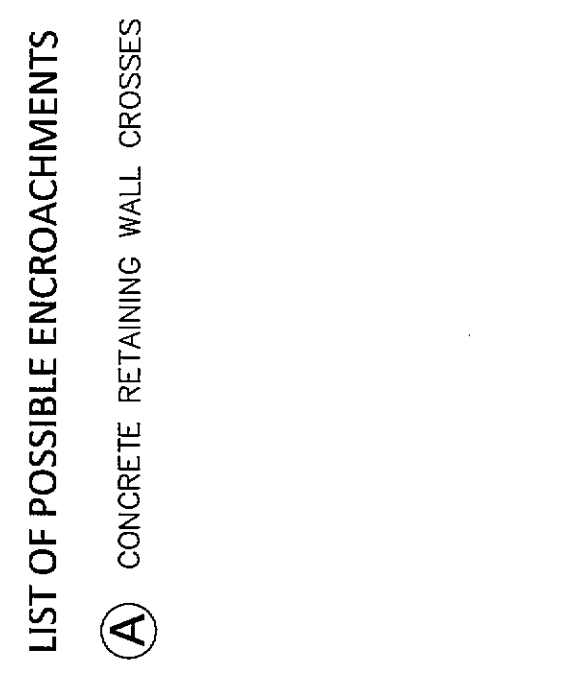
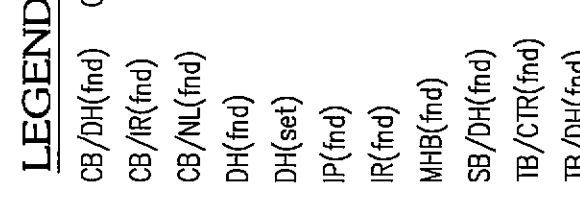
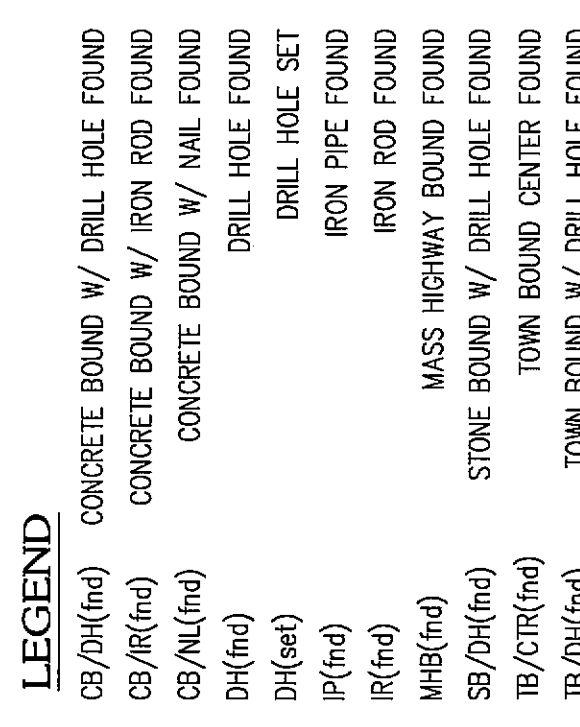
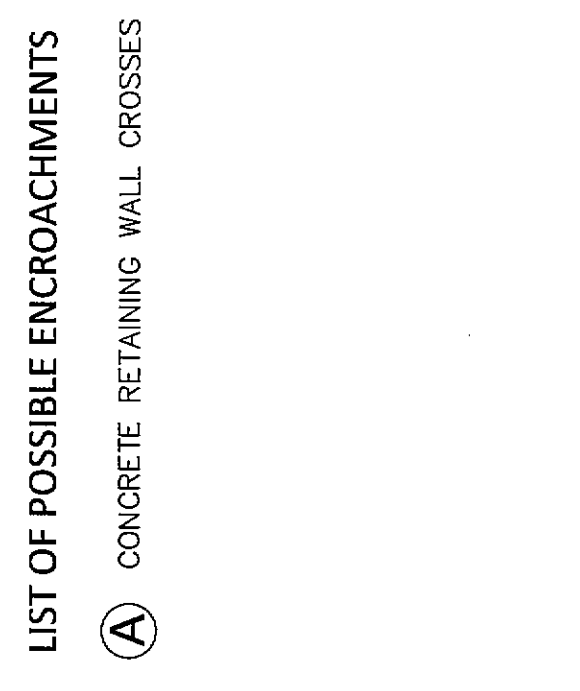
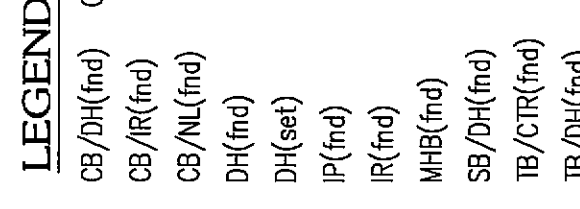
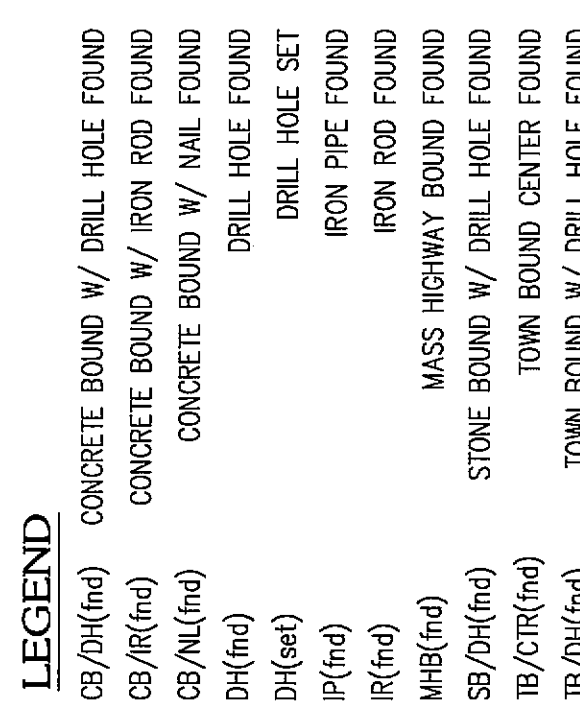
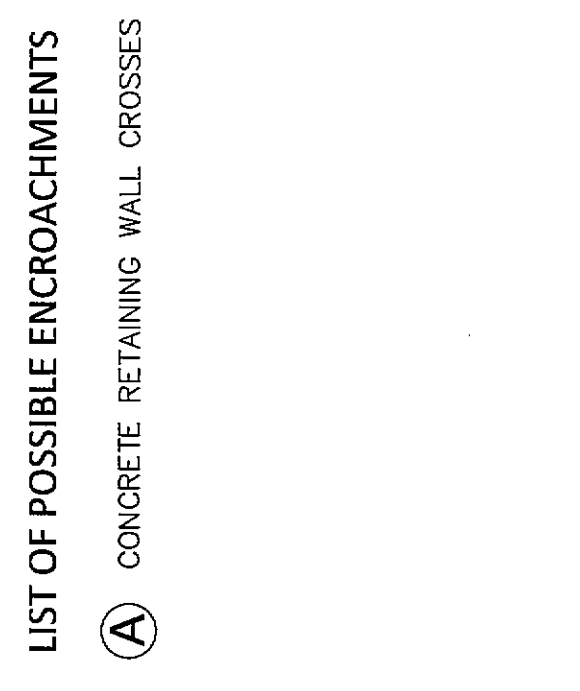
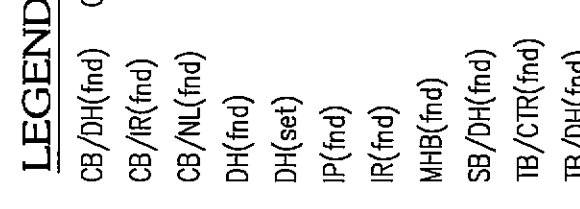
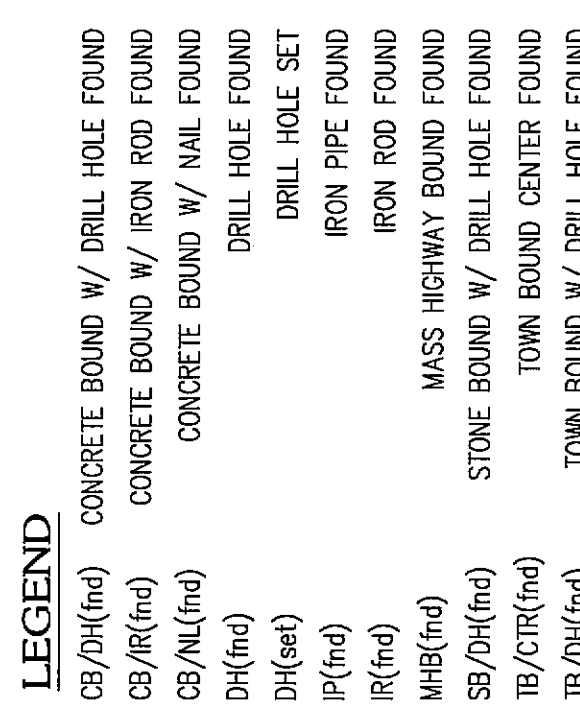
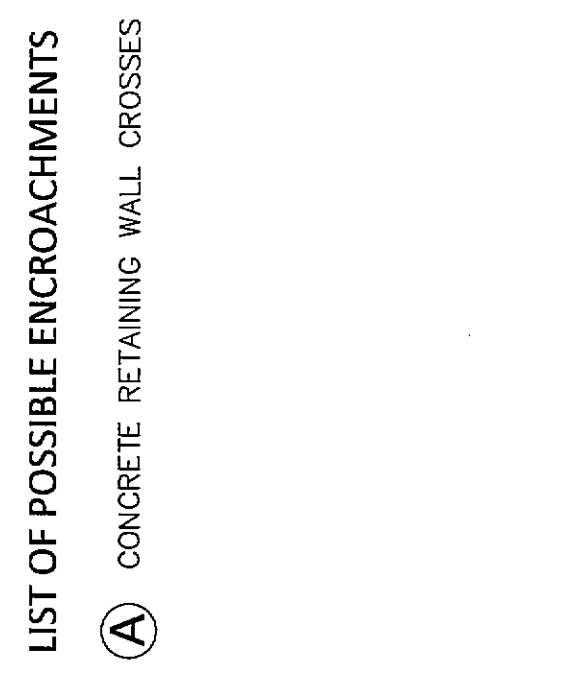
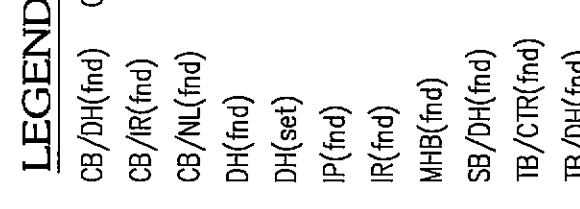
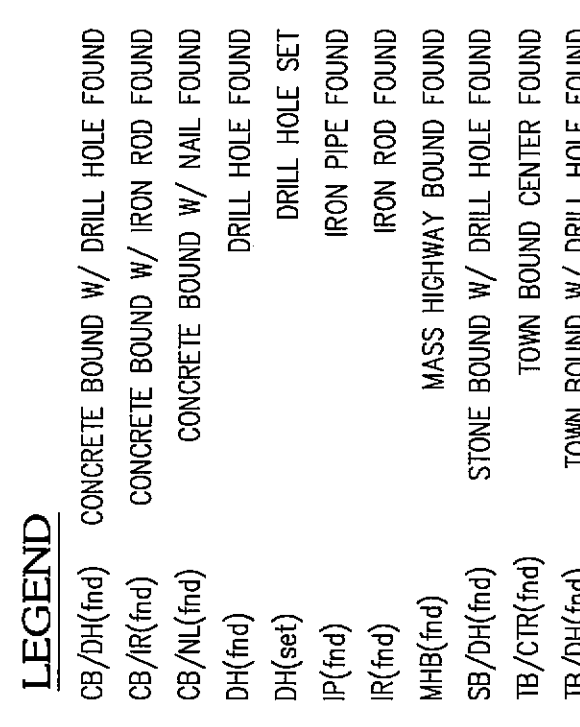
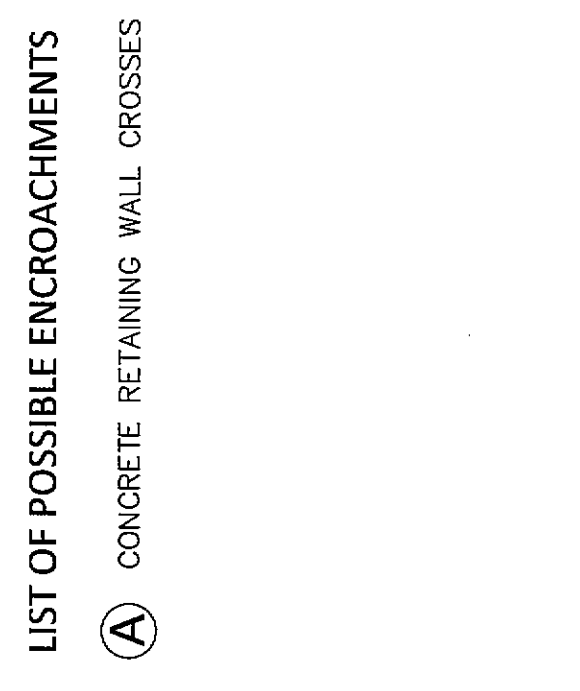
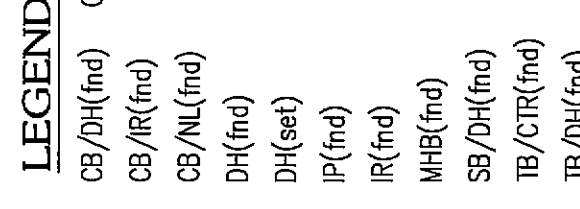
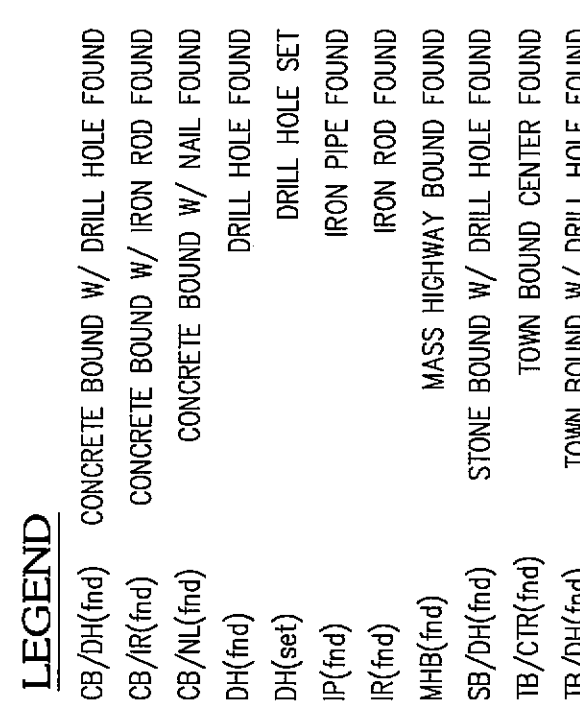
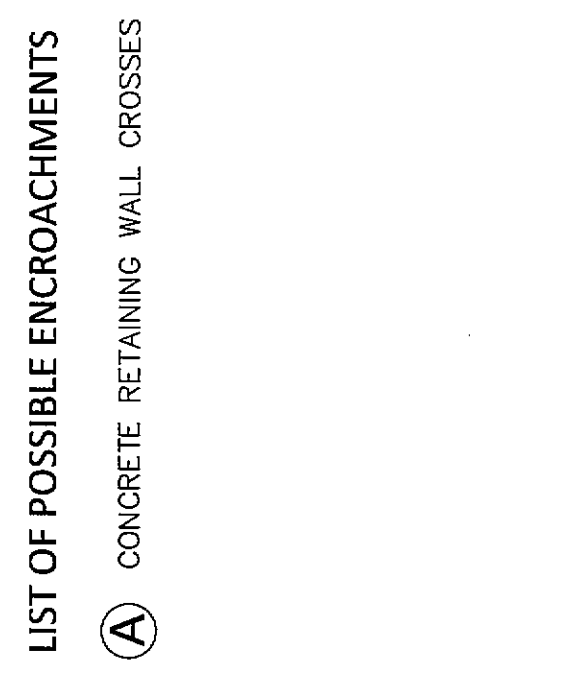
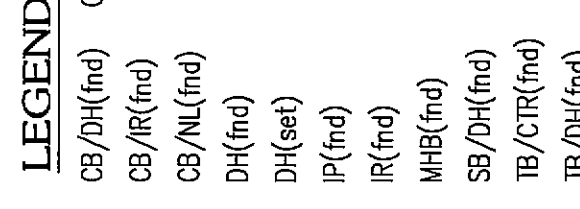
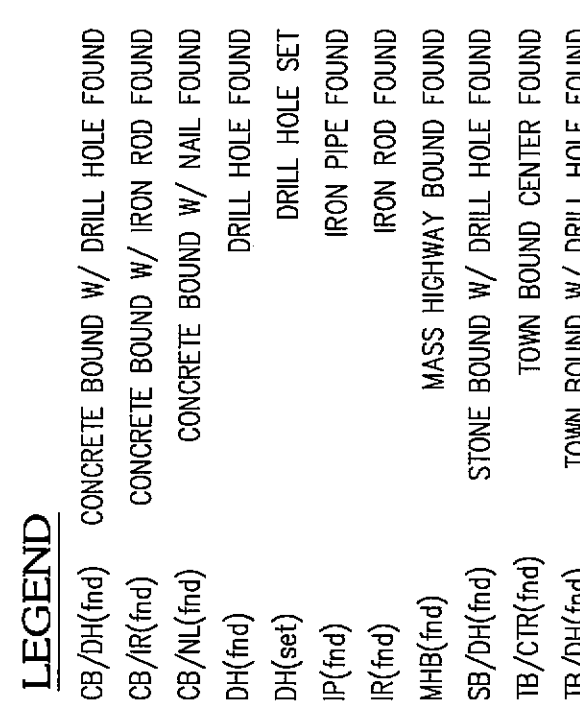
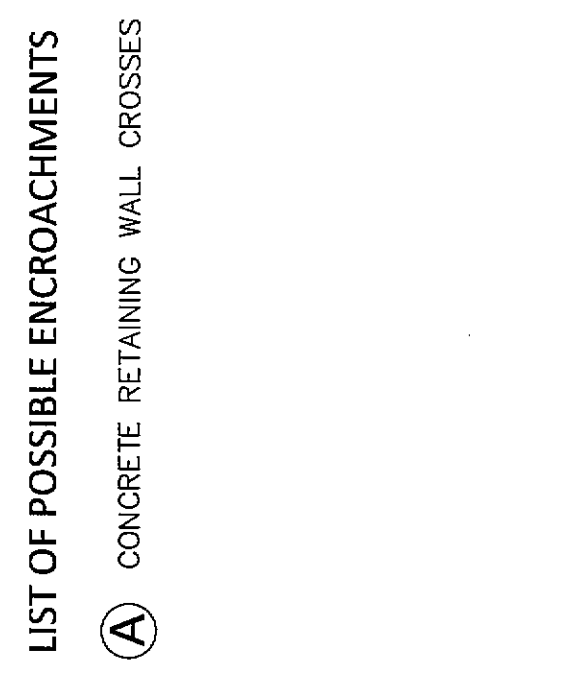
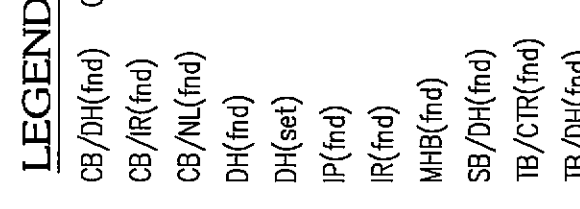
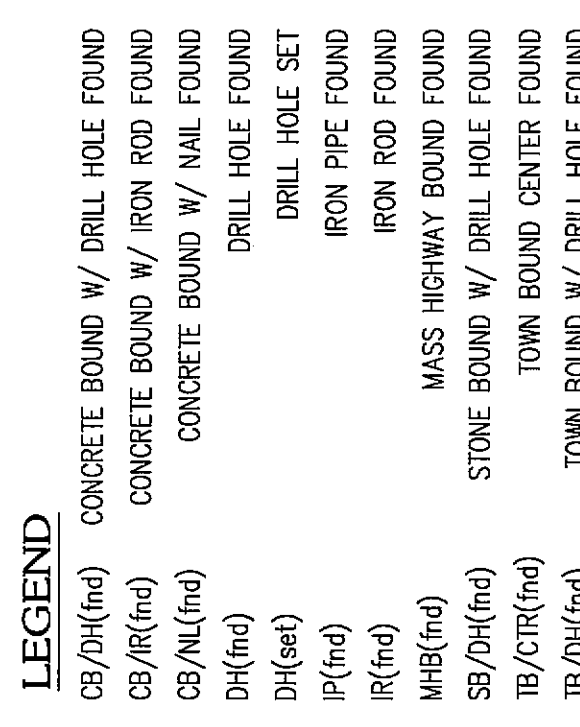
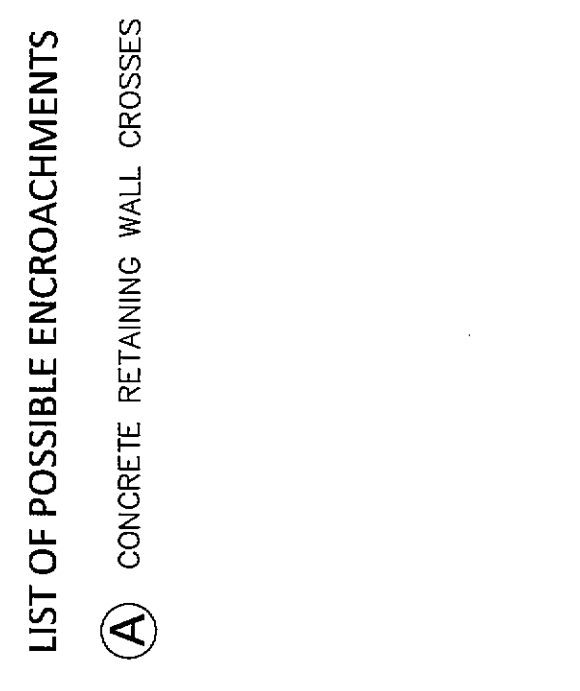
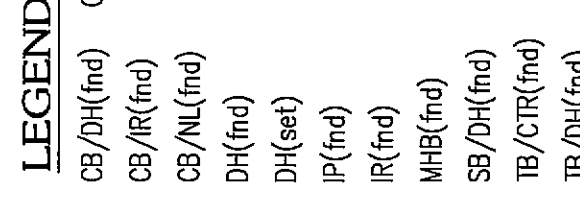
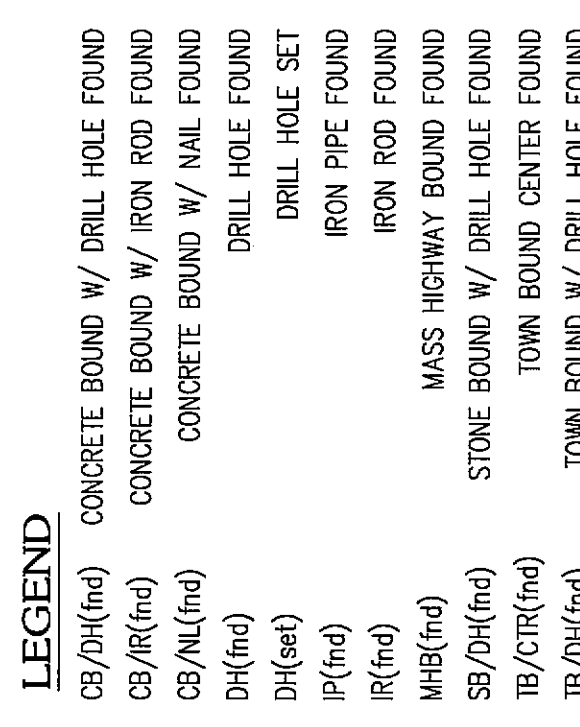
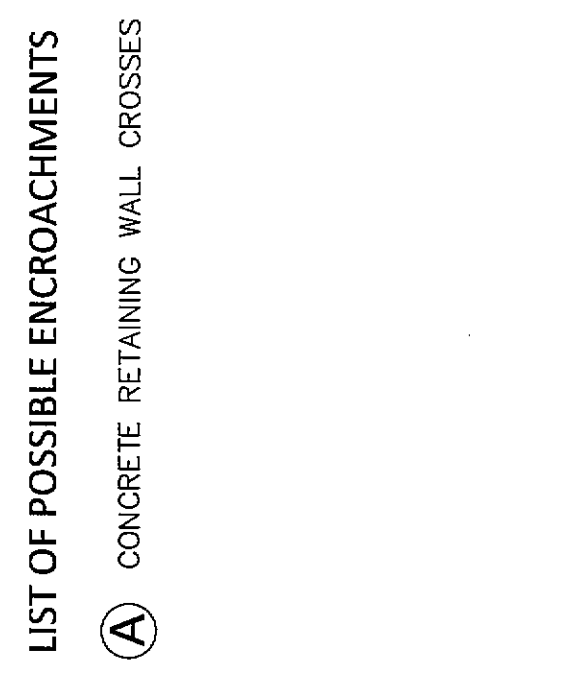
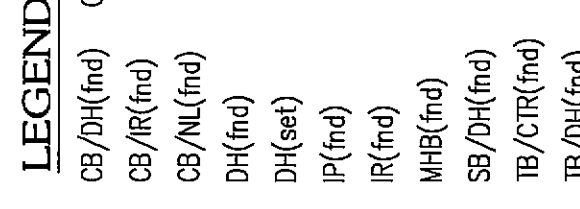
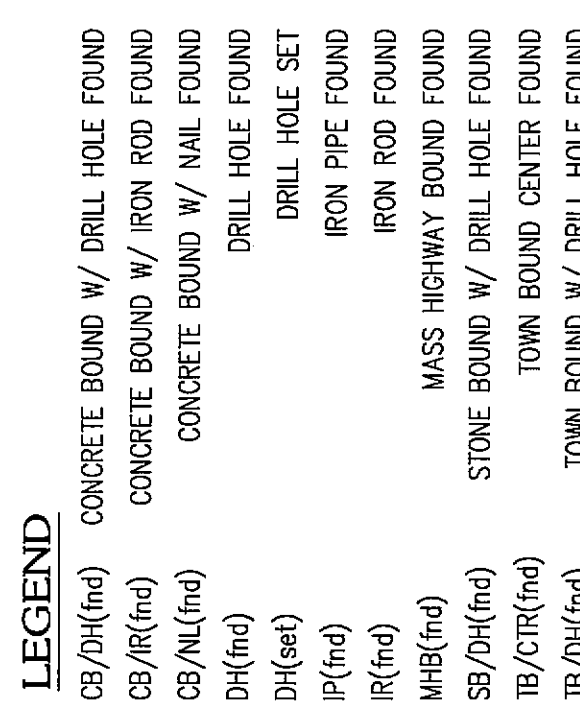
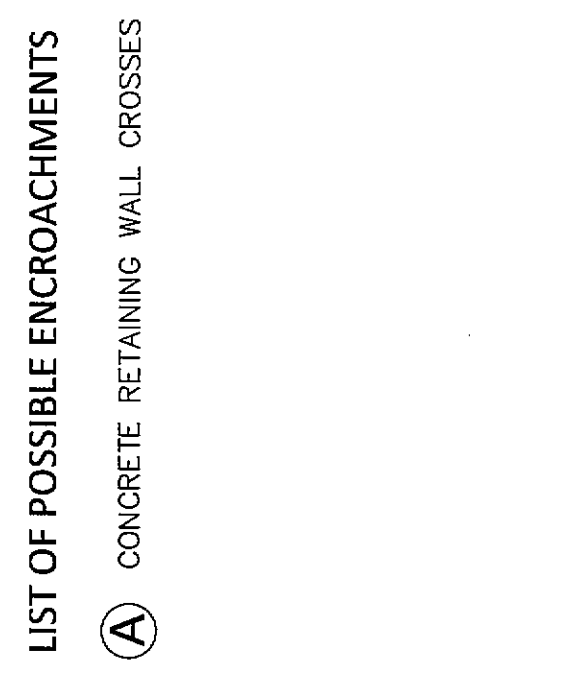
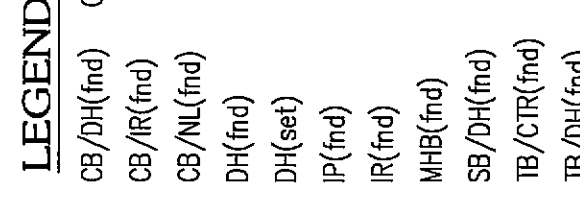
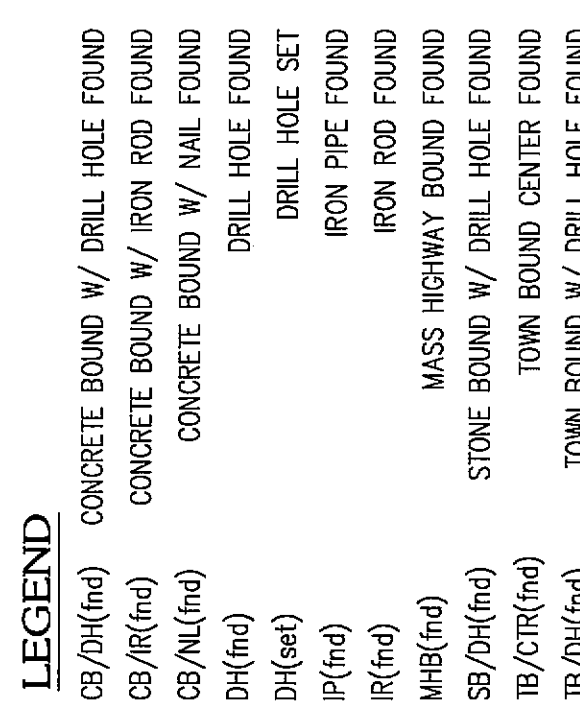
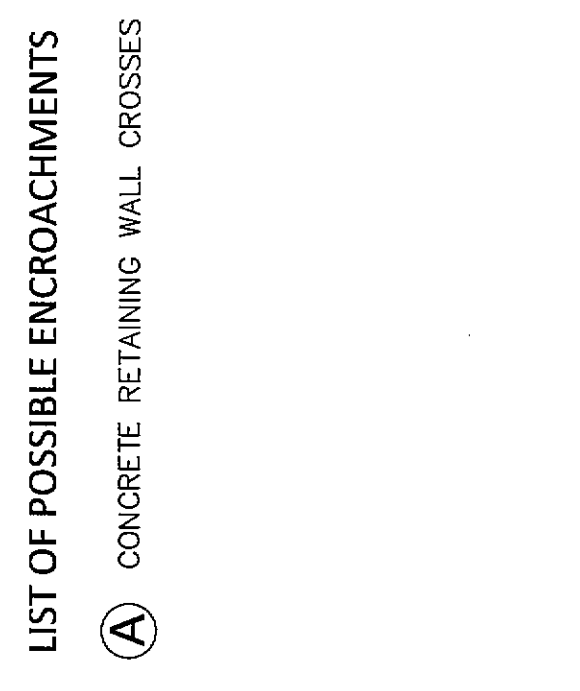
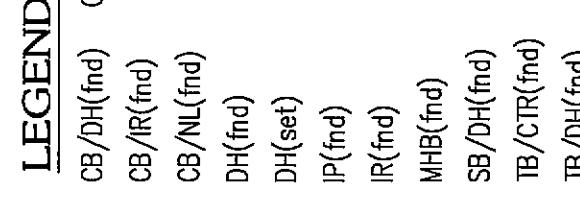
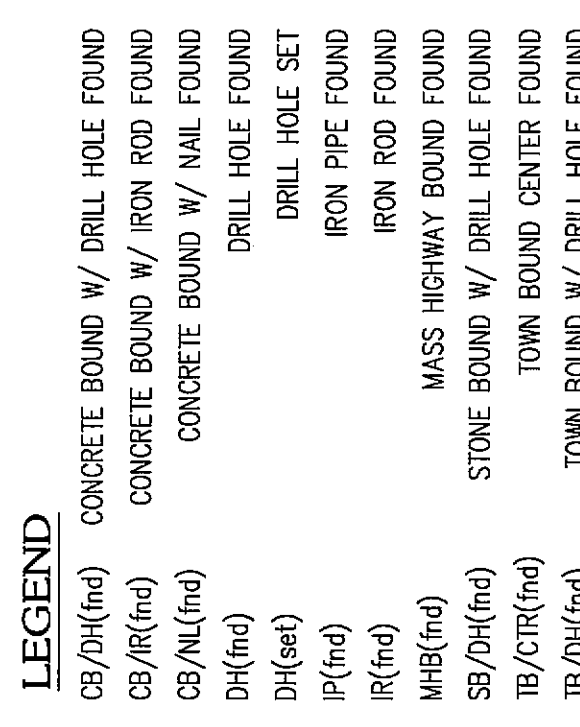
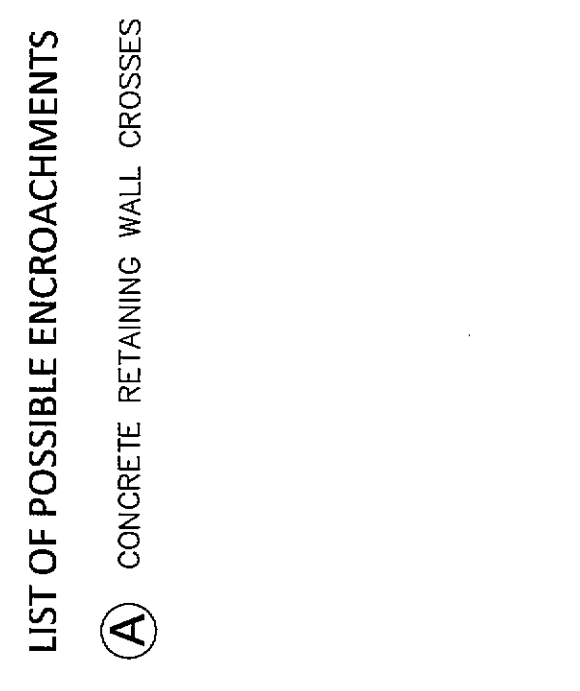
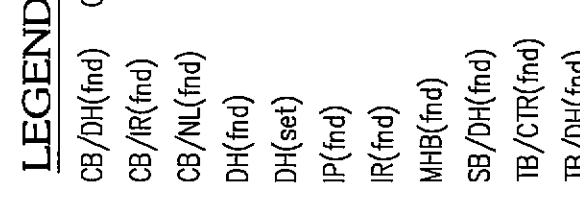
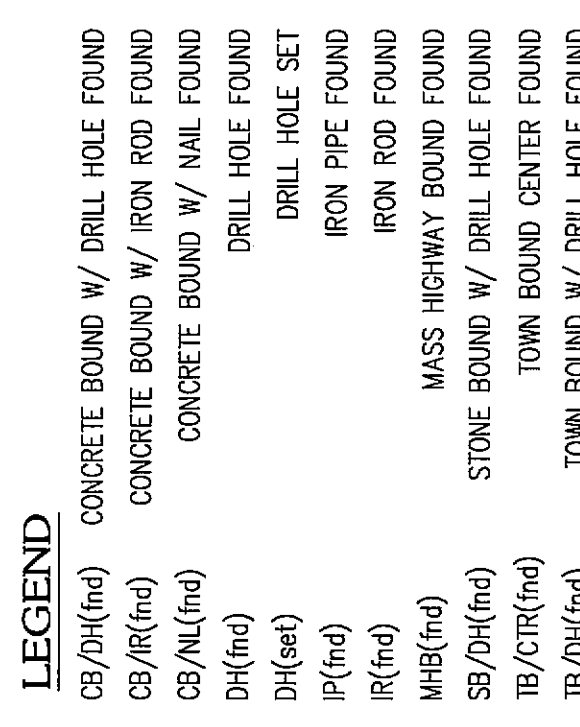
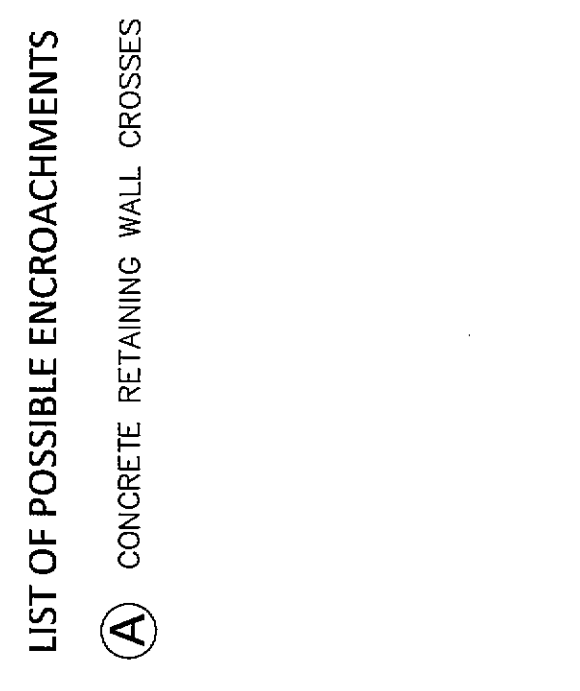
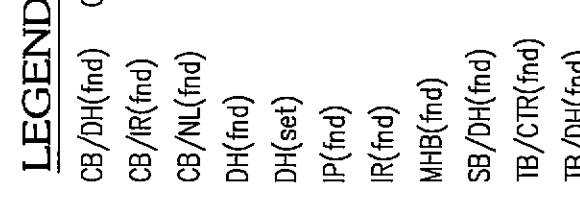
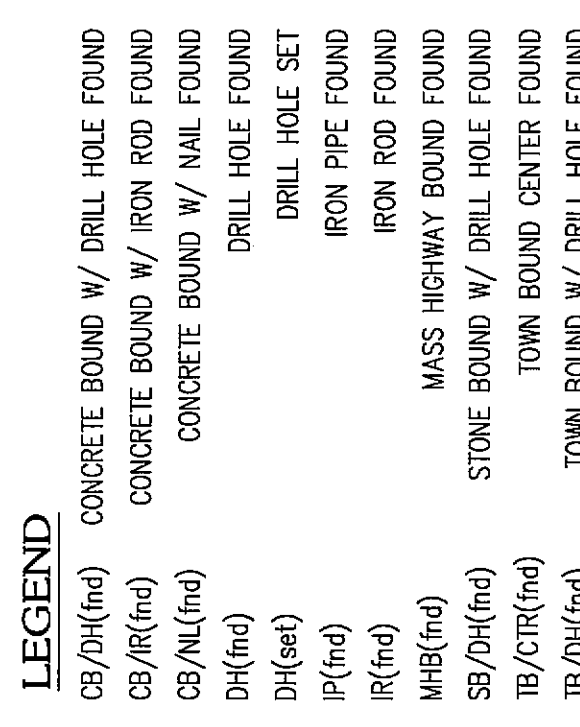
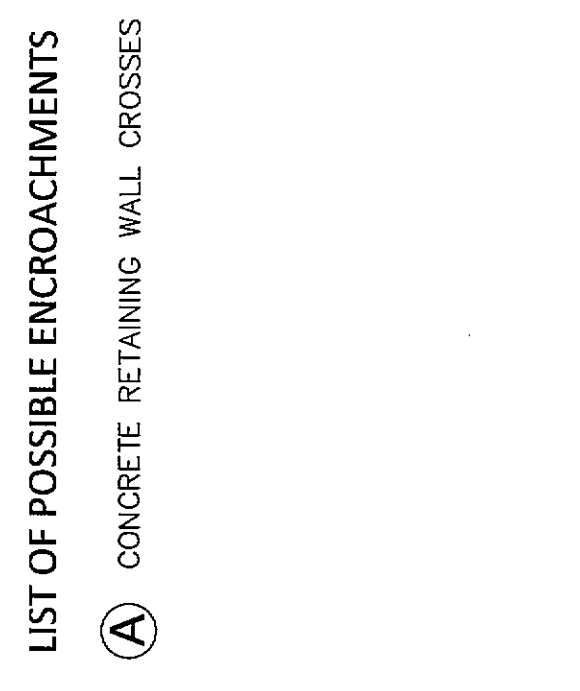
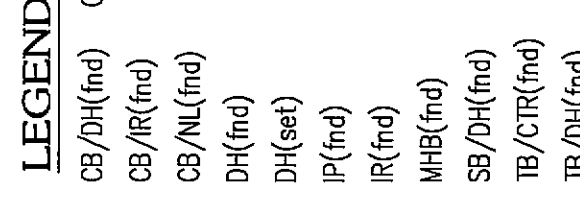
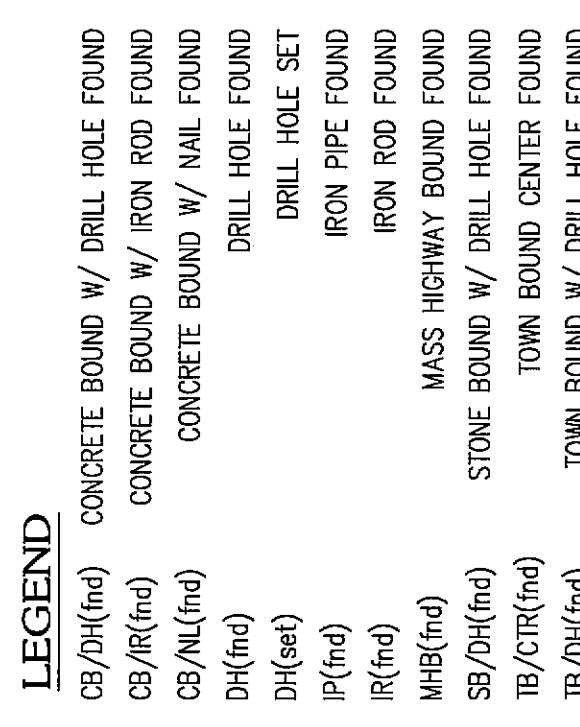
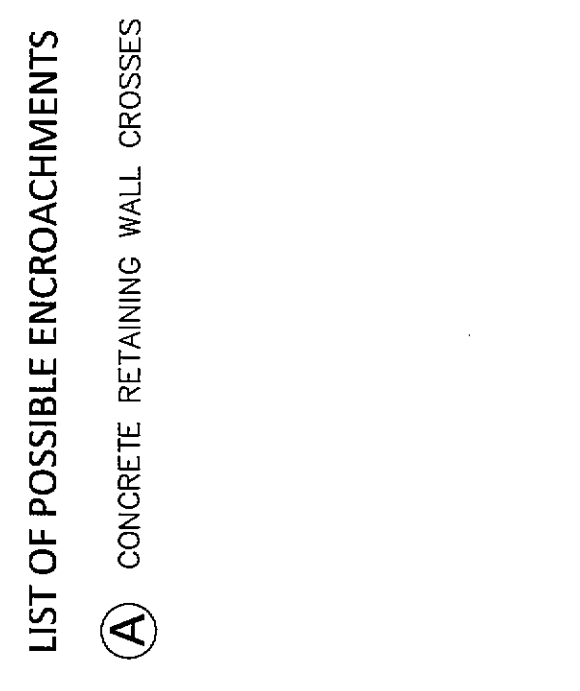
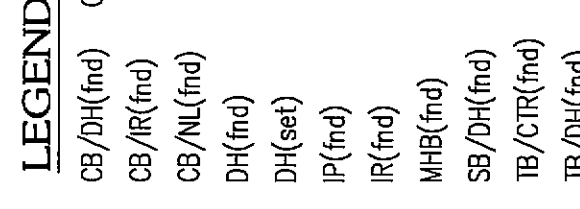
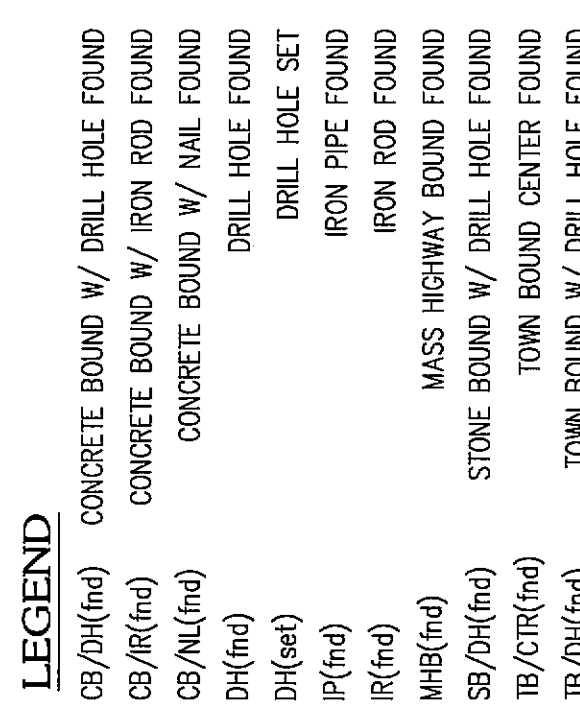
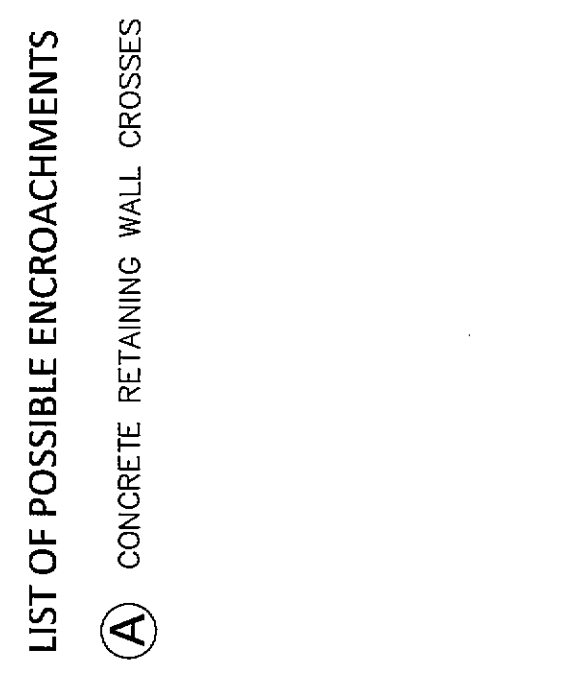
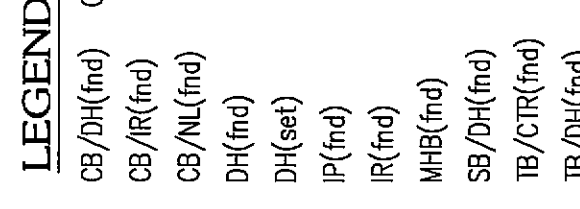
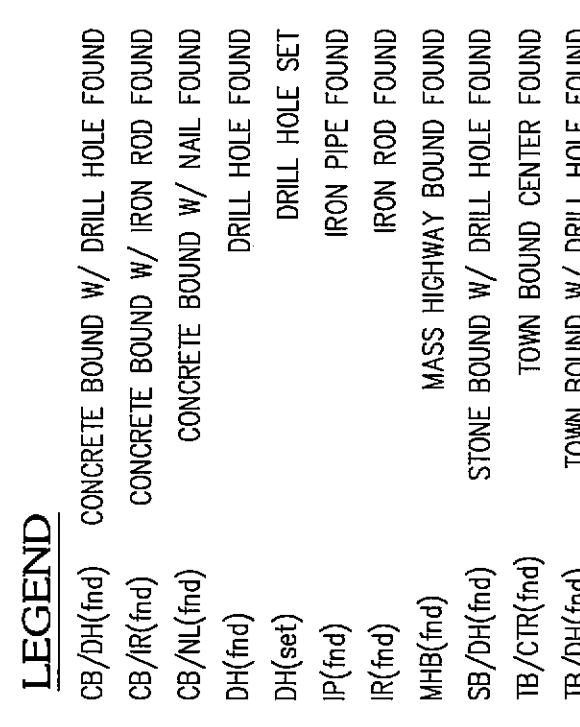
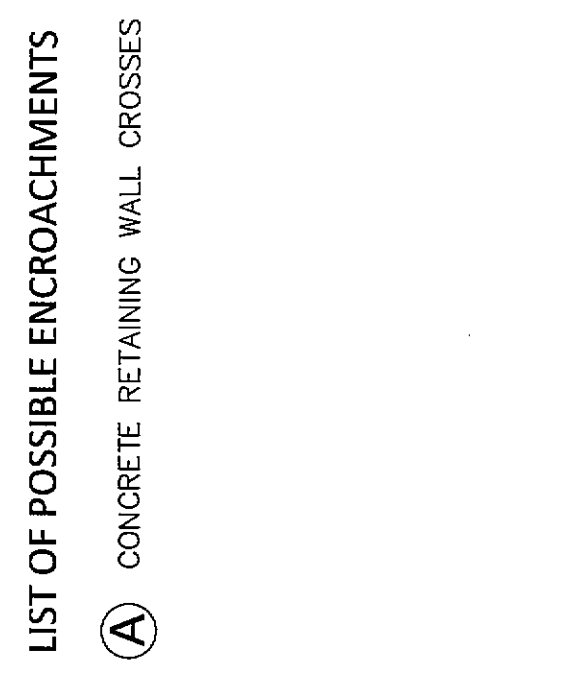
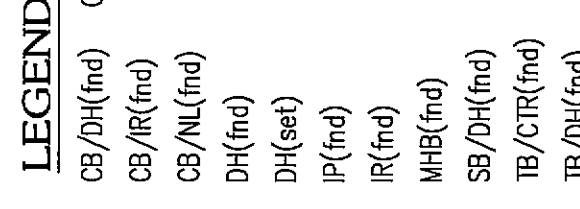
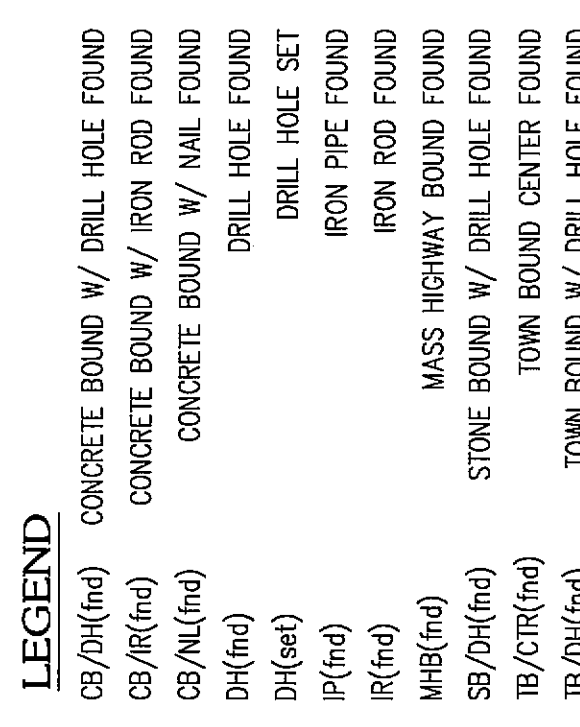
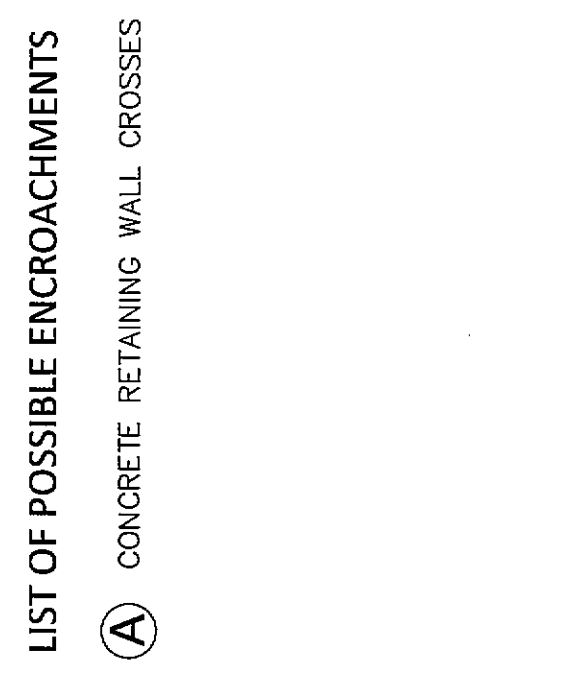
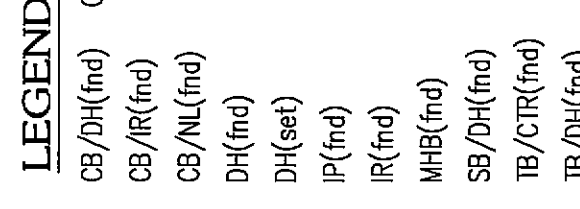
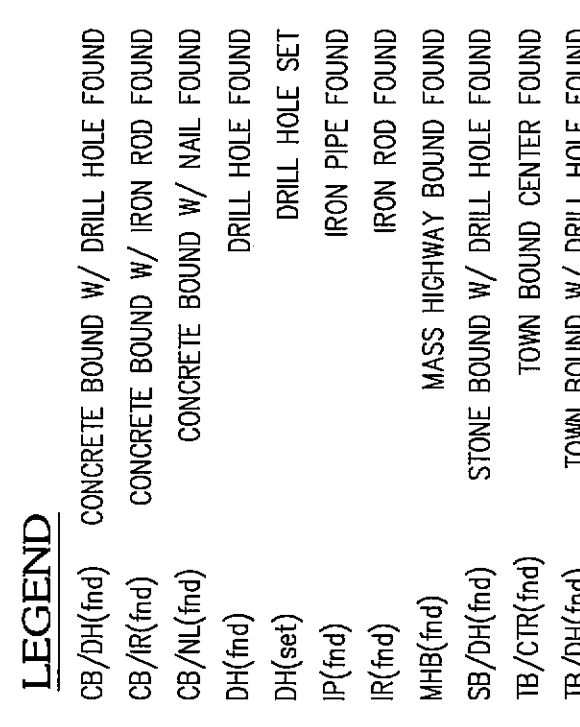
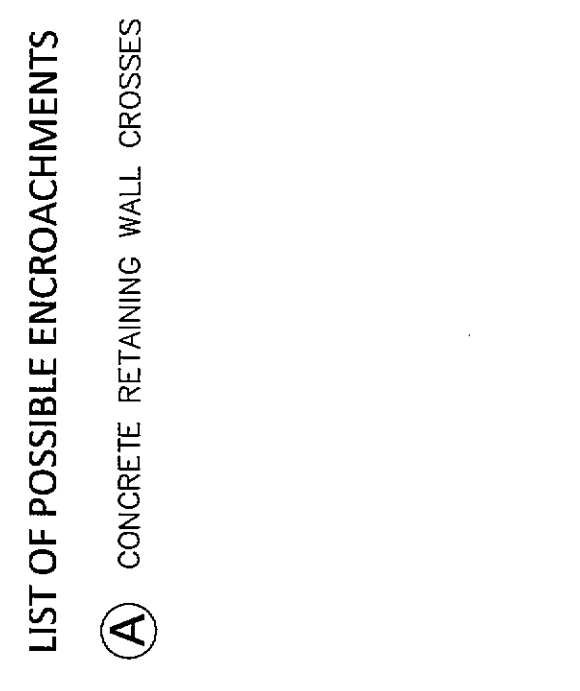
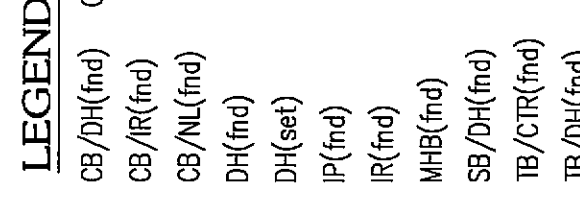
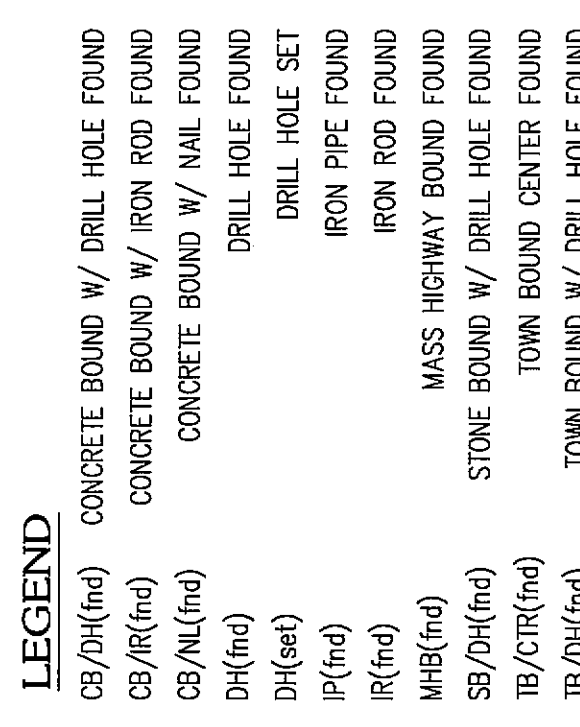
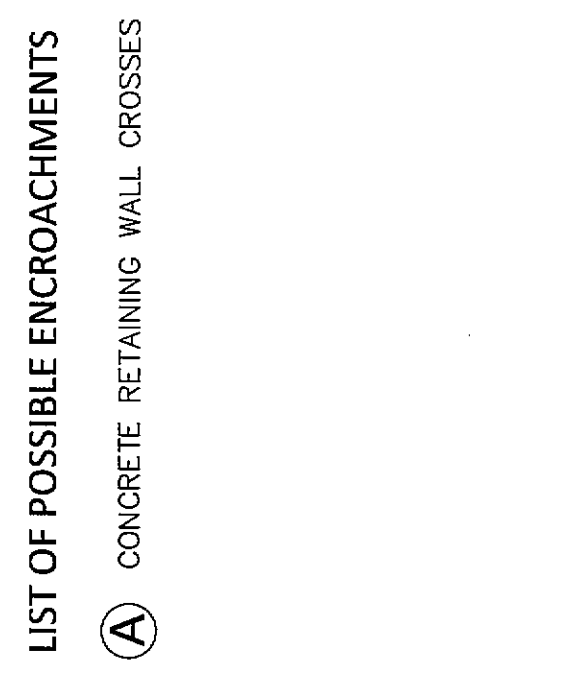
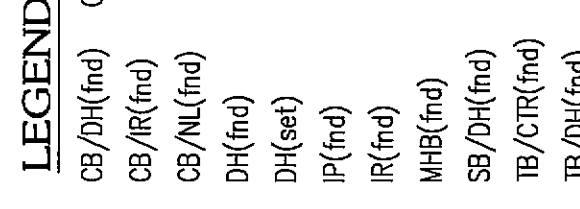
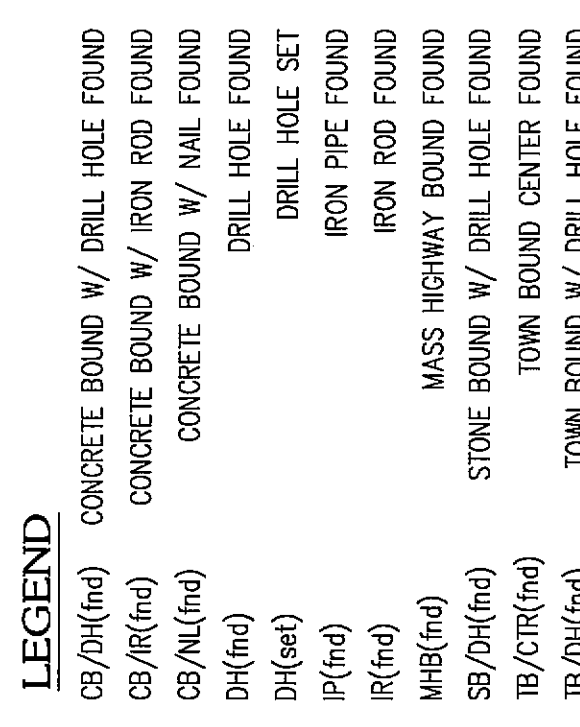
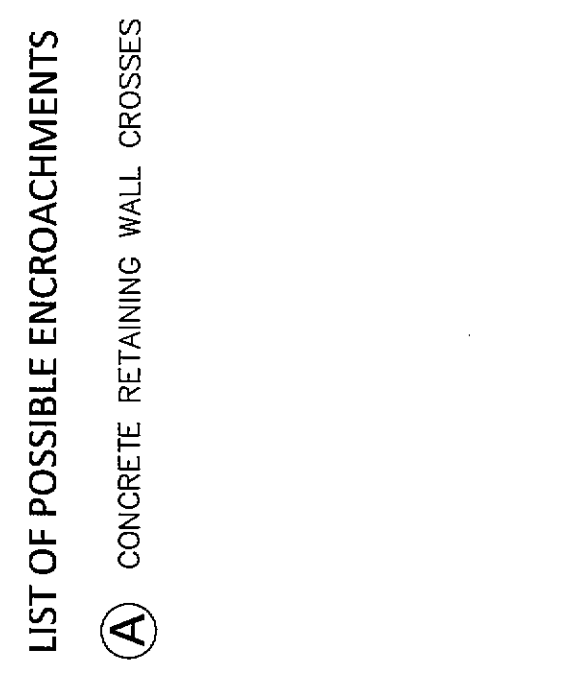
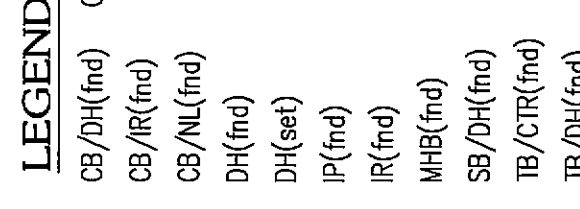
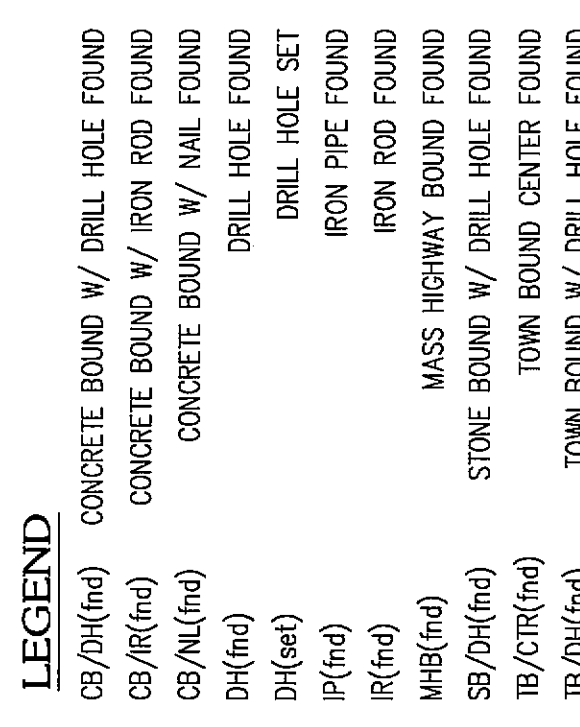
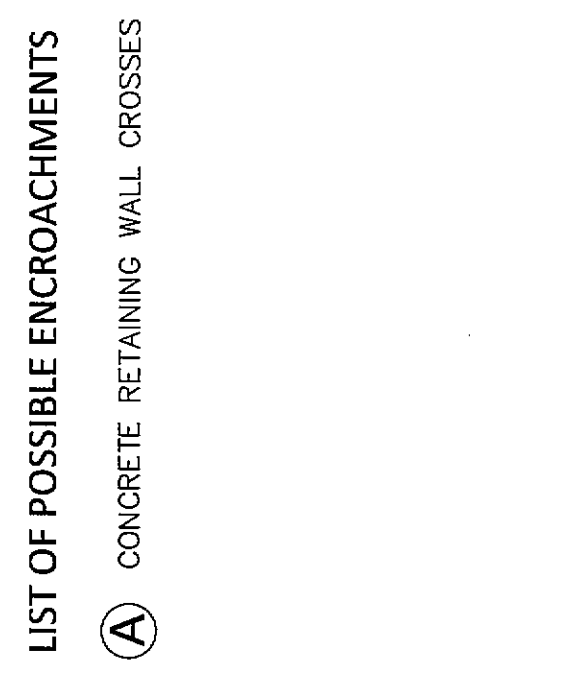
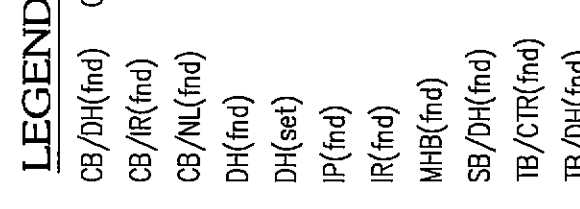
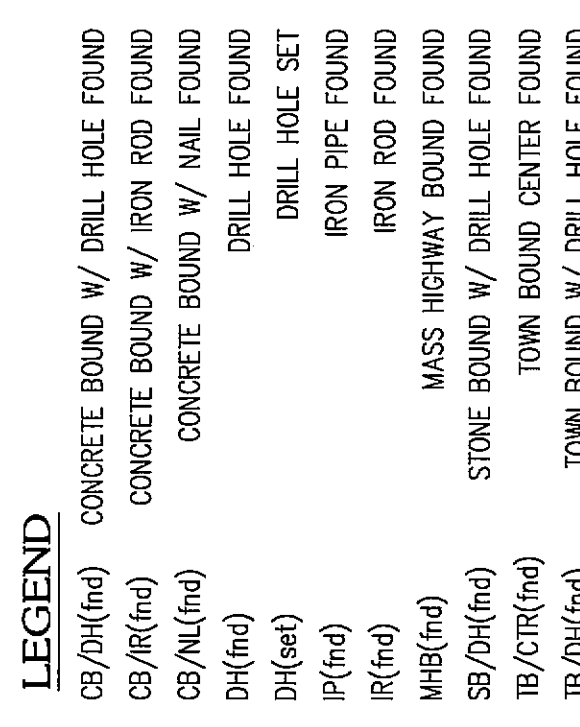
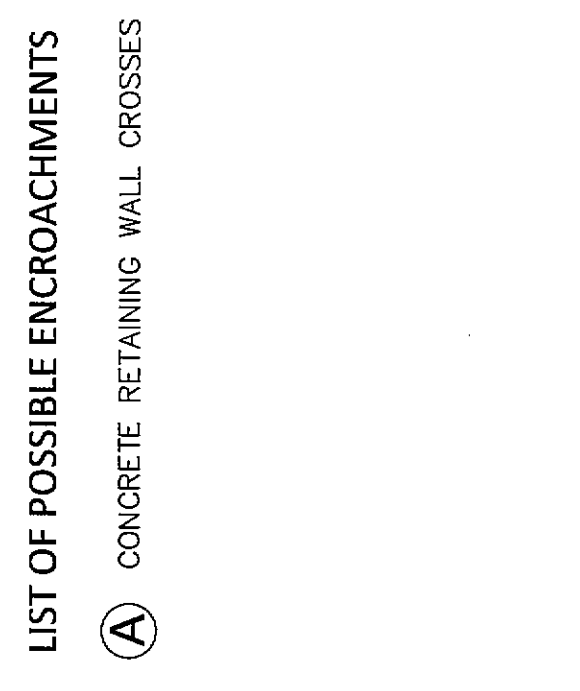
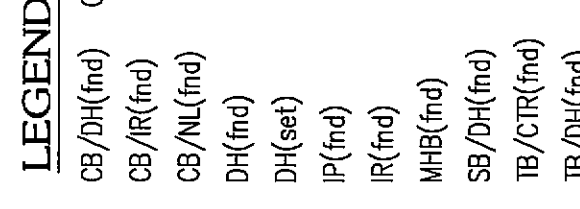
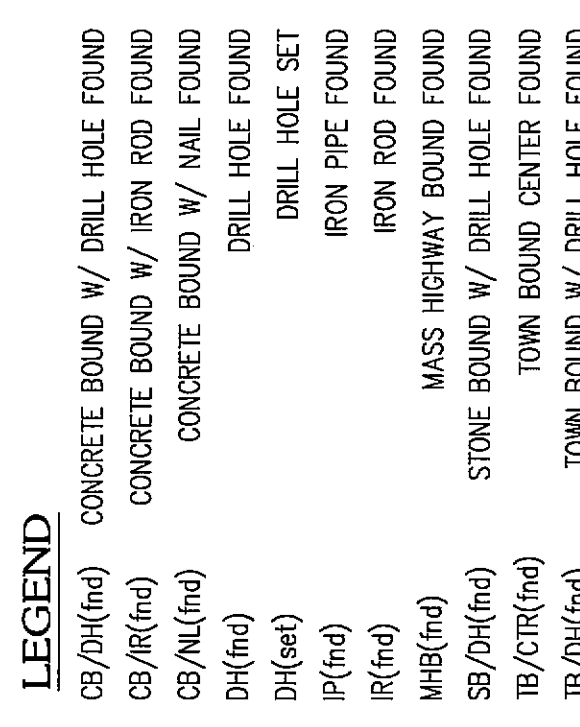
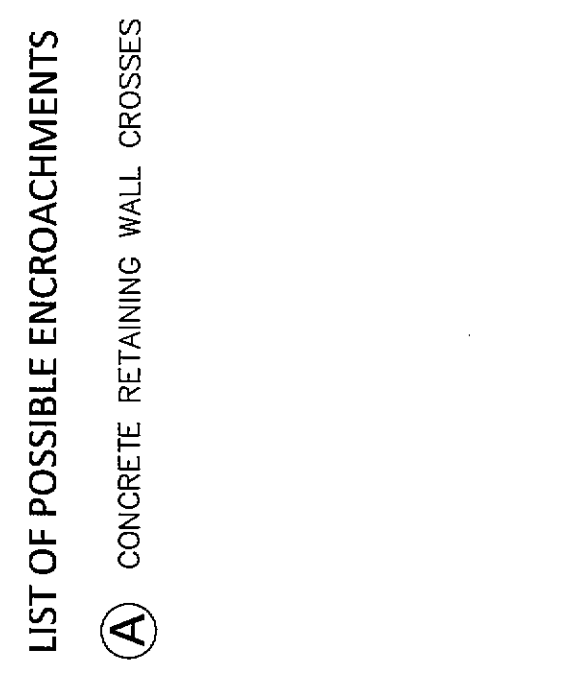
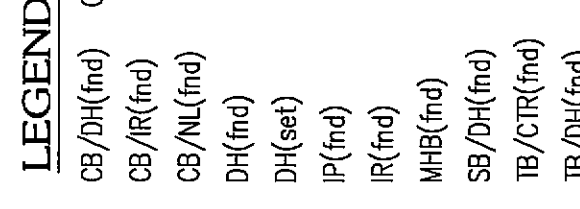
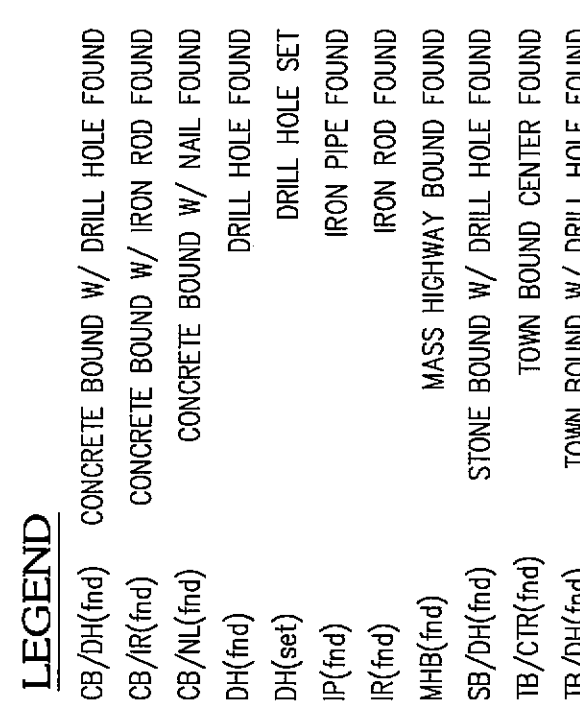
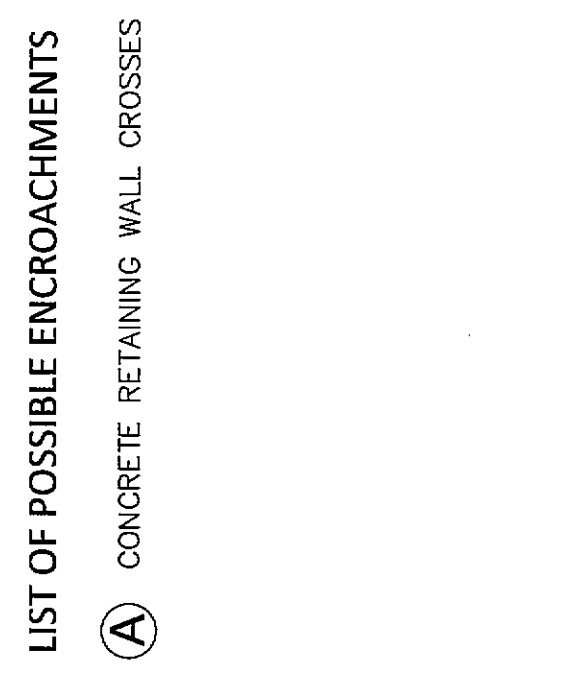
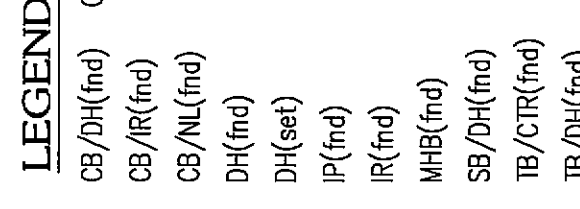
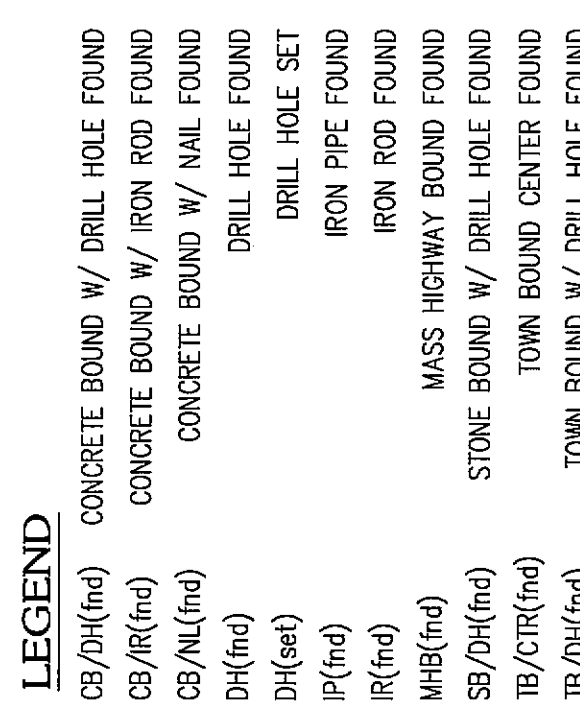
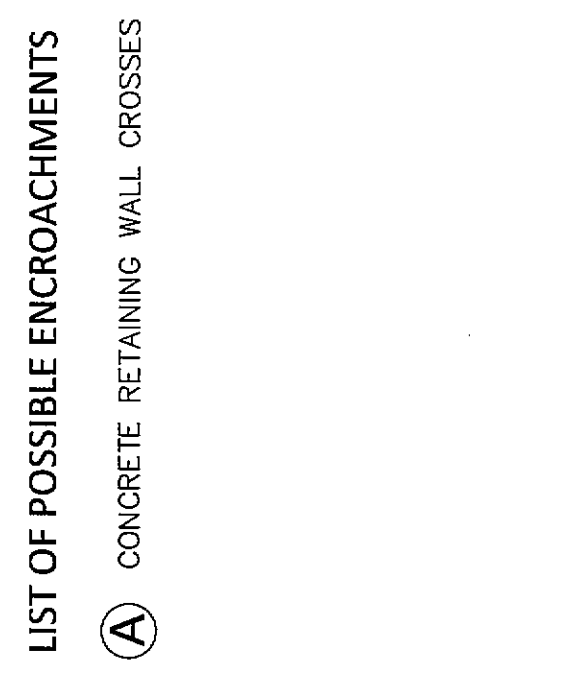
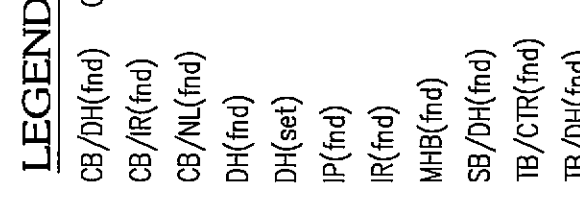
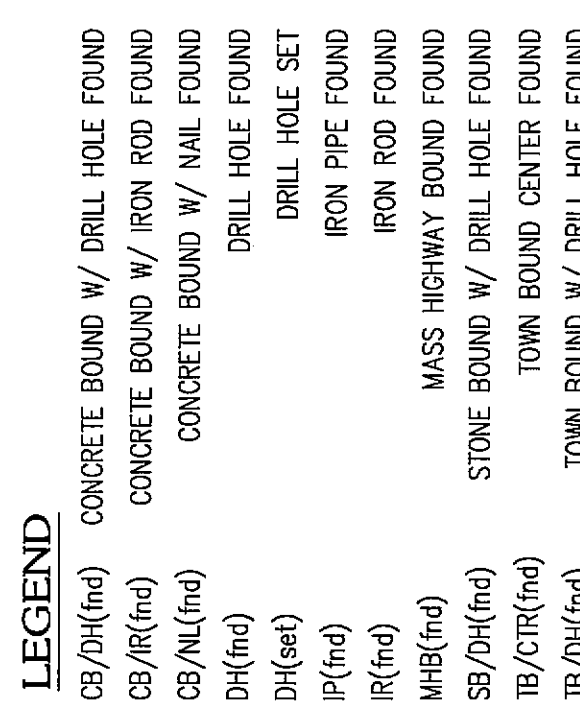
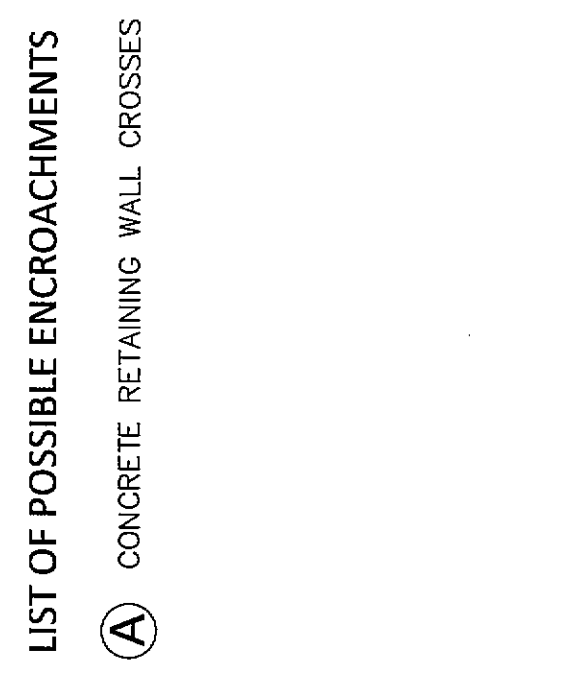
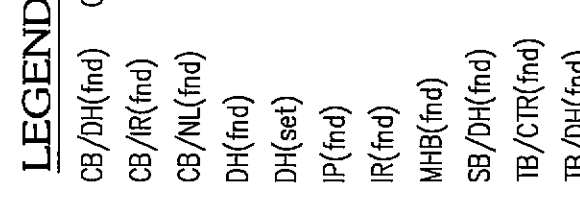
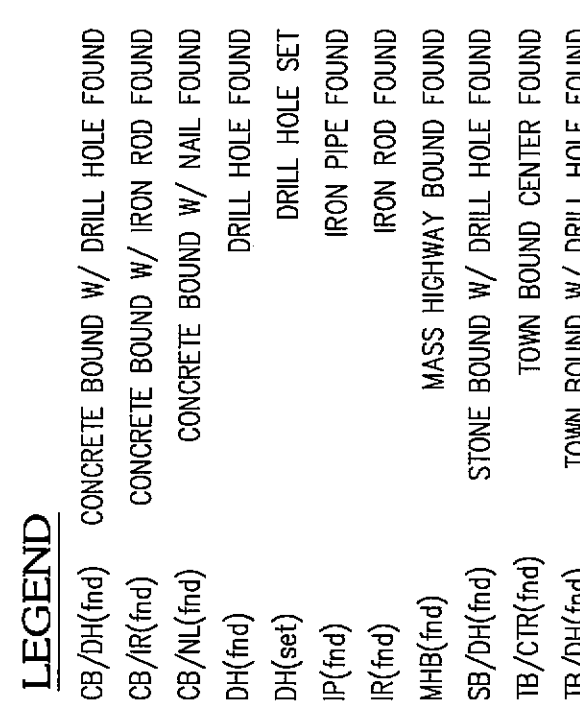
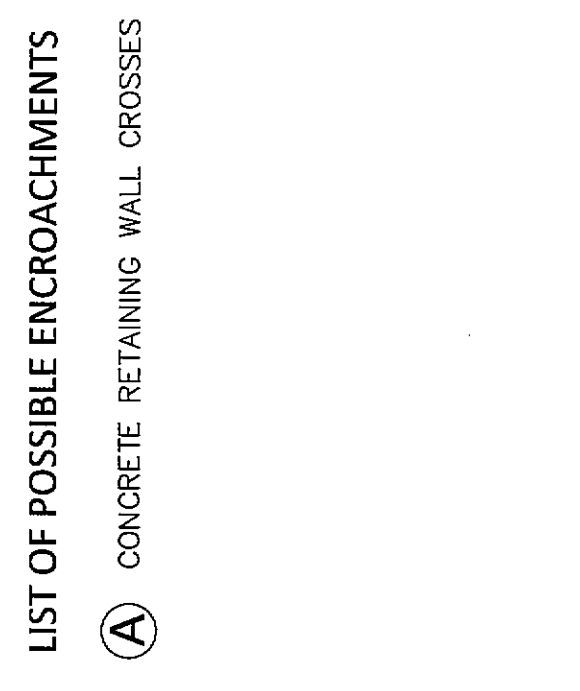
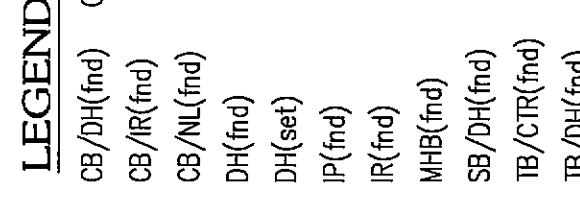
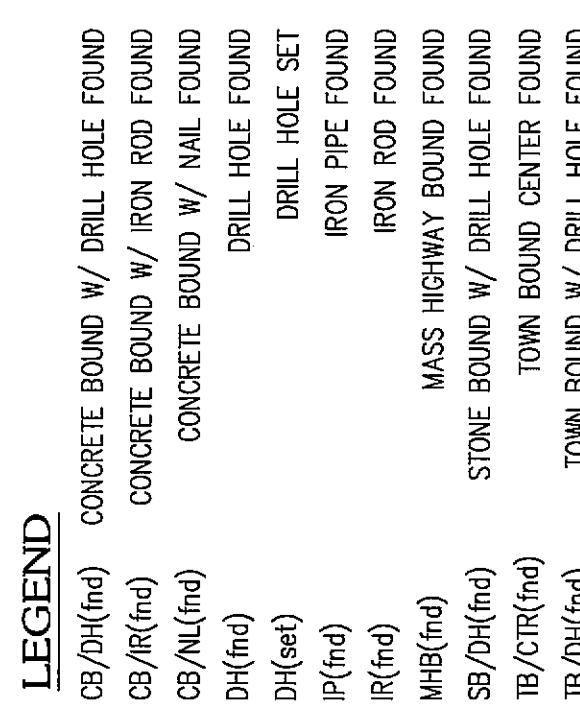
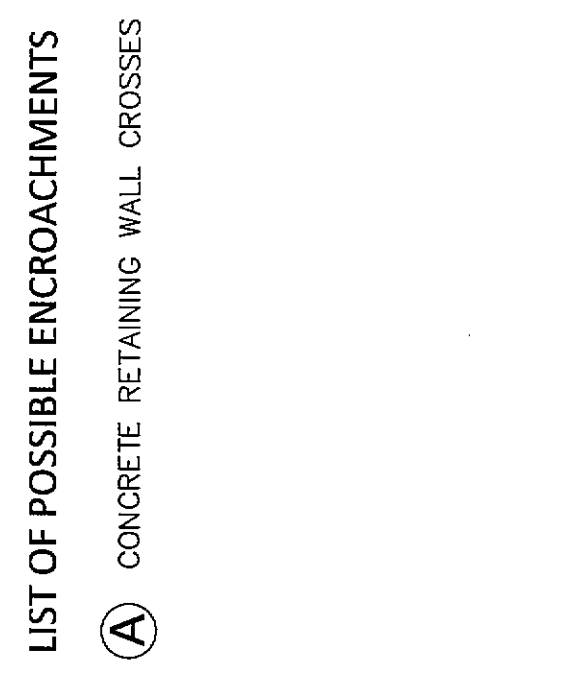
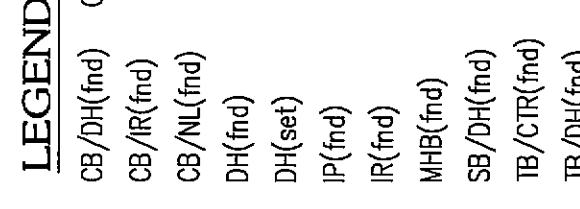
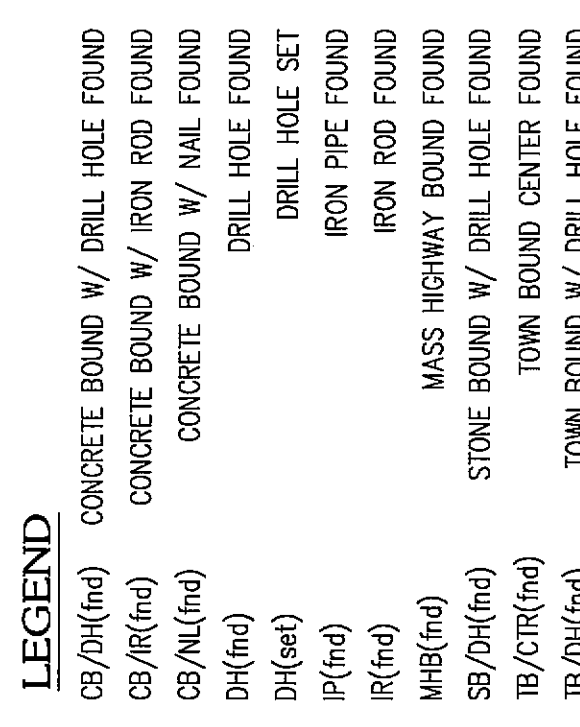
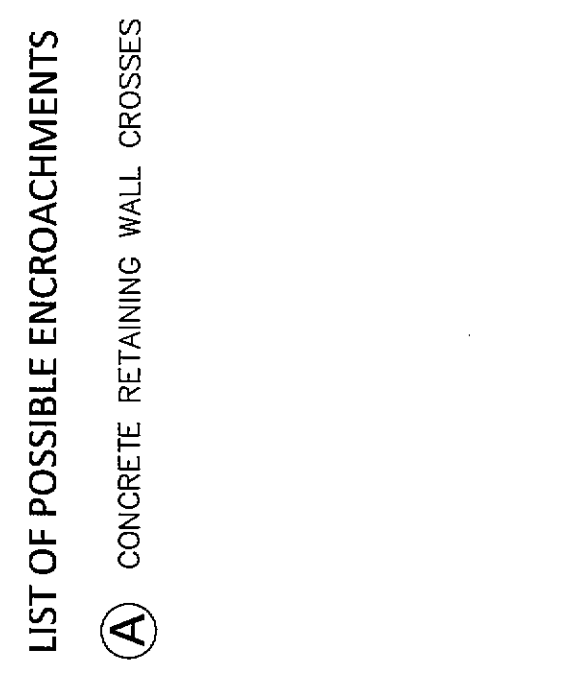
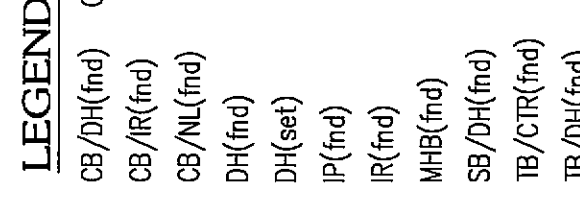
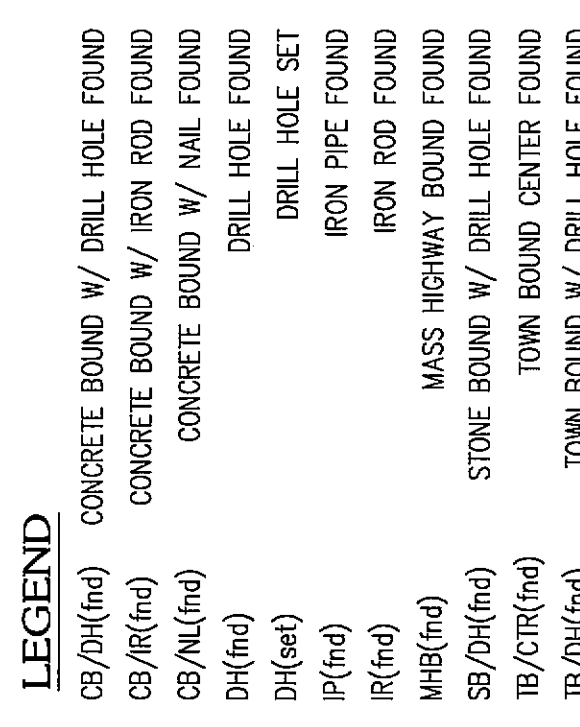
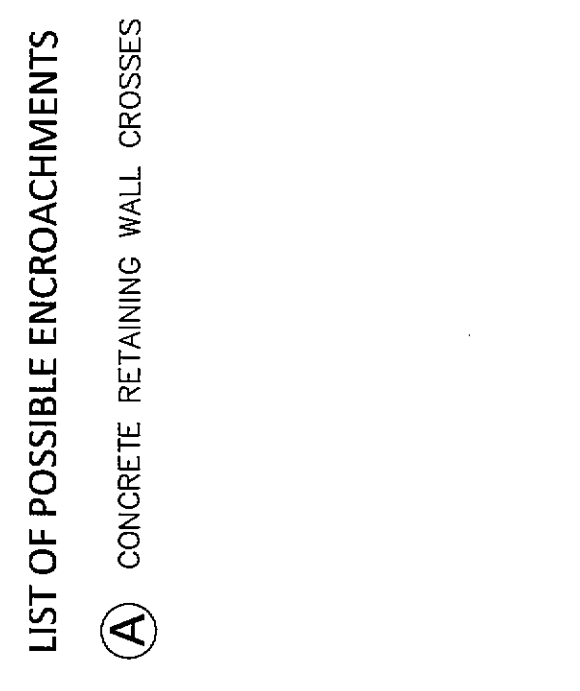
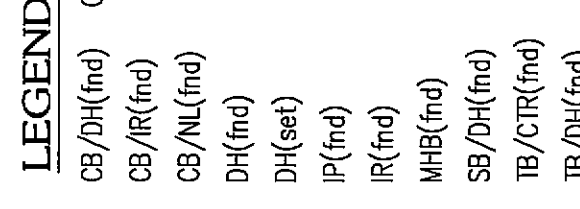
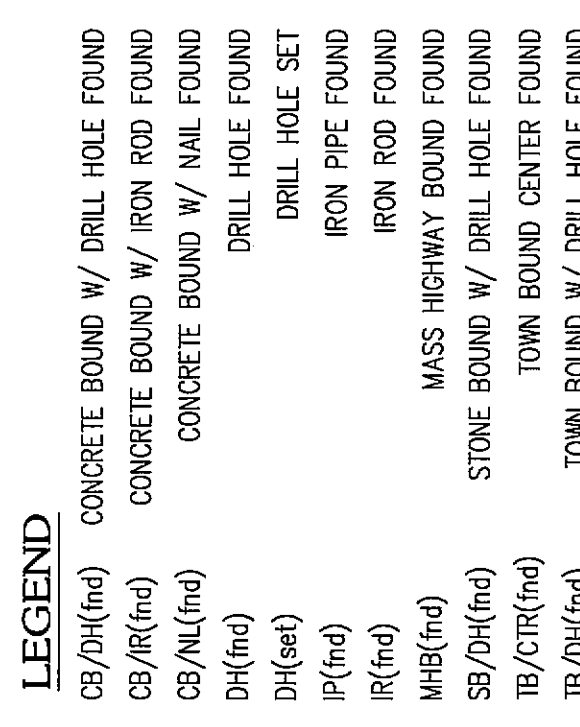
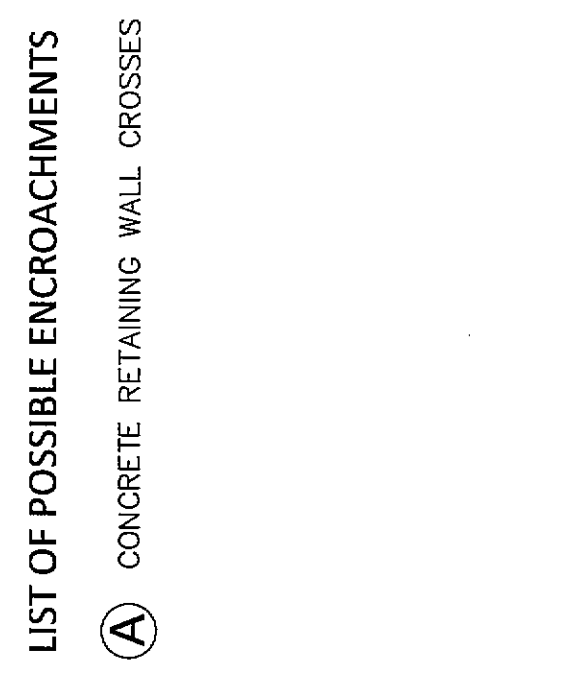
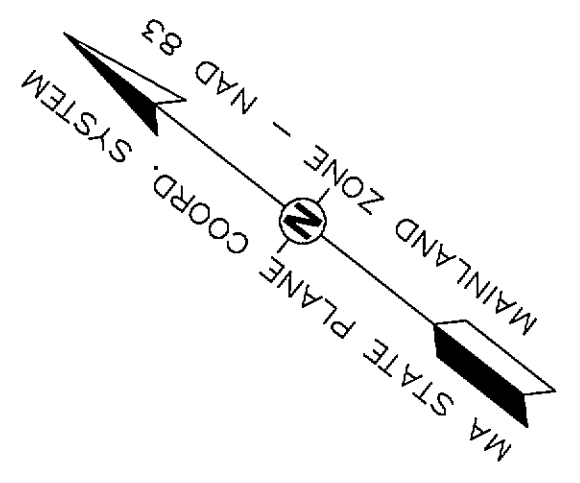
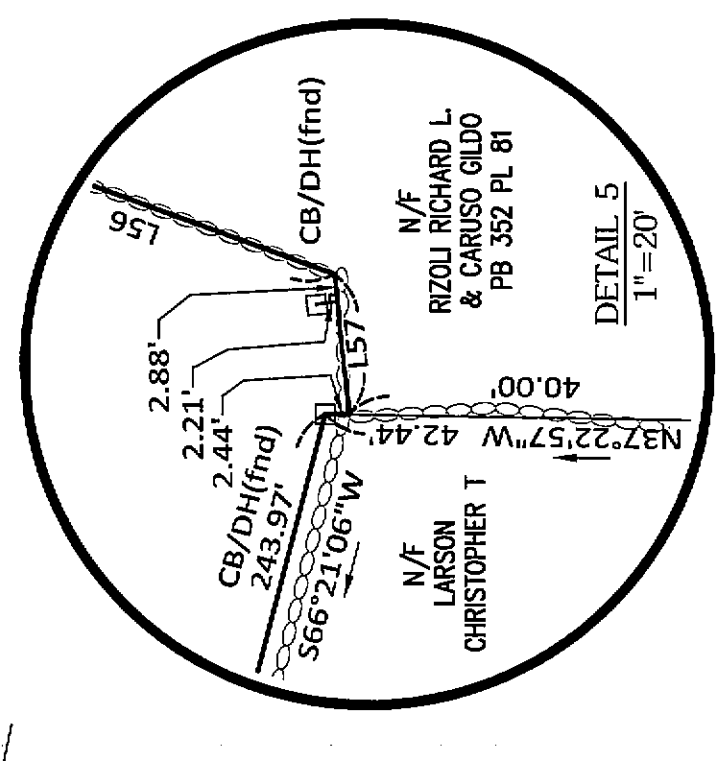
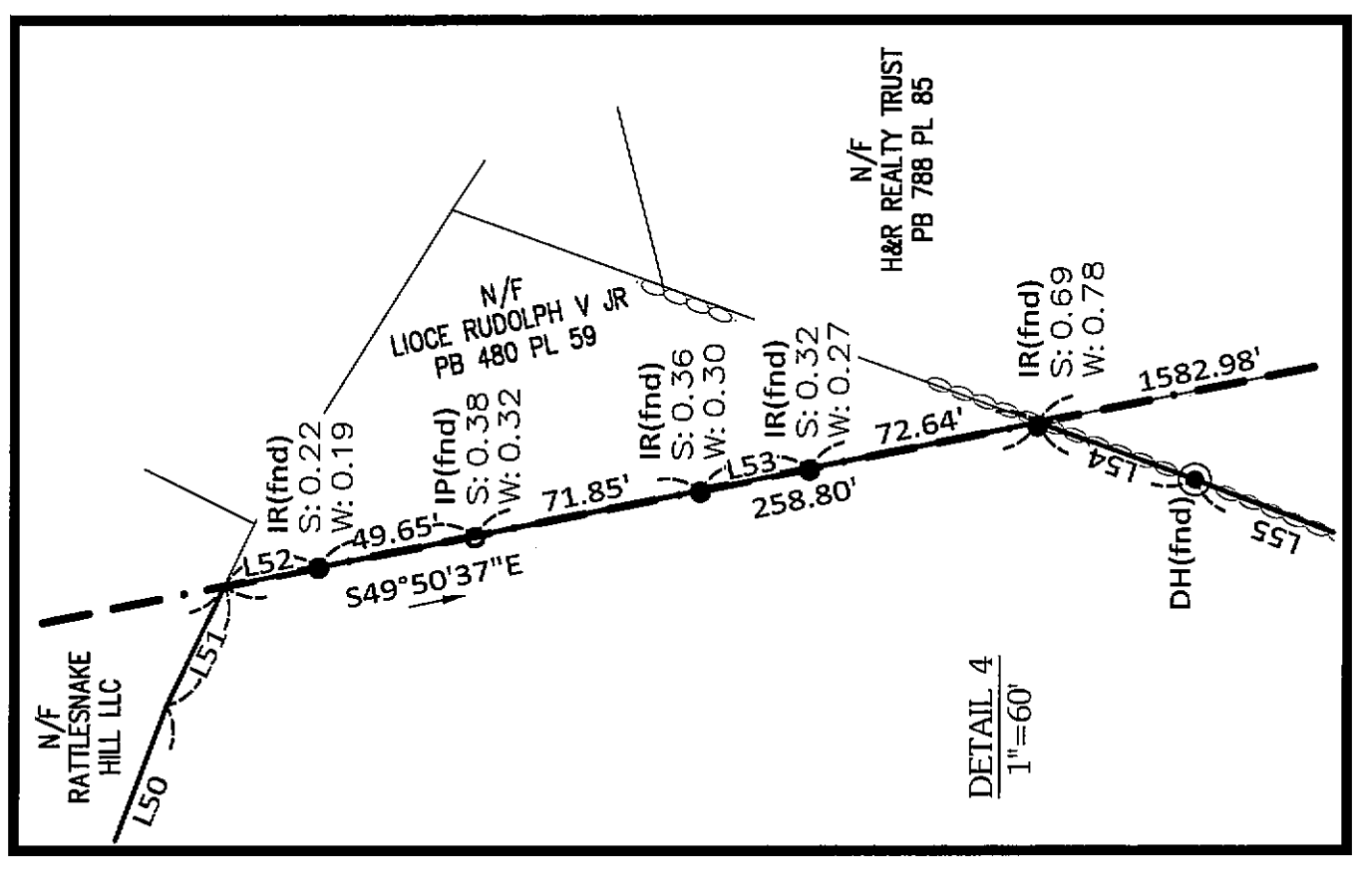
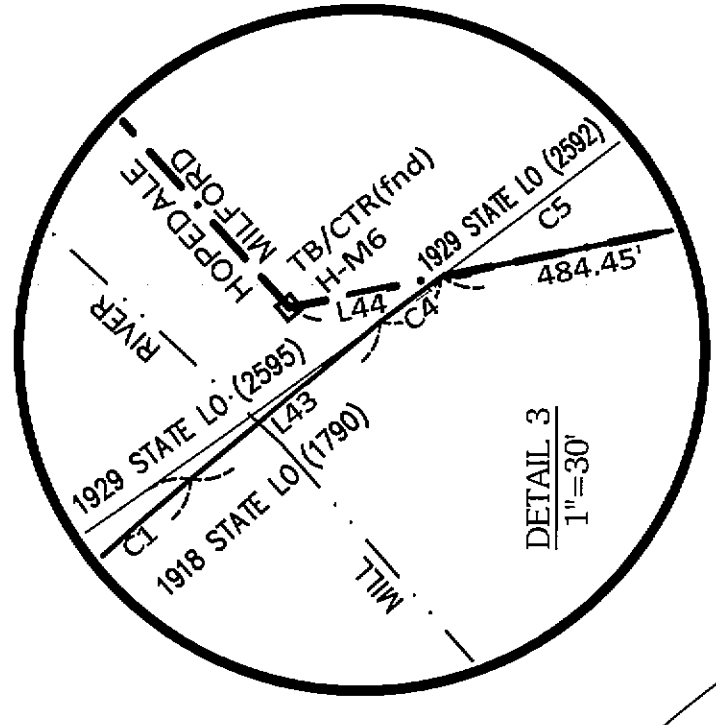
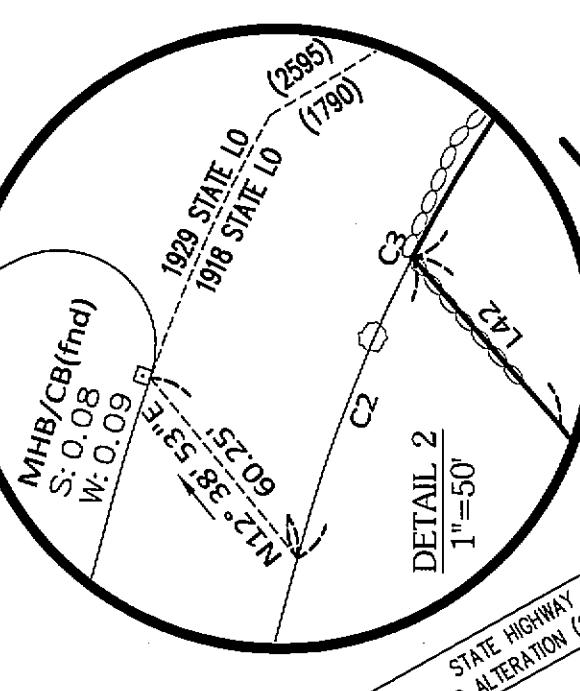
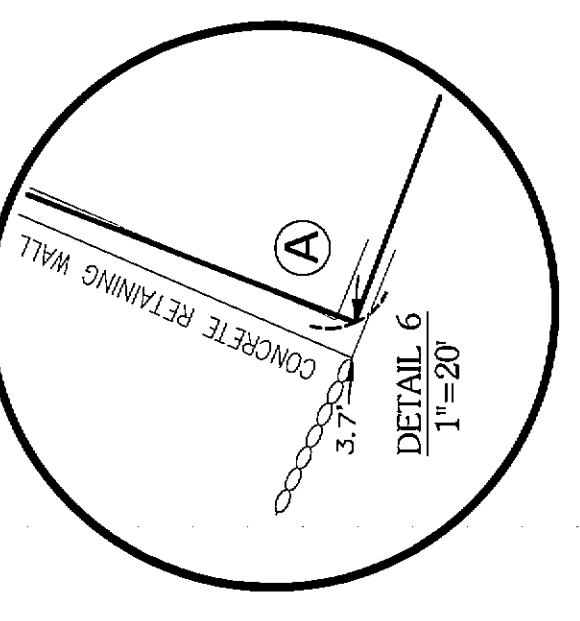
PLAN BOOK: 959 PLAN: 48  
Received: 6/17/21  
Sheet: 10 of 18 of 2  
M

Fee: \$ 210.  
ATTEST: *Richard W. Gailor*  
Register

REGISTRY USE ONLY

PLAN BOOK 957 PLAN 18  
SHEET 2 OF 2

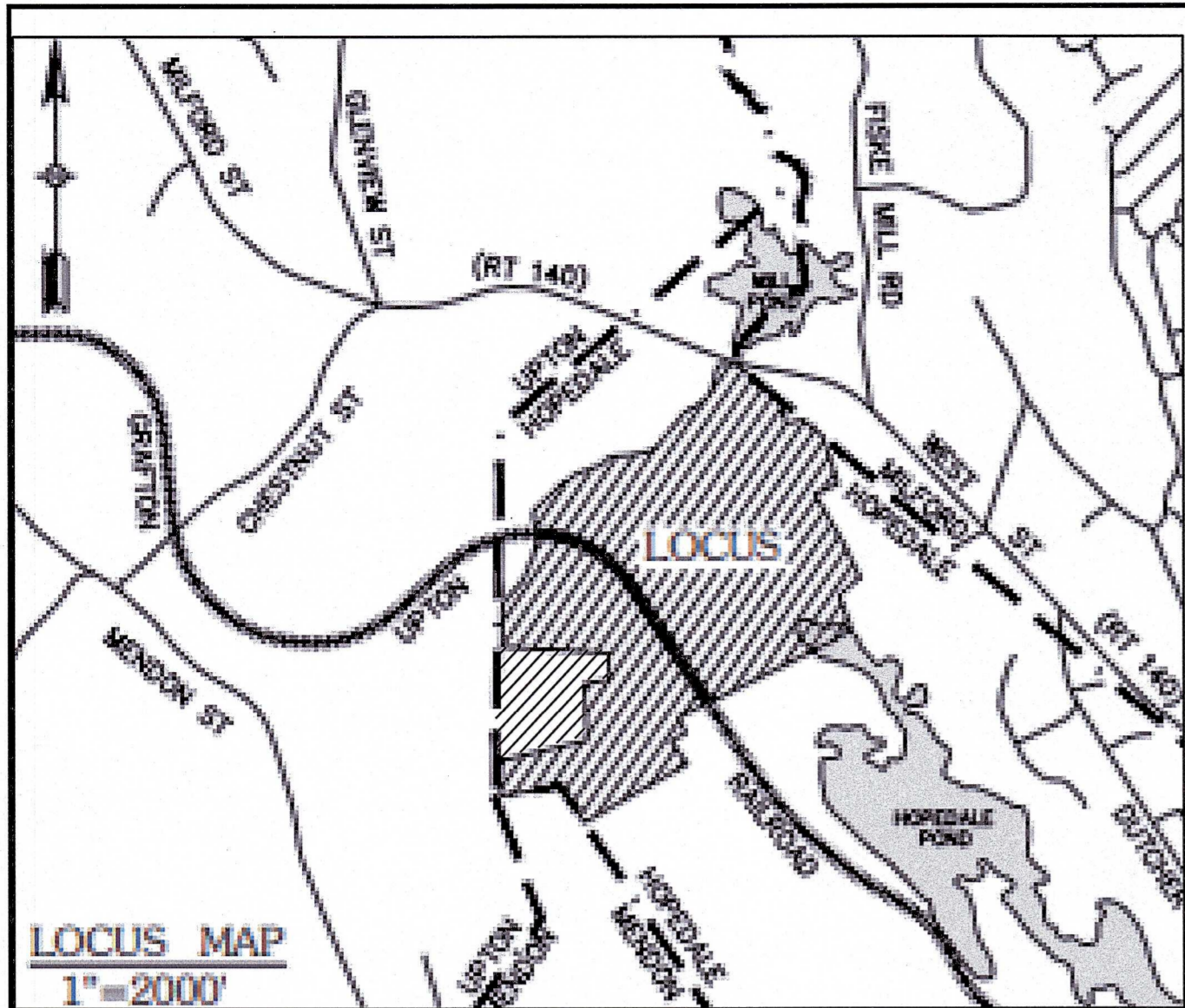
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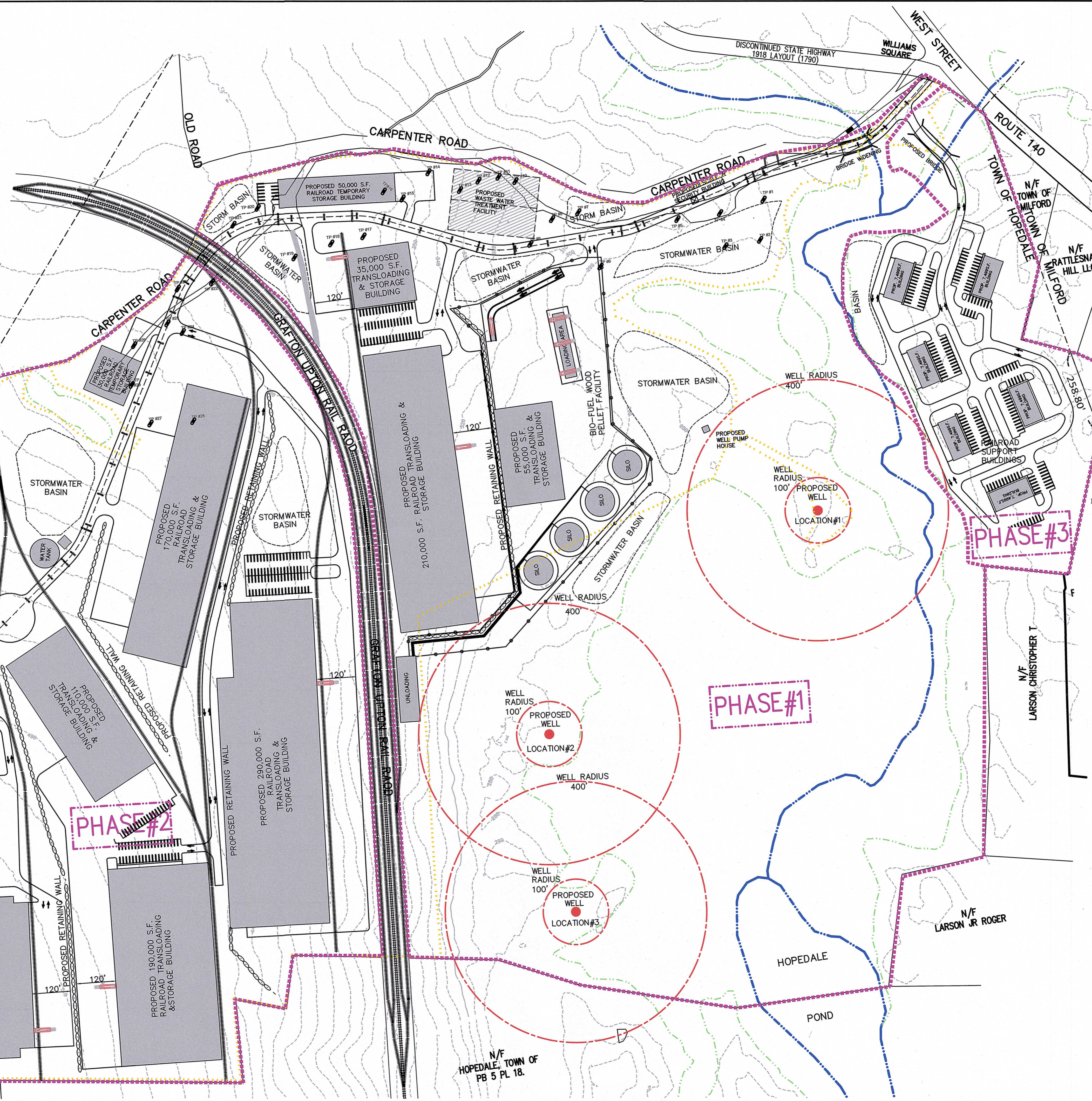
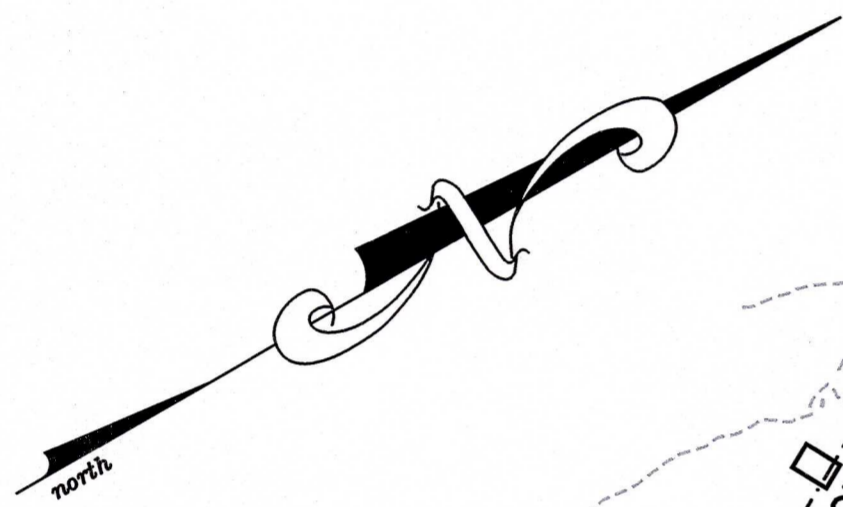
## **EXHIBIT 2**



	<b>PLS.</b>
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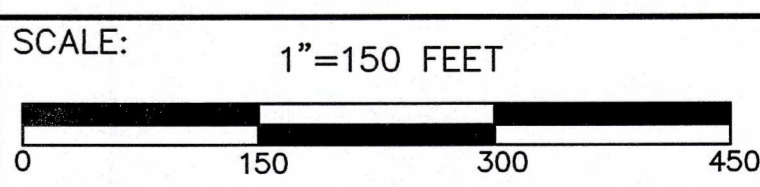
LOCUS MAP



- NOTES:
1. THIS IS A DEVELOPMENT MASTER PLAN THAT WILL BE USED FOR THE FRAMEWORK FOR THE FUTURE CONSTRUCTION OF THE PARCEL.
  2. ALL EXISTING TOPOGRAPHY WAS TAKEN FROM NOAA ACCESS VIEWER AND SHALL BE VERIFIED PRIOR TO START OF DESIGN ON THE PARCEL.
  3. PROPOSED STORMWATER BASINS SHOWN ON THIS PLAN HAVE BEEN SIZED FOR THE TOTAL BUILD OUT SHOWN ON THESE PLANS.
  4. ALL TRAIN RAILS SHOWN ON THIS PLAN HAVE BEEN DESIGNED USING 2.5% SLOPES MAXIMUM. PROPERTY SURVEY HAS BEEN COMPLETED BY ENGINEERING DESIGN CONSULTANTS, INC. AND OVERALL PROPERTY LINES HAVE BEEN TAKEN FROM SURVEYS PERFORMED BY ENGINEERING DESIGN CONSULTANTS, INC.
  5. ALL WETLANDS SHOWN ON THIS PLAN HAVE BEEN TAKEN FROM MASSGIS.

364 WEST STREET  
 TITLE:  
**GU Railroad's Metrowest  
 Transloading &  
 Logistics Center**  
 in  
 HOPEDALE, MA

**D&L Design Group**  
 115 Water Street • Milford, MA 01757  
 P: (508) 408-2577  
 www.dandlgroup.com



SCALE: AS SHOWN  
 DATE: MAY 21, 2021  
 REV. 7/8/22 REV. 8/1/22  
 JOB NO: J-012  
 PLAN NO: SITE - PLAN  
 SHEET NO: 1 OF 1

**Rail Development Plan**

N/F BLACK BROOK REALTY CORP

N/F HOPEDALE, TOWN OF  
 PB 5 PL 18.

N/F LARSON JR ROGER

N/F LARSON CHRISTOPHER T

N/F TOWN OF HILL LLC

N/F TOWN OF HOPEDALE

WEST STREET

ROUTE 140

WILLIAMS SQUARE

DISCONTINUED STATE HIGHWAY  
 1918 LAYOUT (1790)

CARPENTER ROAD

OLD ROAD

CARPENTER ROAD

GRAFTON UNION RAIL ROAD

OLD ROAD

PHASE #4

GAS EASEMENT

TOWN OF HOPEDALE

TOWN OF MENDON

N/F UNKNOWN OWNER

PHASE #2

PHASE #1

PHASE #3

HOPEDALE

POND

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

Plaintiffs )

vs. )

TOWN OF HOPEDALE, THE HOPEDALE )  
SELECT BOARD, by and through its members, )  
GLENDA HAZARD, BERNARD STOCK, )  
and BRIAN KEYES and THE HOPEDALE )  
CONSERVATION COMMISSION by and )  
through its members, BECCA SOLOMON, )  
MARCIA MATTHEWS and DAVID )  
GUGLIELMI )

Defendants )

Case No. 4:22-cv-40080-ADB

**AFFIDAVIT OF MICHAEL DEAN**

Now comes Michael Dean, who on oath deposes and says as follows:

1. I am a resident of Upton, Massachusetts and I am the President of D&L Design Group, Inc., a Massachusetts professional civil engineering and land surveying firm. I have personal knowledge of the facts set forth in this Affidavit.

2. I have attached hereto as Exhibit 1 a true and accurate copy of the Articles of Organization of D&L Design Group, Inc. ("D&L"), which was organized as a Massachusetts corporation on May 22, 2022.

3. I am a licensed professional civil engineer through the Massachusetts Board of Registration of Professional Engineers and of Land Surveyors, under License No. 46255. A true and accurate copy of my license is attached hereto as Exhibit 2.

4. I have been a licensed professional civil engineer in Massachusetts for over 17 years. Prior to opening my own business in May 2022, I have over 30 years of experience working in the field of civil engineering and land surveying, 28+ years with Guerriere & Halnon, Inc (G&H), 6 years with the Town of Milford as the Town Engineer and just over eight (8) months as the owner of D& L Design Group, Inc. While at G & H, I started working summers in the field surveying, progressed to party chief, then to Jr. Engineer, then to Project Engineer, Professional Engineer, then to Engineering Manager and my final position at G&H was Office Manager, where, as Office Manager, I was responsible for managing the daily operations of an office comprised of ten (10) to fifteen (15) civil engineers and land surveyors. The previous nine (9) years I held the position of Engineering Manager leading a team of civil engineers. I am a graduate of Wentworth Institute of Technology with a BSCE degree (with honors, Cum Laude) and have the following certifications: Registered Professional Engineer (Civil) in the Commonwealth of Massachusetts, State Certified Soil Evaluator and State Licensed Title V Inspector. I have also attended numerous seminars and classes pertaining to land development and regulatory implementation.

5. D & L Design Group, Inc. was retained by Grafton & Upton Railroad Company to provide civil engineering and land surveying services for a project referred to as 364 West Street, Hopedale, MA (the site). The evaluation of the property was associated with a railroad transportation facility at the site.

6. Over the course of several months D & L Design Group, Inc., in conjunction with GURR representatives, prepared preliminary plans for the site which


were revised over the course of several months. The plans are associated with the development of a rail transportation facility at the site.

7. The most recent revised plan for the 364 West Street site – entitled “GU Railroad’s Metrowest Transloading & Logistics Center in Hopedale, MA” is dated, August 1, 2022. A true and accurate copy of this plan, revised through August 1, 2022, which includes my professional engineer stamp in the top right corner, is attached hereto as Exhibit 3.

8. As stated in the 4<sup>th</sup> Note on the August 1, 2022 Plan, “All train rails shown on this plan have been based upon using 2.5% slopes maximum.”

9. I do not dispute that the land at 364 West Street has some steep topography, but the Plan, revised through August 1, 2022 fairly and accurately represents a realistic conceptual build-out, revised over several months working with representatives of GURR, at the 364 West Street site, including the layout of proposed buildings and proposed parking areas. The plan, revised through August 1, 2022 is not a final plan, but represents a realistic conceptual build-out as of August 1, 2022. I expect D&L Design will continue to work with GURR to further design and engineer the site before final plans are prepared, which is consistent with generally accepted engineering and surveying practices.

Signed under the penalties of perjury this 6<sup>th</sup> day of February 2023.

  
Michael Dean, P.E.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to counsel of record for all parties on this 7<sup>th</sup> day of February 2023.

/s/ Donald C. Keavany, Jr.

# **EXHIBIT 1**



**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Minimum Fee: \$250.00

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

**Articles of Organization**

(General Laws, Chapter 156D, Section 2.02; 950 CMR 113.16)

Identification Number: 001583820

**ARTICLE I**

The exact name of the corporation is:

D & L DESIGN GROUP, INC.

**ARTICLE II**

Unless the articles of organization otherwise provide, all corporations formed pursuant to G.L. C156D have the purpose of engaging in any lawful business. Please specify if you want a more limited purpose:

THE PURPOSE OF THE BUSINESS IS TO PROVIDE SURVEYING, CIVIL ENGINEERING AND OTHER RELATED SERVICES FOR THE DEVELOPMENT OF LAND. ADDITIONALLY, TO CARRY ON ANY OR ALL OF THE BUSINESS OF THE CORPORATION AS PRINCIPAL, AGENT OR CONTRACTOR, AND TO CARRY ON ANY OTHER BUSINESS INCIDENTAL TO AND IN CONNECTION WITH THE FOREGOING AND TO HAVE AND TO EXERCISE ALL THE POWERS CONFERRED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS UPON CORPORATIONS FORMED UNDER THE GENERAL LAWS THEREOF, AND TO ANY AND ALL THE THINGS HEREINBEFORE SET FORTH TO THE SAME EXTENT AS NATURAL PERSONS MIGHT DO.

**ARTICLE III**

State the total number of shares and par value, if any, of each class of stock that the corporation is authorized to issue. All corporations must authorize stock. If only one class or series is authorized, it is not necessary to specify any particular designation.

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding Num of Shares
		Num of Shares	Total Par Value	
CNP	\$0.00000	15,000	\$0.00	400

G.L. C156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. C156D Section 6.21 and the comments thereto.

**ARTICLE IV**

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the Business Entity must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

**ARTICLE V**

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

ANY STOCKHOLDER, INCLUDING THE HEIRS, ASSIGNS, EXECUTORS OR ADMINISTRATORS OF A DECEASED STOCKHOLDER DESIRING TO SELL OR TRANSFER SUCH STOCK OWNED BY HIM OR HER, SHALL FIRST OFFER IT TO THE CORPORATION THROUGH THE BOARD OF DIRECTORS IN THE MANNER FOLLOWING: HE OR SHE SHALL NOTIFY THE DIRECTORS OF HIS OR HER DESIRE TO SELL OR TRANSFER BY NOTICE IN WRITING, WHICH NOTICE SHALL CONTAIN THE PRICE AT WHICH HE OR SHE IS WILLING TO SELL OR TRANSFER AND THE NAME OF ONE (1) ARBITRATOR. THE DIRECTORS SHALL WITHIN THIRTY (30) DAYS THEREAFTER, EITHER ACCEPT THE OFFER OR BY NOTICE TO HIM OR HER, IN WRITING, NAME A SECOND ARBITRATOR, AND THESE TWO SHALL NAME A THIRD. IT SHALL THEN BE THE DUTY OF THE ARBITRATORS TO ASCERTAIN THE VALUE OF THE STOCK, AND IF ANY ARBITRATOR SHALL NEGLECT OR REFUSE TO APPEAR AT ANY MEETING APPOINTED BY THE ARBITRATORS, A MAJORITY MAY ACT IN THE ABSENCE OF SUCH ARBITRATOR. AFTER THE ACCEPTANCE OF THE OFFER, OR THE REPORT OF THE ARBITRATORS AS TO THE VALUE OF THE STOCK, THE DIRECTORS SHALL HAVE THIRTY (30) DAYS WITHIN WHICH TO PURCHASE THE SAME AT SUCH VALUATION, BUT IF AT THE EXPIRATION OF THIRTY (30) DAYS, THE CORPORATION SHALL NOT HAVE EXERCISED THE RIGHT TO SO PURCHASE, THE OWNER OF THE STOCKS SHALL BE AT LIBERTY TO DISPOSE OF THE SAME IN ANY MANNER HE OR SHE MAY SEE FIT. NO SHARES OF STOCK SHALL BE SOLD OR TRANSFERRED ON THE BOOKS OF THE CORPORATION UNTIL THESE PROVISIONS HAVE BEEN COMPLIED WITH, BUT THE BOARD OF DIRECTORS MAY IN ANY PARTICULAR INSTANCE WAIVE THE REQUIREMENTS.

**ARTICLE VI**

Other lawful provisions, and if there are no provisions, this article may be left blank.

THE CORPORATION MAY BE A PARTNER IN ANY BUSINESS ENTERPRISE WHICH IT WOULD HAVE POWER TO CONDUCT BY ITSELF. EACH DIRECTOR OR OFFICER, PRESENT OR FORMER, OF THE CORPORATION OR OF ANY OTHER CORPORATION, A MAJORITY OF THE STOCK OF WHICH IS OWNED BY THE CORPORATION, SHALL BE INDEMNIFIED BY THE CORPORATION AGAINST ALL COSTS AND EXPENSES REASONABLY INCURRED BY OR IMPOSED UPON HIM OR HER IN CONNECTION WITH OR ARISING OUT OF ANY ACTION, SUIT, OR PROCEEDING IN WHICH HE OR SHE MAY BE INVOLVED BY REASON OF BEING OR HAVING BEEN SUCH DIRECTOR OR OFFICER, SUCH EXPENSES TO INCLUDE THE COST OF REASONABLE SETTLEMENTS (OTHER THAN AMOUNTS PAID TO THE CORPORATION ITSELF) MADE WITH A VIEW TO CURTAILING COSTS OR LITIGATION. THE CORPORATION SHALL NOT, HOWEVER, INDEMNIFY ANY SUCH DIRECTOR OR OFFICER WITH RESPECT TO MATTERS AS TO WHICH ANY DIRECTOR OR OFFICER SHALL BE FINALLY ADJUDGED IN ANY SUCH ACTION, SUIT, OR PROCEEDING NOT TO HAVE ACTED IN GOOD FAITH IN THE REASONABLE BELIEF THAT HIS OR HER ACTIONS WERE IN THE BEST INTEREST OF THE CORPORATION, OR IN RESPECT OF ANY MATTER ON WHICH ANY SETTLEMENT OR COMPROMISE IS EFFECTED IF THE TOTAL EXPENSES, INCLUDING THE COST OF SUCH SETTLEMENT, SHALL SUBSTANTIALLY EXCEED THE EXPENSE WHICH MIGHT REASONABLY BE INCURRED BY SUCH DIRECTOR OR OFFICER IN CONDUCTING SUCH LITIGATION TO A FINAL CONCLUSION. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE EXCLUSIVE OF OTHER RIGHTS TO WHICH ANY SUCH DIRECTOR OR OFFICER MAY BE ENTITLED AS A MATTER OF LAW. IN DETERMINING THE REASONABLENESS OF ANY SETTLEMENT, THE JUDGMENT OF THE BOARD OF DIRECTORS SHALL BE FINAL. NO CONTRACT OR OTHER TRANSACTION BETWEEN THE CORPORATION AND ANY OTHER FIRM OR CORPORATION SHALL BE AFFECTED OR INVALIDATED BY REASON OF THE FACT THAT ANY ONE OR MORE OF THE DIRECTORS OR OFFICERS OF THE CORPORATION IS OR ARE INTERESTED IN, OR IS A MEMBER, STOCKHOLDER, DIRECTOR, OR OFFICER, OR ARE MEMBERS, STOCKHOLDERS, DIRECTORS, OR OFFICERS OF SUCH FIRM OR CORPORATION; AND ANY DIRECTOR OR OFFICER OR OFFICERS INDIVIDUALLY OR JOINTLY, MA



Y BE PARTY OR PARTIES TO, OR MAY BE INTERESTED IN, ANY CONTRACT OR TRANSACTION OF THE CORPORATION OR IN WHICH THE CORPORATION IS INTERESTED, AND NO CONTRACT, ACT, OR TRANSACTION OF THE CORPORATION WITH ANY PERSON OR PERSONS, FIRM, ASSOCIATION, OR CORPORATION SHALL BE AFFECTED OR INVALIDATED BY REASON OF THE FACT THAT ANY DIRECTOR OR DIRECTORS OR OFFICER OR OFFICERS OF THE CORPORATION IS A PARTY OR ARE PARTIES TO, OR INTERESTED IN, SUCH CONTRACT, ACT, OR TRANSACTION OR IS OR ARE IN ANY WAY CONNECTED WITH SUCH PERSON OR PERSONS, FIRM, ASSOCIATION, OR CORPORATION AND EACH AND EVERY PERSON WHO MAY BECOME A DIRECTOR OR OFFICER OF THIS CORPORATION IS HEREBY RELIEVED FROM ANY LIABILITY THAT MIGHT OTHERWISE EXIST FROM THUS CONTRACTING WITH THE CORPORATION FOR THE BENEFIT OF HIMSELF OR HERSELF, OR ANY FIRM, ASSOCIATION, OR CORPORATION WHICH HE OR SHE MIGHT BE IN ANY WAY INTERESTED.

**Note: The preceding six (6) articles are considered to be permanent and may be changed only by filing appropriate articles of amendment.**

#### ARTICLE VII

The effective date of organization and time the articles were received for filing if the articles are not rejected within the time prescribed by law. If a *later* effective date is desired, specify such date, which may not be later than the *90th day* after the articles are received for filing.

**Later Effective Date: Time:**

#### ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

**a,b. The street address of the initial registered office of the corporation in the commonwealth and the name of the initial registered agent at the registered office:**

Name: STEVEN GREENWALD  
 No. and Street: 409 FORTUNE BLVD.  
 City or Town: MILFORD State: MA Zip: 01757 Country: USA

**c. The names and street addresses of the individuals who will serve as the initial directors, president, treasurer and secretary of the corporation (an address need not be specified if the business address of the officer or director is the same as the principal office location):**

<b>Title</b>	<b>Individual Name</b> First, Middle, Last, Suffix	<b>Address</b> (no PO Box) Address, City or Town, State, Zip Code
PRESIDENT	MICHAEL DEAN	60 FISKE MILL ROAD UPTON, MA 01568 USA
TREASURER	STEVEN GREENWALD	15 CLAFLIN FARM ROAD UPTON, MA 01568 USA
SECRETARY	STEVEN GREENWALD	15 CLAFLIN FARM ROAD UPTON, MA 01568 USA
DIRECTOR	MICHAEL DEAN	60 FISKE MILL ROAD UPTON, MA 01568 USA
DIRECTOR	STEVEN GREENWALD	15 CLAFLIN FARM ROAD UPTON, MA 01568 USA

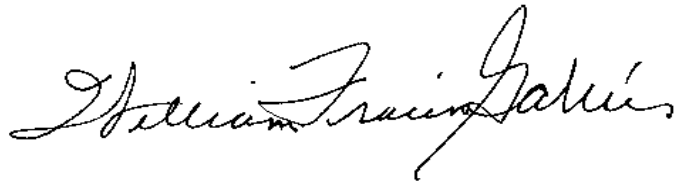
**d. The fiscal year end (i.e., tax year) of the corporation:**



THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

May 18, 2022 05:08 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive style with a large, prominent initial "W".

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*

## **EXHIBIT 2**

Please visit our web site at <http://www.mass.gov/dpl/boards/EN>

MICHAEL DEAN  
60 FISKE MILL RD  
UPTON, MA 01568-1216

(EN)

Fold, Then Detach Along All Perforations

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF OCCUPATIONAL LICENSURE**

BOARD OF  
ENGINEERING  
ISSUES THE FOLLOWING LICENSE  
REG/PROF CIVIL ENGINEER

MICHAEL DEAN  
60 FISKE MILL RD  
UPTON, MA 01568-1216

*[Handwritten Signature]*  
LICENSEE SIGNATURE

46255      06/30/2024      257386

LICENSE NUMBER      EXPIRATION DATE      SERIAL NUMBER

Fold, Then Detach Along All Perforations

**CONTROL # J1874435**

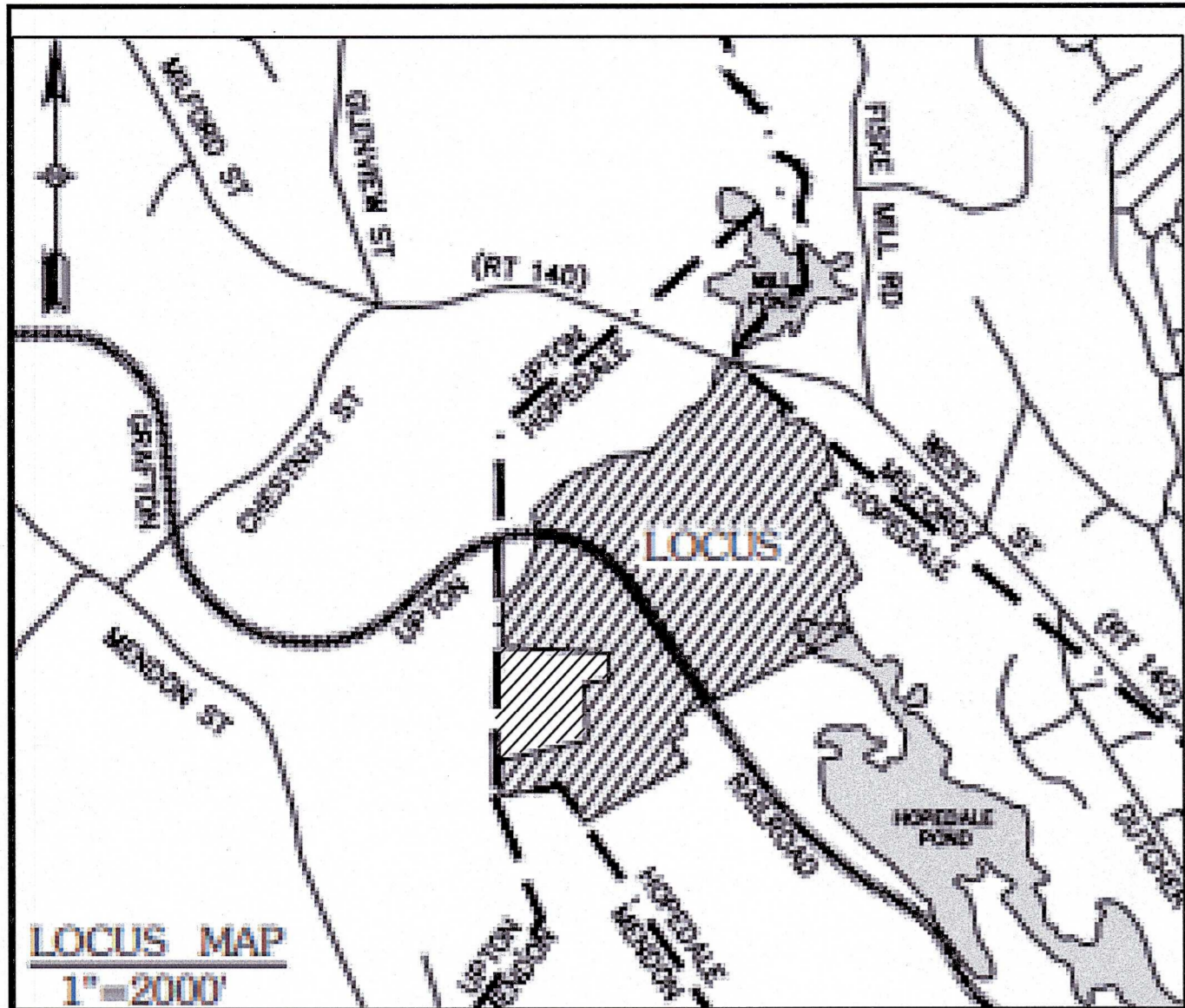
**IMPORTANT**

If your license is lost, damaged or destroyed; is inaccurate; or needs to be corrected, visit our web site at [mass.gov/dpl](http://mass.gov/dpl) for instructions to ensure the proper mailing of your Renewal Application and any other correspondence.

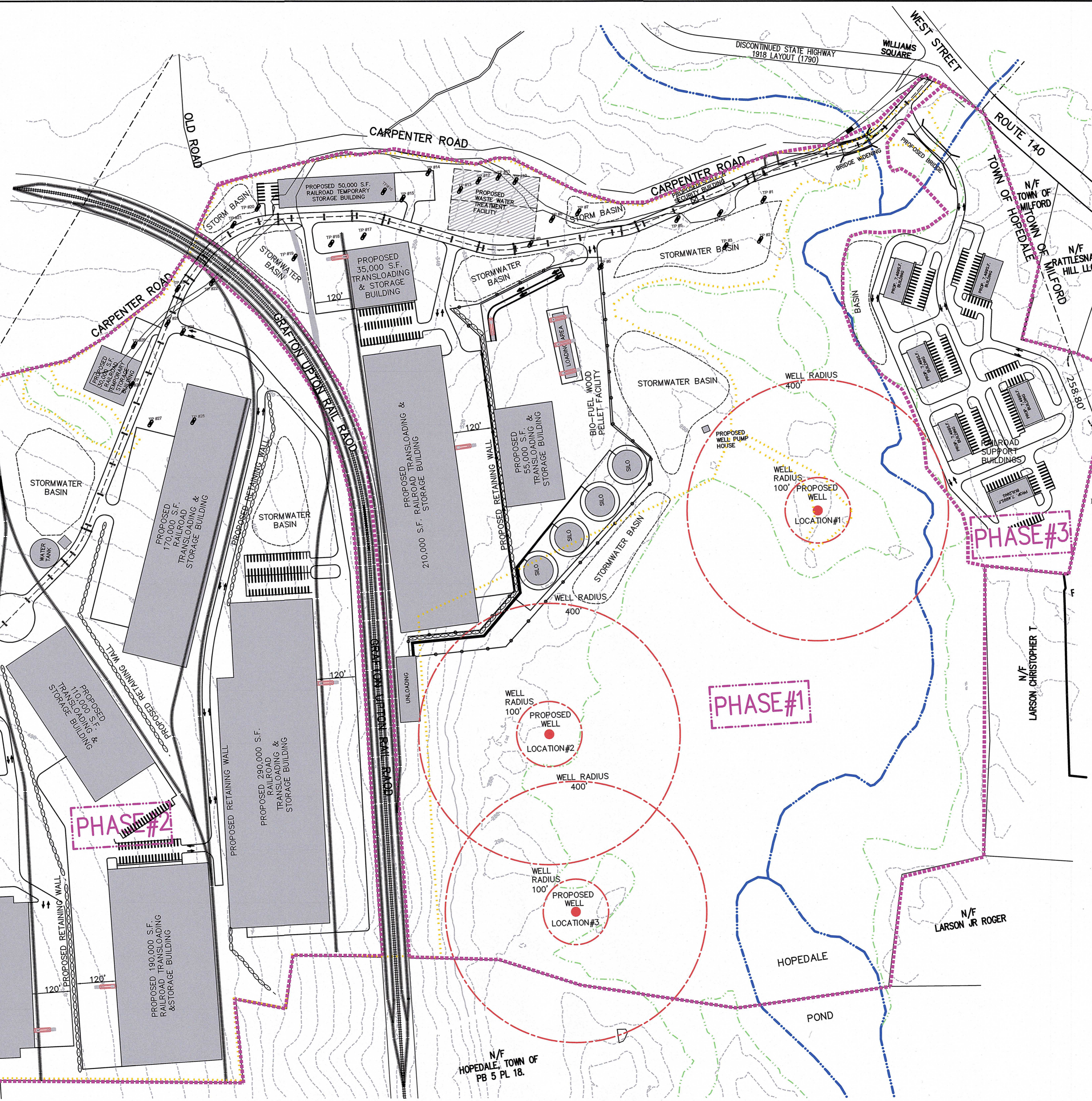
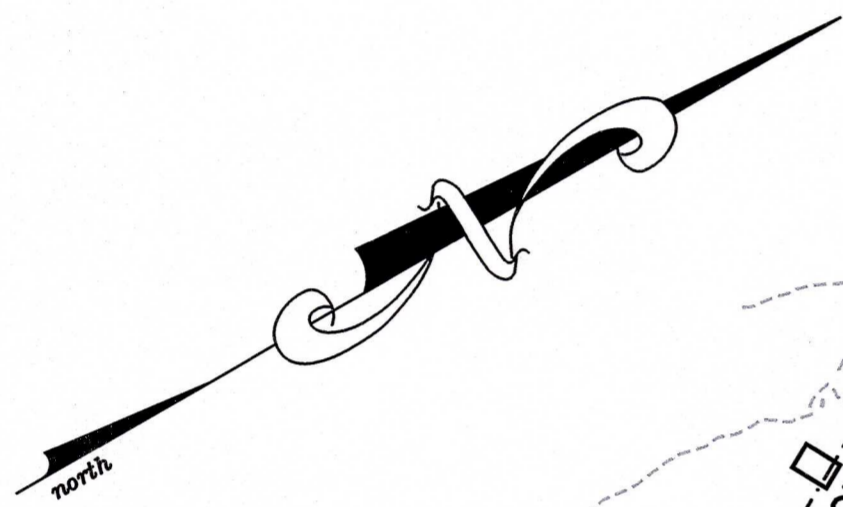
This license is subject to Massachusetts General Laws and regulations. Your license is a privilege, and cannot be lent or assigned to any person or entity under penalty of law. Keep this license on your person or posted as required by law and/or regulations.

# **EXHIBIT 3**

	<b>PLS</b>
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LOCUS MAP



- NOTES:
1. THIS IS A DEVELOPMENT MASTER PLAN THAT WILL BE USED FOR THE FRAMEWORK FOR THE FUTURE CONSTRUCTION OF THE PARCEL.
  2. ALL EXISTING TOPOGRAPHY WAS TAKEN FROM NOAA ACCESS VIEWER AND SHALL BE VERIFIED PRIOR TO START OF DESIGN ON THE PARCEL.
  3. PROPOSED STORMWATER BASINS SHOWN ON THIS PLAN HAVE BEEN SIZED FOR THE TOTAL BUILD OUT SHOWN ON THESE PLANS.
  4. ALL TRAIN RAILS SHOWN ON THIS PLAN HAVE BEEN DESIGNED USING 2.5% SLOPES MAXIMUM. PROPERTY SURVEY HAS BEEN COMPLETED BY ENGINEERING DESIGN CONSULTANTS, INC. AND OVERALL PROPERTY LINES HAVE BEEN TAKEN FROM SURVEY PERFORMED BY ENGINEERING DESIGN CONSULTANTS, INC.
  5. ALL WETLANDS SHOWN ON THIS PLAN HAVE BEEN TAKEN FROM MASSGIS.

364 WEST STREET  
 TITLE:  
**GU Railroad's Metrowest  
 Transloading &  
 Logistics Center**  
 in  
 HOPEDALE, MA

**D&L Design Group**  
 115 Water Street • Milford, MA 01757  
 P: (508) 408-2577  
 www.dandlgroup.com

SCALE: 1"=150 FEET

SCALE: AS SHOWN  
 DATE: MAY 21, 2021  
 REV. 7/8/22 REV. 8/1/22  
 JOB NO: J-012  
 PLAN NO: SITE - PLAN  
 SHEET NO: 1 OF 1

**Rail Development Plan**