

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement is made and entered into this 8th day of February 2021, by and between the following parties (the "Parties"): plaintiff Town of Hopedale, by and through its Board of Selectmen (the "Town"), defendants Jon Delli Priscoli and Michael Milanoski, Trustees of the One Hundred Forty Realty Trust (the "Trust") and Grafton and Upton Railroad Company ("G&U") (collectively the Trust and G&U may be referred to as the "Defendants").

WHEREAS, on or about October 28, 2020, the Town filed & sought preliminary relief in the action entitled Town of Hopedale v. Jon Delli Priscoli, et al, Massachusetts Land Court No. 20MISC00467 (the "Land Court Matter");

WHEREAS, on or about November 22, 2020, G&U filed a Petition for Declaratory Order with the federal Surface Transportation Board, Docket No. FD 36464, (the "STB Matter", together with the Land Court Matter, the "Litigations").

WHEREAS, on November 24, 2020, the Land Court referred the Land Court Matter to Pre-Mediation Screening process offered by the Real Estate Bar Association of Massachusetts;

WHEREAS, the Parties agreed to mediate the issues in the Litigations on January 8, 2021 before former Land Court Judge Lombardi (the "Mediation");

WHEREAS, the Parties attended mediation sessions on January 8 and January 21 and reached a preliminary agreement on the principal terms of a settlement of the Litigations, which was memorialized in a document entitled Settlement Term Sheet;

WHEREAS, the preliminary agreement memorialized in the Settlement Term Sheet was subject to a formal vote by the Town's Board of Selectmen, in a public meeting on Monday, January 25, 2021;

WHEREAS, the Board of Selectmen voted to adopt and approve the terms of the preliminary agreement memorialized in the Settlement Term Sheet at the January 25, 2021 public meeting;

WHEREAS, in order to avoid the time and expense of litigation and without any admission of liability by any of the Parties, the Parties desire to settle fully and finally all differences between them regarding the Litigations, including specifically legal rights to real property located at 364 West Street, Hopedale, MA and any and all claims that were raised or could have been raised therein and any and all defenses and counterclaims that were raised or could have been raised therein;

NOW THEREFORE, in consideration of the promises and covenants set forth below, including, but not limited to, the Mutual Release of Claims, and for other good and valuable consideration as set forth in this Agreement, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Division of Property: The property subject to division by agreement is located at 363 West Street and 364 West Street, and is depicted as Parcels A, B, C, D and E on a document entitled Conceptual Lotting Exhibit – January 26, 2021, which is attached hereto as Exhibit 1. The Defendants collectively are the current record owners of Parcels A, B, C, D and E. The Defendants agree that they will take such action so as to effectuate ownership of these parcels as follows:

a. Parcel A:

- i. Within 60 days of the date of the execution of this Agreement, the Defendants, in consideration of the payment of \$587,500, shall effectuate the conveyance of Parcel A by quitclaim deed(s) to the Town, or its

designee, reserving to the grantor(s), and their successors a slope / grading, utility easement, in the general location depicted on Exhibit 1 and further reserving to the grantor(s) a 100-foot wide easement for a bridge to facilitate the stream crossing over the Mill River at the general location depicted on Parcel A in Exhibit 1, and an easement for installation of a water supply well(s) or well fields for the benefit of the grantors and their successors. The date of the conveyance referenced in the prior sentence may be extended by written agreement of the Parties. Any water supply well(s) or wellfields installed pursuant to the third easement mentioned above shall be abandoned when a public water supply becomes available and operational on Parcel A; provided however, that the Trust shall have the right to connect to the public water supply in consideration for its abandonment of its private well(s). In other words, other than the usual and customary cost of connecting to a public water supply, the only consideration owed by the Trust, or its designee and/or successors to the Town for connecting to a public water supply on Parcel A shall be its abandonment of its private well/water supply. Any hydrogeological analysis performed as part of the exercise of the easement for the installation of a water supply well shall be performed by a licensed engineer and any results from such hydrogeological analysis shall be shared with the Town. The Trust or its designee and/or successors shall comply with all applicable health and safety state and federal laws and regulations regarding the development and operation of a water supply

well ; provided however, nothing herein shall be interpreted as subjecting any such work to any local preclearance requirements.

- ii. In addition to the consideration of \$587,500 being paid by the Town for the conveyance Parcel A, the Parties agree that the Town shall agree to increase the purchase price to cover the cost of any roll back taxes that may be due by the Trust as a result of the change in use of the land in 364 West Street being classified as forestry land under Chapter 61 as determined by the Hopedale Board of Assessors as of the date of the Closing. Within five (5) business days of the Closing, the Trust shall pay the full amount of the roll back taxes to the Town.
- iii. Parcel A shall be transferred to the Town, or its designee, subject to an Army Corp of Engineers no-build easement, so long as such easement will not preclude development of a new water supply well or wellfield for the Town, and for the benefit of the grantors and their successors and for the purpose of maintaining and preserving said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes, subject to the aforementioned easements.
- iv. The Town in its discretion may perform any hydrogeological analysis for the purpose of establishing a public drinking water supply well on Parcel A pursuant to 310 CMR 22, including, but not limited to, activities to support a Site Screening for Siting a New Public Water Supply and pumping test pursuant to applicable state regulations (collectively the

“Hydrological Analysis”) at any location on Parcel A that is more than 400 feet (or 250 feet for a wellfield) from Parcel E, Parcel C and Parcel B.

- v. Any such Hydrogeological Analysis commenced under paragraph 1(A)(v) must be performed by a licensed professional engineer and any results from such analysis must be shared with the Trust.
- vi. In the event that such analysis performed under paragraph 1(A)(v)) indicates the feasibility and financial viability of a public water supply well or wellfield the Trust and its successors will work in good faith with the Town to satisfy Massachusetts Department of Environmental Protection (“MassDEP”) drinking water regulations so that a well or well field may be developed; provided however, that nothing herein shall require the Trust, or its successors to convey any land in Parcels, B, C and E to the Town, or its designee to satisfy the Defendants’ commitment to work in good faith. For the purpose of this sub-paragraph and this Agreement the term “feasible” shall mean a well capable of producing a water source that will supply greater than 10% of the Town’s water demand, and the term “financeable” shall mean that the Town has voted to appropriate the necessary funds to pay for the expenses associated with developing a well, or well field.
- vii. It is agreed that the intent of the well-testing process set forth in Section 1(a) is to provide appropriate mitigation measures to assist the Town, but it is not intended to stop or curb development of adjoining Parcels, B, C or E.

viii. The Trust agrees to collaborate with the Town in good faith to establish a formula to share costs and expenses associated with any such testing and Hydrogeological Analysis, on a pro rata basis pursuant to the Cost Sharing Agreement attached hereto as Exhibit 2. In the event that the Parties and any third-party cannot come to an agreement on the terms of such a Cost Sharing Agreement in substantial compliance with Exhibit 2, each party shall be responsible for its own costs and expenses related to such Hydrogeological Analysis.

b. Parcel B:

- i. The Trust shall retain ownership in fee of Parcel B, subject to its unconditional right to convey this Parcel to a designee;
- ii. Parcel B shall not be subject to Chapter 61 of the Massachusetts General Laws.
- iii. The Trust at its own determination, and in its sole discretion as to location, shall install appropriate monitoring wells on Parcel B and hereby agrees to share data from such monitoring wells as required by applicable law.
- iv. The Trust, and/or its designee/successor agrees to construct an enclosed building/structure, or multiple enclosed buildings / structures on Parcel B.
- v. The Trust, its designee and/or successor agrees to record a deed restriction on Parcel B for groundwater protection, in the form attached hereto as Exhibit 3.
- vi. The Defendants agree to record a 50-foot easement restricting building in a “riparian buffer zone” area marked on Exhibit 1, but reserving the right

to use this easement area for stormwater management features providing infiltration (i.e. – not oil-water separators or other contaminant removal structures) and/or driveway(s).

vii. Consistent with their established practice, Defendants agree to keep state and local authorities apprised of any development plans/intentions.

c. Parcel C:

- i. Defendants shall retain ownership in fee of Parcel C, subject to its unconditional right to convey this Parcel to a designee.
- ii. Parcel C shall not be subject to Chapter 61 of the Massachusetts General Laws.
- iii. Defendants at their own determination, and in their sole discretion as to location, shall install appropriate monitoring wells on Parcel C and hereby agree to share data from such monitoring wells as required by applicable law.
- iv. Defendants intend to construct a bridge to facilitate the stream crossing over the Mill River at the general location depicted on Parcel C on Exhibit 1.
- v. The Defendants, their designee and/or successor agree to record a 50-foot easement restricting building in a riparian buffer zone area marked on Exhibit 1, but reserving the right to use this easement area for stormwater management features providing infiltration (i.e. – not oil-water separators or other contaminant removal structures) and/or driveway(s).

- vi. Defendants agree to record a deed restriction on Parcel C for groundwater protection, in the form attached hereto as Exhibit 3.
- vii. Consistent with their established practice, Defendants agree to keep state and local authorities apprised of any development plans/intentions.

d. Parcel D:

- i. Subject to approval by a majority vote at Town Meeting pursuant to G.L. c. 40, § 14, G&U shall donate Parcel D to the Town, or its designee, as is, including but not limited to with all existing encumbrances, municipal liens and tax obligations to be used for conservation purposes in collaboration with the Hopedale, Upton, and Milford Conservation Commissions.
- ii. The Parties agree that should Parcel D shall be transferred to the Town, or its designee, it will be subject to an Army Corp of Engineers no-build easement, so long as such easement will not preclude development of Town's new water supply well, and for the purpose of maintaining and preserving said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes, subject to the aforementioned easements.

e. Parcel E:

- i. The Trust shall retain ownership in fee of Parcel E, subject to its unconditional right to convey this Parcel to a designee.
- ii. Parcel E shall not be subject to Chapter 61 of the Massachusetts General Laws.

- iii. The Trust at its own determination, and in its sole discretion as to location, shall install appropriate monitoring wells on Parcel E and hereby agrees to share data from such monitoring wells as required by applicable law.
- iv. The Trust, its designee and/or successor agrees not to construct any buildings on the approximately 300 foot by 1000-foot rectangular area marked on Exhibit 1 for a period of five years, or until the Town identifies a financeable and feasible public drinking water supply well area on the adjacent Parcel A, whichever occurs earlier. In consideration of this 5-year easement in Parcel E, the Trust will reserve and the Town agrees to a five-year replication easement under federal Army Corp of Engineer regulations of approximately 3 acres on Parcel A benefitting the Trust for potential wetlands replication in the area shown on Exhibit 1. Prior to performing any work within the replication easement area, the Trust shall share copies of plans used for the federal replication filings with the Board of Selectmen, the Hopedale Parks Commission and Hopedale Conservation Commission.

2. Waiver of Right of First Refusal: The Town acknowledges that it waives any and all claims and/or rights to acquire any property subject to this Agreement by right of first refusal under Chapter 61 or by eminent domain under Chapter 79 of the Massachusetts General Laws.

3. Roll Back Taxes: As noted in Section 1.a(ii) above, the Parties agree to that any and all claims to any roll-back taxes that may be owed by the Defendants and/or their predecessors in title as a result of property subject to this Agreement being classified, or having been classified under Chapter 61 of the Massachusetts General Laws, shall be addressed at the

Closing where the purchase price for the Chapter 61 forestry land shall be increased by the amount of roll-back taxes determined by the Hopedale Board of Assessors. The Town shall pay the increased purchase price and then within five (5) business days the Defendant shall pay the full amount of the roll-back taxes to the Town.

4. Execution of Purchase and Sale Agreement: The Parties shall execute a standard Purchase and Sale Agreement with respect to the conveyance of Parcel A based on the terms outlined in this Agreement when the survey work contemplated by this Agreement is complete.

5. Miscellaneous:

- a. The Town shall not unreasonably withhold support G&U's future application(s) for state and federal grants.
- b. The Town shall share proportionately in the engineering and legal title work expense associated with surveying Parcels A, B, C, D, and E based on the acreage of Parcel A compared to the combined acreage of Parcels B, C and E. Said survey work and expense shall include the placement of permanent monuments to properly stake these parcels to delineate ownership of the respective parcels.
- c. All land transferred by the Defendants to the Town shall be subject to an Army Corps of Engineers no-build restriction so long as such easement will not preclude development of Town's new water supply well, and for the purpose of maintaining and preserving said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes, subject to the aforementioned easements.
- d. The parties agree to make best efforts to close the contemplated transactions within 60 days of the execution of this Settlement Agreement (the "Closing").

- e. The Town shall not take any action inconsistent with the terms and intent of this Agreement to extinguish, restrict, eliminate or to take by eminent domain the easement areas delineated on Exhibit 1.
- f. The Town acknowledges that the land subject to this Agreement has historically been zoned for Industrial uses within the Town, and further acknowledges that the Defendants relied on the zoning status of this land as allowing Industrial uses as a matter of right to initially acquire the subject land and thereafter to effectuate the allocation of Parcels, A, B, C, D and E in this Agreement. The Board of Selectmen shall continue to support the zoning of Parcels B, C and E as permitting Industrial uses as a matter of right.
- g. The Board of Selectmen shall be designated as the decision-making body for the Town for the purpose of implementing the provisions of this Settlement Agreement. The Board of Selectmen shall have the right to consult with any such board, commission, or department as is necessary for carrying out any such terms of this Agreement, but shall retain decision-making authority to the extent permitted by law.

6. Mutual Releases:

- a. The Town's Release: In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Defendants, which covenants, promises and representations survive this Release, the Town hereby releases the Defendants and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Defendant Releasees")

from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Town had or has against any of the Defendant Releasees relating to the subject-matter of the Litigations, including but not limited to any claims with respect to ownership of real property located at 364 West Street, Hopedale, MA, including any claim asserting a right of first refusal under Chapter 61 of the Massachusetts General Laws. The Town specifically reserve its rights to seek enforcement of this Settlement Agreement.

- b. Defendants' Release: In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Town, which covenants, promises and representations survive this Release, the Defendants hereby release the Town and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Town Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Defendants had or have against any of the Town Releasees relating to the subject-matter of the Litigations, including but not limited to any claims with respect to ownership of real property located at 364 West Street, Hopedale, MA, including any claim asserting a right

of first refusal under Chapter 61 of the Massachusetts General Laws. The Defendants specifically reserve their rights to seek enforcement of this Settlement Agreement.

7. Understanding and Counsel: The Parties represent and warrant that (i) they have read and understand the terms of this Agreement, (ii) they have been represented by counsel with respect to this Agreement and all matters covered by and relating to it, and (iii) they have entered into this Agreement for reasons of their own and not based upon representations of any other person or party hereto.

8. Legal Fees and Costs: Each of the Parties shall pay its own respective costs and attorneys' fees incurred with respect to the Litigations and this Agreement.

9. Entire Agreement: This Agreement, constitutes the entire agreement with respect to the subject matter addressed herein and supersedes any prior written and/or verbal agreements between the Parties.

10. Severability: The provisions of this Agreement are severable and should any provision be deemed for any reason to be unenforceable the remaining provisions shall nonetheless be of full force and effect; provided however, that should any provision be deemed unenforceable by a court of competent jurisdiction, the parties shall negotiate in good faith to cure any such defect(s) in the subject provision(s).

11. Amendments: This Agreement may not be orally modified. This Agreement may only be modified or amended in a writing signed by all of the Parties.

12. Headings: All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of the Agreement.

13. Execution in Counterparts; Execution by Facsimile or PDF: This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final Agreement as if one document had been signed by all of the Parties. The Parties agree that facsimile or Portable Document Format (“PDF”) signatures shall have the same binding force as original signatures, again as if all Parties had executed a single original document.

14. Actions to Enforce: Should any action be brought by one of the parties in a court of competent jurisdiction, including but not limited to the Massachusetts Superior Court and the Land Court to enforce any provision of this Agreement, the non-prevailing party to such action shall reimburse the prevailing party for all reasonable attorneys’ fees and court costs and other expenses incurred by the prevailing party in said action to enforce. Provided however, that before any party to this Agreement files any such action, that party shall identify and inform the opposing party of any alleged violations of the Agreement and the parties shall work in good faith to resolve their dispute prior to filing any action to enforce.

15. Applicable Law: This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This Agreement shall not be construed against any of the Parties, including the drafter thereof, but shall be given a reasonable interpretation under the circumstances. Nothing in this Agreement shall abrogate the application of any applicable federal law with respect to any of the properties or activities referenced in this Settlement Agreement, including, but not limited to the Clean Water Act and the Safe Drinking Water Act, to the extent applicable.

16. Notice: All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, electronic mail with proof of

receipt, facsimile, or mailed by certified or registered mail, to the Parties' respective addresses as follows:

To the Trust:

One Hundred Forty Realty Trust
c/o Michael Milanoski, Trustee
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolonydev.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik & Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

To G&U:

Michael Milanoski, President
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolonydev.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik & Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

To the Board of Selectmen:

Brian R. Keyes, Chair
Board of Selectmen
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
bkeyes@hopedale-ma.gov

With a copy to:

Diana Schindler
Town Administrator
Town of Hopedale
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
dschindler@hopedale-ma.gov

17. Dismissal of Litigations:

- a. Attorneys for the Parties shall file a Stipulation of Dismissal With Prejudice in the Land Court Matter within five (5) business days of the execution of this Agreement.
- b. Attorneys for the Defendants shall file a Request to Withdraw its Petition for Declaratory Order in the STB Matter within five (5) business days of the execution of this Agreement.

[signatures on following page]

TOWN OF HOPEDALE

By its Board of Selectmen

By 
Brian Hayes

By 
Louis Arcudi

By _____
Glenda Hazard

**JON DELLI PRISCOLI and
MICHAEL R. MILANOSKI, as
TRUSTEES of the ONE HUNDRED
FOR A REALTY TRUST**

By 
Jon Delli Priscoli, Trustee

By 
Michael Milanoski, Trustee

**GRAFTON & UPTON RAILROAD
COMPANY**

By 
Michael Milanoaki, President

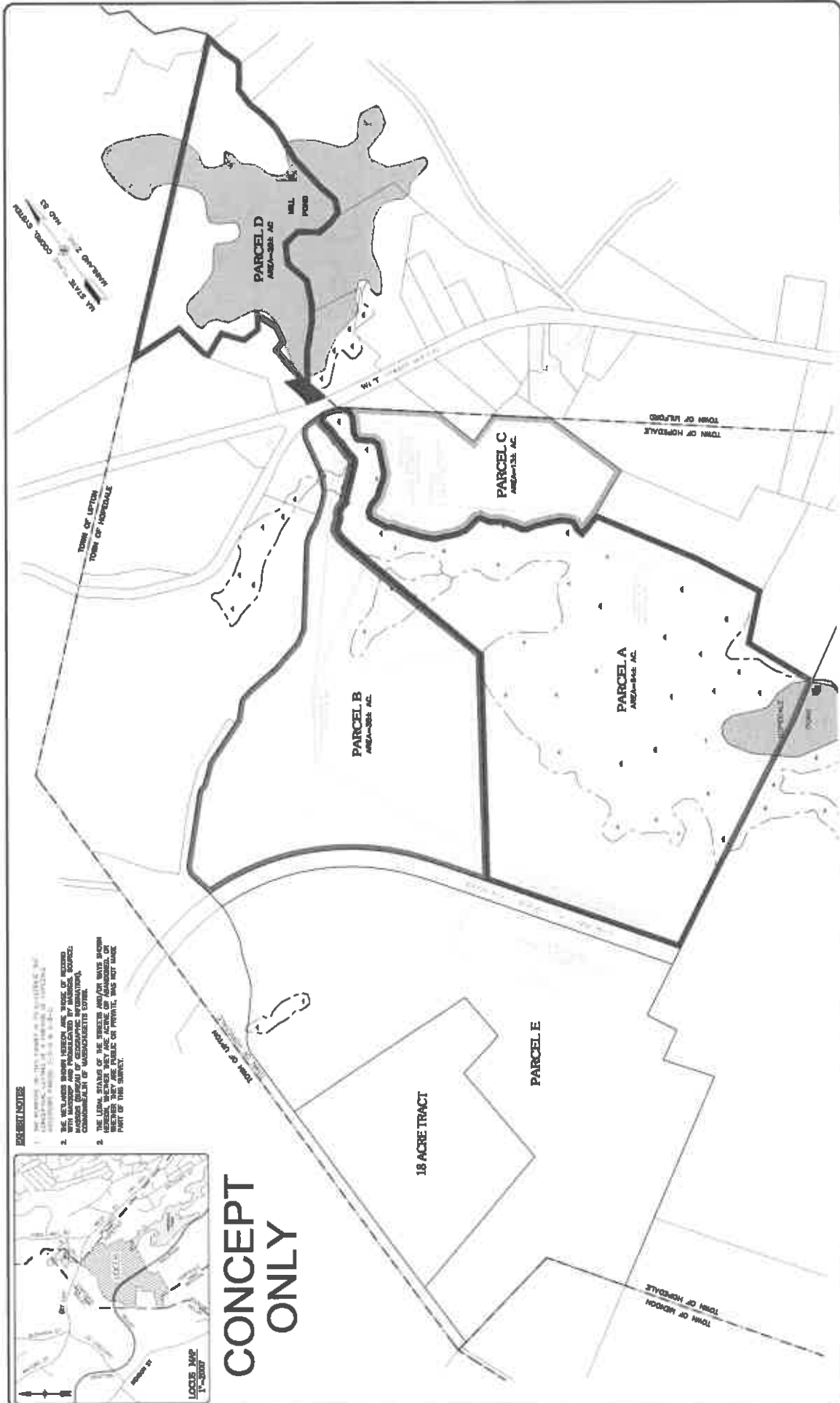
Exhibit 1

DISCLAIMER

1. THE INFORMATION ON THIS MAP IS THE PROPERTY OF THE ENGINEERING DESIGN CONSULTANTS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.
2. THE BOUNDARIES SHOWN HEREON ARE THOSE OF RECORD AND HAVE BEEN OBTAINED FROM THE RECORDS OF THE REGISTERED PROFESSIONAL ENGINEER, CONSULTING SURVEYOR, COMMONWEALTH OF MASSACHUSETTS.
3. THE LEGAL STATUS OF THE WETLANDS AND AREAS HAVE BEING DETERMINED BY THE STATE OF MASSACHUSETTS, AND THE PUBLIC OR PRIVATE STATUS OF THE AREAS IS NOT GUARANTEED BY THIS MAP.



CONCEPT ONLY



<p>DATE: 11/15/07 SHEET: 1 of 1 PROJECT NUMBER: 36559</p>	<p>CONCEPTUAL LAND DIVISION EXHIBIT</p>
<p>FOR: Grafton & Upton Railroad Company 42 Main Street North Grafton, Massachusetts 01536</p>	<p>PROJECT: GRAFTON & UPTON RAILROAD 364 WEST STREET (WORCESTER COUNTY) HOPKIN, MASSACHUSETTS</p>
<p>DESIGNED BY: Engineering Design Consultants, Inc. 32 Turpin Road Southborough, Massachusetts (508) 480-0225</p>	<p>SCALE: 1" = 200'</p>

Exhibit 2

COST SHARING AGREEMENT

This Cost Sharing Agreement (the "Agreement") is made and entered into this ____ day of February 2021, by and between the following parties (the "Parties"): the Town of Hopedale, by and through its Board of Selectmen ("Board") and its Board of Water & Sewer Commissioners ("Commissioners," together with the Board, the "Town"), Jon Delli Priscoli and Michael Milanoski, Trustees of the One Hundred Forty Realty Trust (the "Trust"), and Grafton and Upton Railroad Company ("G&U") (the Trust and G&U may be referred to collectively as "GURR").

WHEREAS, the Board and GURR are parties to a Settlement Agreement dated February ___, 2021, which, among other things:

- a. resolved outstanding claims in:
 - i. Town of Hopedale v. Jon Delli Priscoli, et al, Massachusetts Land Court No. 20MISC00467 (the "Land Court Matter"); and
 - ii. a Petition for Declaratory Order filed by G&U with the federal Surface Transportation Board, Docket No. FD 36464, (the "STB Matter", together with the Land Court Matter, the "Litigations");
- b. established an amicable division of property that was the subject of the Litigations, including the partition of 364 West Street into Parcels A, B, C and E as shown on a document entitled Conceptual Lotting Exhibit – January 26, 2021, which is attached hereto as Exhibit 1;
- c. provided for the conveyance of land registered under G.L. c. 61 within Parcel A by quitclaim deed(s) from GURR to the Town, or its designee, reserving to the grantor(s) and their successors a slope, grading, and utility easement in the

general location depicted on Exhibit 1, and further reserving to the grantor(s) a 100-foot wide easement for a bridge to facilitate the stream crossing over the Mill River at the general location depicted on Parcel A in Exhibit 1, and an easement for installation of a water supply well(s) or well fields for the benefit of the grantors and their successors;

- d. acknowledged that G&U will donate the non-Chapter 61 land within Parcel A to the Town, or its designee, as is, including but not limited to with all existing encumbrances;
- e. provided that the Town, in its discretion, may perform any hydrogeological analysis for the purpose of establishing a public drinking water supply well on Parcel A pursuant to 310 CMR 22.00, including, but not limited to, activities to support a Site Screening for Siting a New Public Water Supply and a pumping test pursuant to applicable state regulations (collectively the “Hydrological Analysis”) at any location on Parcel A that is more than 400 feet (or 250 feet for a wellfield) from Parcel E, Parcel C, and Parcel B;
- f. provided that in the event the Hydrological Analysis performed by the Town indicates the feasibility and financial viability of a public water supply well or wellfield, GURR and its successors will work in good faith with the Town to satisfy Massachusetts Department of Environmental Protection (“MassDEP”) drinking water regulations so that a well or well field may be developed; provided however, that nothing herein shall require the Trust, or its successors, to convey any land in Parcel B, Parcel C, or Parcel E to the Town, or its designee, to satisfy GURR’s commitment to work in good faith; and

- g. provided that GURR shall abandon any water supply well(s) or wellfields it may have installed on any of the subject parcel when a public water supply becomes available and operational on Parcel A, and that GURR shall have the right to connect to the public water supply in consideration for its abandonment of its private well.

WHEREAS, both GURR and the Town have an interest in exploring the water resources in Parcel A to determine whether the aquifer will support either a bedrock well or wells, or a well or well field within the groundwater in the shallow overburden in Parcel A;

NOW THEREFORE, the Parties agree as follows:

1. Description of Work: The Parties agree to work cooperatively and collaboratively for their mutual benefit in: (a) performing a Hydrogeological Analysis to assess the viability of a well or wells for water supply from the groundwater located in the shallow overburden in the areas shown as "Potential Aquifer Material" on the Figure prepared by Environmental Partners Group, Inc., attached hereto as Exhibit 2; (b) performing a Hydrogeological Analysis to assess the viability of a well or wells for water supply from bedrock sources in the three areas shown as "Potential Bedrock Well Location" in Exhibit 2; and (c) performing such other work as they mutually agree to undertake to assess the viability of a water supply and/or public drinking water supply on Parcel A (tasks (a), (b), and (c) collectively are referred to as the "Work").

- a. For the avoidance of doubt, it is expressly acknowledged that the Work subject to this Cost Sharing Agreement is restricted to the Hydrogeological Analysis, and does not include costs associated with the permitting, construction, or operation of any water supply well, including, but not limited to, the costs for any other associated infrastructure for any well. All such costs for the permitting (beyond

the Site Screening and pumping test activity), construction, and operation of a water supply well(s), including any public water supply well(s), shall be borne by the Party deciding to pursue to the permitting, construction, and operation of such water supply well(s). Any Party deciding to pursue the permitting, construction, and operation of a water supply well(s) based on the information generated through the Work shall inform the other Parties in writing of their intent to establish a well or wells, including the precise location and anticipated yield from the well or wells.

- b. In the event the Parties seek to share any costs for the permitting, construction, and operation of a water supply well beyond the scope of the Work, such activity shall be separately negotiated and subject to a separate cost sharing agreement.

2. Cost Share.

- a. "Cost of Work" means the following costs associated with the Work: Joint Contractor (as that term is defined in Paragraph 3.b) fees consistent with the scope and budgets approved under Paragraph 1 and all other direct expenses mutually agreed upon in writing by the Parties. Subject to Paragraph 5 below regarding the Term of the Agreement, the Parties shall pay for the Cost of Work according to the following percentage shares: GURR shall pay 50% and the Commissioners shall pay 50%.
- b. The Parties agree that the Joint Contractors shall be retained by, and shall be invoiced by, both G&U and the Commissioners for each Party's respective share of the Cost of Work. Retention of any Joint Contractors shall be in compliance with any applicable state law relating to public contracting.

3. Responsibility for Management Work.

- a. In furtherance of the Work and the purpose of this Cost Sharing Agreement, the Parties will coordinate their communications with third parties, including Joint Contractors, and to the extent necessary, MassDEP. Each Party shall have the right to be present in all meetings and telephone conferences with MassDEP with respect to matters involving the Work. All work plans, proposals, reports, and other written communication with MassDEP concerning the Work must be mutually approved in writing in advance by both Parties and will be jointly submitted to MassDEP.
- b. The Parties will jointly select and manage technical consultants, advisors, and contractors, including a licensed professional engineer (collectively "Joint Contractors"), to perform the Work. Each Party will have open access to all Joint Contractors and will have the right to be present in meetings and telephone conferences with Joint Contractors. The Parties may jointly determine to terminate a Joint Contractor at any time and without cause.
- c. All data, written analysis, reports, or laboratory results performed by or at the direction of a Joint Contractor shall be shared with all Parties.
- d. Each Party will give the other Parties at least ten (10) days advance notice of any meeting and 20-hour advance notice (at least one business day) of any telephone conference scheduled with MassDEP or a Joint Contractor relating to matters involving the Work. Each Party, however, may contact the Joint Contractors independently regarding routine matters or to obtain information without providing advance notice to the other Party and without seeking to involve the

other Party in the communication, provided that the Parties shall instruct the Joint Contractors that such contacts are not confidential with respect to the other Party and that both Parties are to be involved in all calls involving non-routine matters and matters of strategic importance.

- e. Nothing in Paragraph 3.d. or Paragraph 3.a shall prevent either Party from accepting telephone calls from MassDEP. Each Party shall promptly report to the other Party the substance of any telephone calls or other communications with MassDEP relating to the Work that involve non-routine matters or matters of strategic importance.

4. Unilateral Assessment Work. If either Party unilaterally undertakes assessment activities beyond the scope of the Work, that Party shall be solely responsible for the cost of any such assessment. It is expressly acknowledged that there are Potential Aquifer Material areas show on Exhibit 2 that are located exclusively within Parcel B. Any Hydrological Analysis work performed by GURR on Parcel B is not subject to this Cost Sharing Agreement.

5. Term. This Agreement shall be effective on the date first written above (the "Effective Date") and shall remain in effect until such time as the Work is completed, unless terminated earlier as provided herein. The Agreement may be extended only by written agreement of the Parties.

6. Termination. Any Party may terminate this Agreement upon thirty (30) days written notice to the other Parties. The terminating Party shall remain responsible for all of that Party's share of the Cost of Work incurred through the effective date of the termination. The Agreement may also be terminated for breach pursuant to the terms of Paragraph 8.

7. Internal Costs. Each Party shall be fully responsible for its own internal costs, including but not limited to legal and consulting fees or the internal costs of the Hopedale Water Department, in implementing this Agreement. Such costs shall not be subject to the cost sharing outlined in Paragraph 2.

8. Breach. The Parties agree that in the event of a breach of this Agreement by any Party, the Parties shall attempt in good faith to resolve the dispute through a dialogue between responsible representatives of the Parties. If the Parties are unable to resolve any such dispute during the two-week period immediately following commencement of the discussion, then, at the written request of any Party, the Parties shall attempt to settle the dispute by non-binding mediation under the procedures of REBA Dispute Resolution, Inc. The neutral in any such proceeding shall be selected by and agreed to by both Parties, shall be an expert in the particular matter, and shall be available to serve on short notice. All statements of any nature made in connection with the non-binding mediation shall be privileged and shall be inadmissible in any subsequent court or other legal proceeding involving or relating to the same claim. The mediation process shall continue until the first to occur of: (a) resolution of the dispute; (b) the forty-fifth (45th) day after the Parties agree on the identity of the neutral for such mediation; or (c) a determination by the neutral that resolution is not reasonably possible in a mediation proceeding. The costs of the neutral shall be borne by the Parties jointly on an equal basis. The Parties shall pay their own attorneys' fees, consultant fees, and other costs of mediation. If at the end of the mediation process the Parties fail to resolve the dispute, the Party or Parties claiming breach shall have the right to take any action, in law or equity, available to such Party, including, but not limited to, bringing suit in the Massachusetts Superior Court or other court of competent jurisdiction for injunctive or other relief.

9. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties. No assignment or delegation to make any payment or reimbursement hereunder will release the assigning Party without prior written consent of the other Parties hereto, which approval shall not be unreasonably withheld.

10. Waiver. The failure of any Party to enforce at any time or for any period of time any of the provision of this Agreement will not be construed to be a waiver of such provisions or of its right thereafter to enforce such provisions and each and every provision thereafter. Termination of this Agreement does not affect the accrued rights and remedies a Party may have prior to such termination.

11. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter addressed herein and supersedes any prior written and/or verbal agreements between the Parties.

12. Third Parties. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party, including, but not limited to, federal and state regulatory authorities.

13. Severability. The provisions of this Agreement are severable and should any provision be deemed for any reason to be unenforceable the remaining provisions shall nonetheless be of full force and effect; provided however, that should any provision be deemed unenforceable by a court of competent jurisdiction, the parties shall negotiate in good faith to cure any such defect(s) in the subject provision(s).

14. Amendments: This Agreement may not be orally modified. This Agreement may only be modified or amended in a writing signed by all of the Parties.

15. Headings. All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of the Agreement.

16. Execution in Counterparts: Execution by Facsimile or PDF. This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final Agreement as if one document had been signed by all of the Parties. The Parties agree that facsimile or Portable Document Format ("PDF") signatures shall have the same binding force as original signatures, again as if all Parties had executed a single original document.

17. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This Agreement shall not be construed against any of the Parties, including the drafter thereof, but shall be given a reasonable interpretation under the circumstances. Nothing in this Agreement shall abrogate the application of any applicable federal or state law, including, but not limited to, the Clean Water Act and the Safe Drinking Water Act, to the extent applicable.

18. Notice. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, electronic mail with proof of receipt, facsimile, or mailed by certified or registered mail, to the respective addresses as follows:

To the Trust:

One Hundred Forty Realty Trust
c/o Michael Milanoski, Trustee
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolondev.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik &
Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

To G&U:

Michael Milanoski, President
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolonydev.com

To the Board of Selectmen:

Brian R. Keyes, Chair
Board of Selectmen
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
bkeyes@hopedale-ma.gov

To the Board of Water & Sewer Commissioners:

Edward J. Burt, Chair
Hopedale Board of Water & Sewer
Commissioners
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
eburt.hd@gmail.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik &
Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

With a copy to:

Diana Schindler
Town Administrator
Town of Hopedale
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
dschindler@hopedale-ma.gov

With a copy to:

Tim Watson, Manager
Town of Hopedale Water &
Sewer Department
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
twatson@hopedale-ma.gov

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed or have caused their proper representatives to duly execute this Agreement as of the Effective Date first written above.

TOWN OF HOPEDALE

By its Board of Selectmen

By _____
Brian Keyes

By _____
Louis Arcudi

By _____
Glenda Hazard

By its Board of Water & Sewer Commissioners

By _____
Ed Burt

By _____
James Morin

By _____

**JON DELLI PRISCOLI and
MICHAEL R. MILANOSKI, as
TRUSTEES of the ONE HUNDRED
FORTY REALTY TRUST**

By _____
Jon Delli Priscoli, Trustee

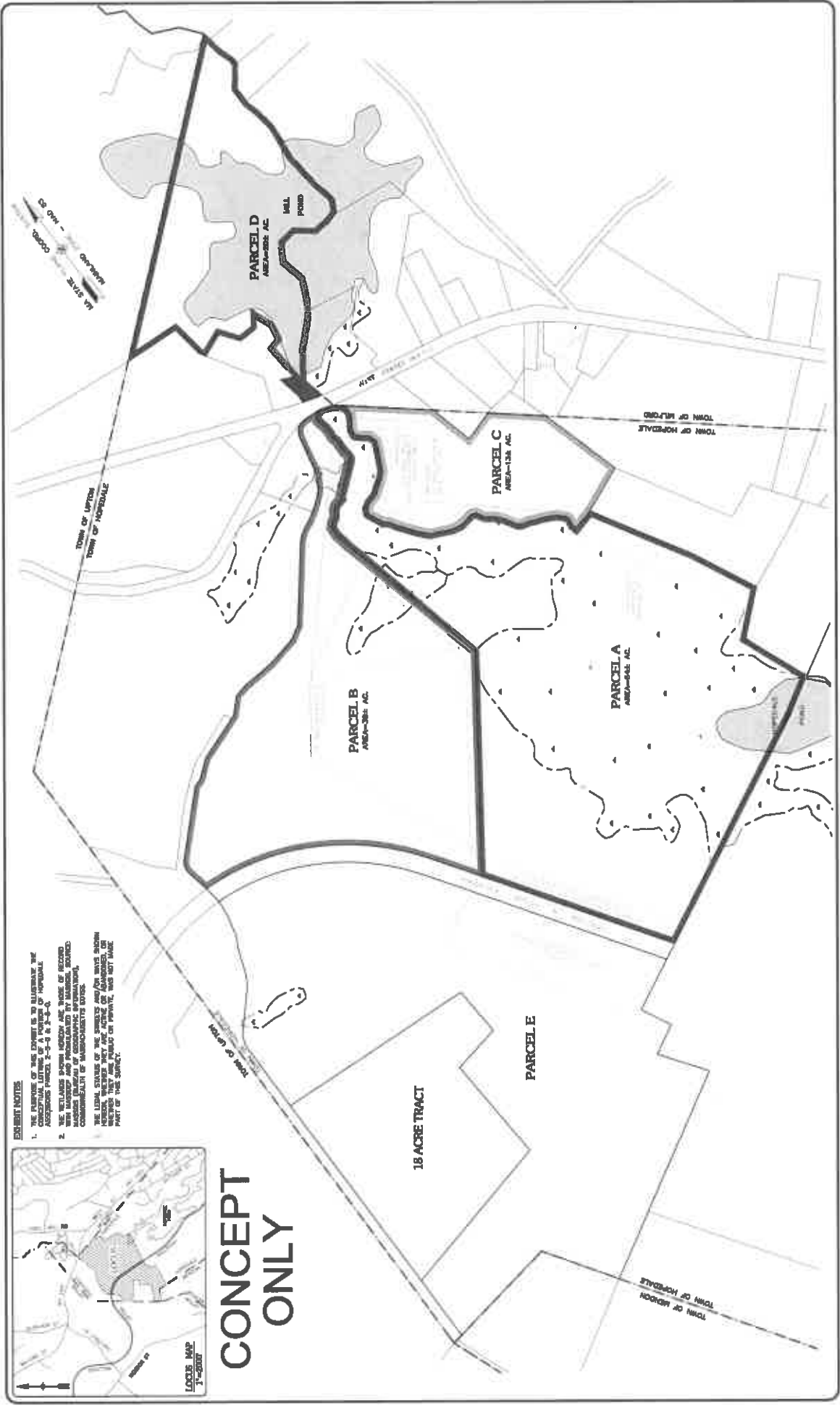
By _____
Michael Milanoski, Trustee

**GRAFTON & UPTON RAILROAD
COMPANY**

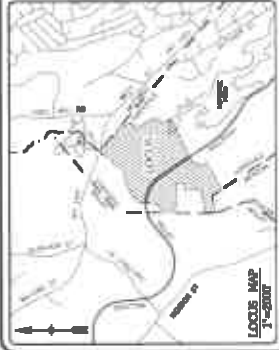
By _____
Michael Milanoski, President

EXHIBIT

A



- EXHIBIT NOTES**
1. THE PURPOSE OF THIS EXHIBIT IS TO ILLUSTRATE THE CONCEPTUAL LAYOUT OF THE PROPOSED DEVELOPMENT OF HOPEDALE ACRES PARCELS 1-5 & 7-10.
 2. THE BOUNDARIES SHOWN HEREON ARE THOSE OF RECORD WITH MAPS AND PARCELS AS SHOWN BY MASS. RECORDS. THE BOUNDARIES SHOWN HEREON ARE NOT TO BE CONSIDERED AS A GUARANTEE OF ACCURACY OR COMPLETENESS BY THE ENGINEER.
 3. THE LEGAL STATUS OF THE PROPERTY AND THE RIGHTS THEREON ARE NOT GUARANTEED BY THIS EXHIBIT. THE ENGINEER HAS NOT CONDUCTED A TITLE SEARCH AND HAS NOT MADE ANY INVESTIGATION AS TO THE STATUS OF THE PROPERTY OR THE RIGHTS THEREON. THE ENGINEER HAS NOT MADE ANY INVESTIGATION AS TO THE STATUS OF THE PROPERTY OR THE RIGHTS THEREON.



CONCEPT ONLY

<p>DATE: JANUARY 14, 2017</p> <p>1 of 1</p> <p>EXHIBIT NUMBER: 3659</p>	<p>CONCEPTUAL LAND DIVISION</p> <p>EXHIBIT</p> <p>FOR: Grafton & Upton Railroad Company 49 Woodboro Road North Grafton, Massachusetts 01536</p>
<p>PROJECT: GRAFTON & UPTON RAILROAD</p> <p>864 WEST STREET (WORCESTER COUNTY) HOPEDALE, MASSACHUSETTS</p>	<p>PREPARED BY:</p>  <p>Engineering Design Consultants, Inc. 32 Turnpike Road Southborough, Massachusetts (508) 480-0228</p>

EXHIBIT

B

Exhibit 3

**EXHIBIT 3 TO SETTLEMENT TERM SHEET
TEMPLATE OF DEED RESTRICTION**

A. The following uses shall not be allowed on land conveyed in this deed:

1. Landfills and open dumps as defined in 310 CMR 19.006;
2. Storage of liquid petroleum products, provided that such storage, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity;
3. Land filling of sludge or septage as defined in 310 CMR 32.05;
4. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
5. Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00;
6. Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
7. Storage of animal manure unless covered or contained in accordance with the specifications of the United States Soil Conservation Service;
8. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within six (6) feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations and associated support / grading infrastructure, roads, parking, rail, or utility works, including stormwater management facilities;
9. Facilities that generate, treat, store, or dispose of hazardous waste subject to MGL 21C and 310 CMR 30.000, except the following:
 - i. Very small quantity generators as defined under 310 CMR 30.000;
 - ii. Household hazardous waste centers and events under 310 CMR 30.390;
 - iii. Waste oil retention facilities required by MGL Chapter 21, Section 52A;
 - iv. Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
10. Automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1;
11. Treatment works that are subject to 314 CMR 5.00;
12. Storage of hazardous materials, as defined in MGL Chapter 21E, unless in a free standing container within a building or above ground with adequate secondary containment adequate to contain a spill the size of the container's total storage capacity;
13. Industrial and commercial uses which discharge process waste water on-site;
14. Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from

outside the parcel;

15. Storage of commercial fertilizers, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;

16. The use of septic system cleaners which contain toxic or hazardous chemicals;

- B. In the event a private roadway is not feasible and a public road is required, the Defendants acknowledge their obligation to comply with Massachusetts law with respect to the construction of a public road. In the event a private roadway is contemplated to provide access to the Property said private roadway shall be designed to minimize impacts to the Mill River to the extent practicable following industry standards for stormwater management and stream crossing design, including the US Army Corps of Engineers Stream Crossing Best Management Practices. All plans for the private access roadway and for any "bridge" that will span across the Mill River shall be stamped by a professional engineer, and forwarded to an independent licensed professional engineer selected by the Board of Selectmen who may review such plans at no expense to the Owner. The plans shall be submitted to the Town of Hopedale Board of Selectmen for their review; but shall not require a Board vote to approve such plans. In the event a private roadway is not feasible and a public road is required, the Defendants acknowledge their obligation to comply with Massachusetts law with respect to the construction of a public road.
- C. The application of pesticides, including herbicides, insecticides, fungicides, and rodenticides for non-domestic or nonagricultural uses shall in accordance with state and federal standards.
- D. For the purpose of preserving groundwater quality to the greatest extent practicable, any development shall provide recharge by storm water infiltration basins or similar systems covered with natural vegetation; dry wells shall be used only where other methods are infeasible. All such storm water infiltration basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all storm water infrastructure, including all recharge areas, shall be permanently maintained in full working order by the Owner.
- E. Prior to occupancy of building, owner shall prepare a Hazardous Materials Management Plan ("HMM Plan"), the Owner shall file the HMM Plan with the Town's Hazardous Materials Coordinator, Fire Chief, and Board of Health. The HMM Plan shall include:
- (1) Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
 - (2) Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
 - (3) Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification, number from the Massachusetts Department of Environmental Protection.
- F. Development will be limited to enclosed buildings/structures so as to avoid outside storage. This does not apply to necessary infrastructure to support buildings / structures.

- G. Owner will not be subject to any local permitting; beyond compliance to these conditions, federal laws and regulations, and consistent with established practice the Owner will keep state and local authorities apprised of any development plans by providing notification to the Board of Selectmen and/or Town Administrator.**

- H. Any of these deed restrictions may be waived by the Board of Selectmen on an individual basis at the Board of Selectmen's sole discretion following a properly posted public meeting upon a finding that enforcement of the specific restriction is not necessary to further the purposes of protecting groundwater or surface water supplies.**

- I. Nothing contained in this Deed Restriction limits the enforceability of these provisions through an action to a court of competent jurisdiction, including, but not limited to the Massachusetts Superior Court and the Land Court.**