



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, including back up information, 8 days prior to the requested meeting date. Public Hearing requests must be submitted 20 days prior to the requested meeting date to meet publication deadlines (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: March 29, 2021

Date of Meeting: April 8, 2021

Submitted by: Edgebrook Heights, LLC and Wigston Properties, LLC

Time Required: 15 minutes

Department: N/A

Background Info. Supplied: Yes No

Speakers: None anticipated

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/Retirement:	<input type="checkbox"/>
Public Hearing:	<input type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input checked="" type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

Release of Easement Deeds / Edgebrook Heights

DESCRIPTION OF ITEM

Request that Town Council approve the release of certain sewer easement deeds for sewer lines never developed. Please see the enclosed Attachment for background information.

REFERENCE (IF KNOWN)

RSA:	Warrant Article:
Charter Article:	Town Meeting:
Other:	N/A:

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input checked="" type="checkbox"/>

CONTACT INFORMATION

Name:	J. Bradford Westgate, Esq.	Address:	111 Concord Street, Nashua, NH 03064
Phone Number:	603-882-5157	Email Address:	jbwestgate@winerbennett.com

APPROVAL

Town Manager: Yes No Chair/Vice Chair: Yes No

Hold for Meeting Date:



TOWN OF MERRIMACK INTER-DEPARTMENT COMMUNICATION

DATE: March 29, 2021
AT (OFFICE): Department of Public Works

FROM: Dawn B. Tuomala, PE, LLS, CWS
Deputy Director/Town Engineer

To: Eileen Cabanel,
Town Manager

SUBJECT: **Release of Sewer Easement**
Edgebrook Heights, LLC and Wigston Properties, LLC
Daniel Webster Highway
Tax Map 1E Lots 4-1 & -2 and Map 2E, Lots 6-2, 7, 8 & 9

Edgebrook Heights, LLC owner of properties on Daniel Webster Highway have requested that a sewer easement that runs through their above referenced properties be released. The property has recently been through the Planning Board approval process to be able to develop the property into a multi-family community, together with an age restricted residential facilities. The properties are located just north of the City line with Nashua and are located across Daniel Webster Highway from the Harris Pond plaza.

The sewer utilities have been relocated as part of the planning process and are on the plans already recorded in the Hillsborough County Registry of Deeds. The owners are now in the process of installing the utilities and the Wastewater Division are waiting the testing results to grant final approval.

The Release of the existing sewer easement has all been reviewed by the Town Attorney Keriann Roman (see attached email). All of the required changes have been incorporated and are acceptable. A copy of the Plan and the Release are all attached as backup for the meeting. Their request is further outlined in an Attachment to the Town Council – Agenda Request Form also attached.

We are requesting that the Town Council approve release of the sewer easement and authorize you to sign as their agent. The document references the plans that are already recorded as part of the subdivision/Site Plan process. Once signed the release can then be recorded in the Hillsborough County Registry of Deeds.

Should you have any questions please let me know,
Thank you for your help in this matter.

Dawn

CC: Kyle Fox; Director
File

David K. Pinsonneault
J. Bradford Westgate*
Kent M. Barker
John M. Edwards*

All Admitted in NH
*Admitted in NH and MA

W&B
Winer and Bennett, LLP

Attorneys at Law

www.winerbennett.com

Brian C. Kelly*
Brenner G. Webb
Barbara W. Halevi*

Peter W. Bennett (retired)
Peter G. Webb (retired)
S. Robert Winer (1920-2019)
John V. Dwyer, Jr. (1946-2013)

March 29, 2021

Eileen Cabanel, Town Manager
Town of Merrimack
Town Hall
6 Baboosic Lake Road
Merrimack, New Hampshire 03054
ecabanel@merrimacknh.gov

**Re: Edgebrook Heights, LLC and Wigston Properties, LLC / Request for Release
of Sewer Easement Deeds**

Dear Ms. Cabanel:

I represent Edgebrook Heights, LLC and Wigston Properties, LLC. Edgebrook Heights, LLC is the owner of two parcels of land on the easterly side of Daniel Webster Highway (in the southern part of Merrimack) known as Lot 2E/7 and Lot 1E/4-2 shown on Hillsborough County Registry of Deeds Plan No. 40649. Edgebrook Heights, LLC and Wigston Properties, LLC own Lot 2E/6-2, just to the north of Lot 2E/7. Plan No. 40649 depicts the so-called Edgebrook Heights properties located across from Harris Pond (plaza). As you are aware, Edgebrook Heights is serviced by a private road known as Benning Court (which has been substantially completed, together with the utility services under and about Benning Court). Development of so-called Lot 1E/4-1 has also commenced.

You may recall that by letter of October 5, 2020 to you I submitted an Agenda Request Form to present to the Town Council a request that it authorize the release of existing (but never used) sewer easements on certain of the Edgebrook Heights parcels. That request, and the proposed Release of Easement Deeds, was reviewed by, among others, Dawn Tuomala, P.E., Town Engineer. Ms. Tuomala posed certain questions to me regarding these sewer easements and related matters. She and I had communications over the last few months by which I provided additional information and addressed the various questions she posed. My understanding is that all the questions that she posed have been adequately addressed. During this process the Town's attorney also reviewed and made proposed revisions to the release instrument, now entitled Release of Sewer Easements.

March 29, 2021

Page 2

In light of the foregoing, the Agenda Request Form submitted on October 5, 2020 is hereby withdrawn. In its place, kindly see enclosed the new Agenda Request Form with an Attachment explaining the background circumstances. Also submitted with the Agenda Request Form is a copy of Plan No. 40649 and the proposed Release of Sewer Easements.

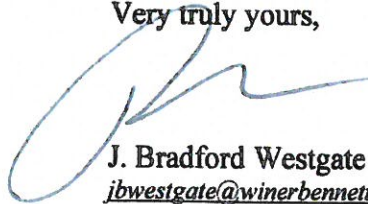
As I noted in my letter of October 5, 2020, in connection with the preparation of the subdivision and site plans for the Edgebrook Heights project, and in consultation with Timothy J. Thompson, Town of Merrimack Community Development Director, Edgebrook Heights, LLC agreed to seek the release of these public sewer easements that were never constructed and which are no longer needed or desired. Because the project approvals were not conditioned upon such release, it was anticipated that this step would occur after all of the approvals were obtained and the development of the project had commenced.

The sewer easements to be released are highlighted in yellow on Plan No. 40649, a copy of which is attached to the Agenda Request Form. As noted in the Attachment to the Agenda Request Form, one of the easements to be released (which was never constructed or used) was a cross-country sewer easement. Another easement to be released is a small sewer easement in the northwest corner of the complex which has now been replaced by a larger sewer easement, as shown on Plan No. 40649.

On behalf of Edgebrook Heights, LLC and Wigston Properties, LLC, it is respectfully requested that the Town Council approve the execution and recording of the Release of Easement Deeds.

Please do not hesitate to contact me with any questions.

Very truly yours,



J. Bradford Westgate

jwestgate@winerbennett.com

JBW:cns

cc: Dawn Tuomala, P.E., Town Engineer (w/encs.) (via email only)
Timothy J. Thompson, AICP, Community Development Director (w/encs.) (via email only)
Edgebrook Heights, LLC and Wigston Properties, LLC (w/encs.) (via email only)
Tom Zajac, P.E. (w/encs.) (via email only)

Attachment to Town Council – Agenda Request Form

Edgebrook Heights, LLC and Wigston Properties, LLC (Release of Sewer Easement Deeds)

Introduction

Edgebrook Heights, LLC is the owner of two vacant parcels of land on the easterly side of Daniel Webster Highway in the south end of Merrimack, known as Lot 2E/7 and Lot 1E/4-2 on Hillsborough County Registry of Deeds Plan No. 40649. Edgebrook Heights, LLC and Wigston Properties, LLC are owners of an adjacent parcel of land on the easterly side of Daniel Webster Highway, situated immediately north of Lot 2E/7, shown as Lot 2E/6-2 on Plan No. 40649. A copy of Plan No. 40649 is attached. On July 30, 2020, Edgebrook Heights, LLC conveyed Lot 1E/4-1 (shown on Plan No. 40649) to SMC Residences at Edgebrook Limited Partnership (“SMC”). SMC is developing Lot 1E/4-1 into a multi-family community, together with an age restricted residential facility. These lots are located across from Harris Pond (plaza) on the southerly end of Daniel Webster Highway.

Edgebrook Heights, LLC has substantially completed Benning Court (a private street to service the properties) and the utility installations underground and about Benning Court.

By letter of October 5, 2020 to Eileen Cabanel, Town Manager, J. Bradford Westgate, Esquire, counsel for Edgebrook Heights, LLC and Wigston Properties, LLC, submitted an Agenda Request Form to the Town Council outlining the background circumstances and requesting Town Council approval to authorize the release of certain sewer easements which were granted to the Town of Merrimack a number of years ago but never constructed or used by the Town of Merrimack. The submission included the proposed form of the Release of Easement Deeds to effect the release of these sewer easements.

That submission (on behalf of Edgebrook Heights, LLC and Wigston Properties, LLC) was reviewed by Dawn Tuomala, P.E., Town Engineer. The form of the Release of Easement Deeds was also reviewed by the Town’s attorney. Ms. Tuomala posed a number of questions to Attorney Westgate and requested additional documentation to address those questions. Attorney Westgate’s understanding is that all the questions posed by Ms. Tuomala have been adequately addressed. In addition, Attorney Westgate’s understanding is that the form of the instrument to release the sewer easements (now entitled Release of Sewer Easements), with final edits by Attorney Westgate is acceptable to the Town’s attorney and Ms. Tuomala.

In light of the foregoing, Edgebrook Heights, LLC and Wigston Properties, LLC withdraws its Agenda Request Form submitted on October 5, 2020 and respectfully submits the Agenda Request Form to which this attachment is appended.

Sewer Easements to be Released

As noted, Plan No. 40649 depicts sewer easements which were granted to the Town of Merrimack a number of years ago but never used by the Town of Merrimack. No sewer lines or related improvements were ever built in these easements. These existing (but never used) sewer easements are highlighted in yellow on Plan No. 40649 attached.

During the approval processes for the Edgebrook Heights project, the boards and agencies for the Town determined that the Edgebrook Heights properties would not be serviced by the aforementioned existing (but never used) sewer easements, but rather by a different design and approach. Given that directive, the project engineers for Edgebrook Heights designed the revised arrangements for sewer service which were depicted in the approved plan set for Edgebrook Heights. As a result, these (unused sewer easements) noted in yellow on Plan No. 40649 are no longer needed. In fact they are contemplated to be released as referenced in Plan No. 40649.

Accompanying this Agenda Request Form is the proposed Release of Sewer Easement. This is the form as revised by the Town's attorney, with final edits made by Attorney Westgate, as submitted by Attorney Westgate to Ms. Tuomala by email dated January 11, 2021. It identifies the sewer easements depicted on Plan No. 40649, and would effect their release if authorized by the Town Council and duly executed and recorded.

Conclusion and Request

The Applicants respectfully request that the Town Council authorize the release of the sewer easements and authorize the execution and the recordation of the Release of Sewer Easements in the form accompanying this Agenda Request Form.

BOUNDARY, CONSOLIDATION AND SUBDIVISION PLAN
 (MAP 1E, LOTS 4-1 & 4-2 AND MAP 2E, LOTS 6-2, 7, 8 & 9)

EDGEBROOK HEIGHTS

DANIEL WEBSTER HIGHWAY
 MERRIMACK, NEW HAMPSHIRE

PREPARED FOR/RECORD OWNER
EDGEBROOK HEIGHTS, LLC

179 AMHERST STREET
 NASHUA, NEW HAMPSHIRE 03064
 (603) 889-5208

ADDITIONAL RECORD OWNERS
WIGSTON PROPERTIES, LLC

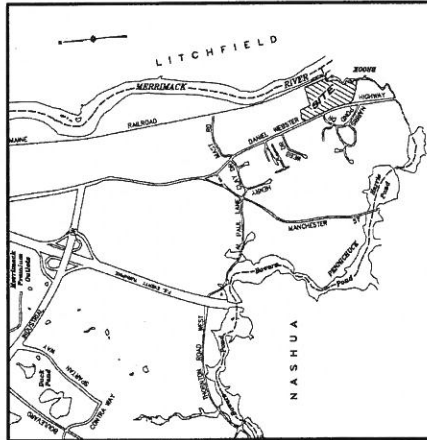
91 AMHERST STREET
 NASHUA, NEW HAMPSHIRE 03064
 (603) 889-3300

Q. PETER NASH 1987 REV. TRUST I

91 AMHERST STREET
 NASHUA, NEW HAMPSHIRE 03064
 (603) 889-3300

12 OCTOBER 2018

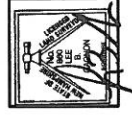
17 DECEMBER 2018
 10 JANUARY 2019
 26 NOVEMBER 2019



VICINITY PLAN SCALE: 1" = 2,000'



HSI Hayner/Swanson, Inc.
 Civil Engineers/Land Surveyors
 3 Congress Street
 Nashua, NH 03062
 (603) 883-2057
 www.hayner-swanson.com



1/2/19

40649 DUE 166 1064

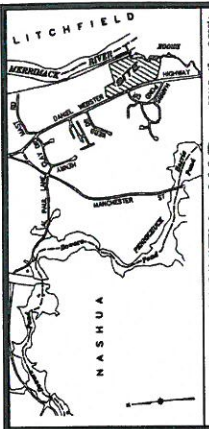
FILE No. R:\2966\DWG\2966 SUB\2966SUB-C500

**MERRIMACK PLANNING BOARD
 CONDITIONS OF APPROVAL**

AT THE MEETING OF JANUARY 8, 2019, THE MERRIMACK PLANNING BOARD VOTED TO GRANT CONDITIONAL APPROVAL, SUBJECT TO THE FOLLOWING GENERAL AND SUBSEQUENT CONDITIONS BE PLACED ON THE APPROVAL:

- THE APPLICANT IS RESPONSIBLE FOR RECORDING THE PLAN INCLUDING RECORDING FEE AND THE MERRIMACK COUNTY REGISTER OF DEEDS. THE APPLICANT IS ALSO RESPONSIBLE FOR PROVIDING PROOF OF SAID RECORDING APPLICABLE LOCAL ORDINANCES SHALL BE RECORD AT THE MERRIMACK COUNTY REGISTER OF DEEDS AT THE EXPENSE OF THE APPLICANT.
- THE APPLICANT SHALL OBTAIN NECESSARY PERMITS FROM THE CITY DEPARTMENT OF MUNICIPAL ENGINEERING AND CONSTRUCTION.

INDEX OF PLANS	
SHEET No.	TITLE
1 OF 5	MASTER BOUNDARY, CONSOLIDATION AND SUBDIVISION PLAN 1"= 100'
2,3 OF 5	BOUNDARY, CONSOLIDATION AND SUBDIVISION PLAN 1"= 60'
4-5 OF 5	TOPOGRAPHIC BOUNDARY, CONSOLIDATION AND SUBDIVISION PLAN 1"= 60'



VICINITY MAP
SCALE: 1" = 500'

PLAN REFERENCES:

- BOARDSMAN PLAN FOR THE SUBDIVISION OF THE 3.19 ACRES OF LAND BELONGING TO DANIEL WEBSTER INDUSTRIAL, INC. RECORDED IN THE PUBLIC RECORDS OF MERRIMACK COUNTY, NEW HAMPSHIRE, UNDER RECORD 1234567890. DATED: JANUARY 15, 2018. SCALE: 1" = 80'. DATED: JANUARY 15, 2018. RECORDED: HORD PLAN NO. 3489.
- DEVELOPMENT OF LAND, NASHUA CORPORATION, MERRIMACK, NH. SCALE: 1" = 100'. DATED: JULY 14, 1988 WITH REVISIONS THROUGH 2/1992, AND PREPARED BY THOMAS F. BROWN RECORDED: HORD PLAN NO. 2178.

NOTES:

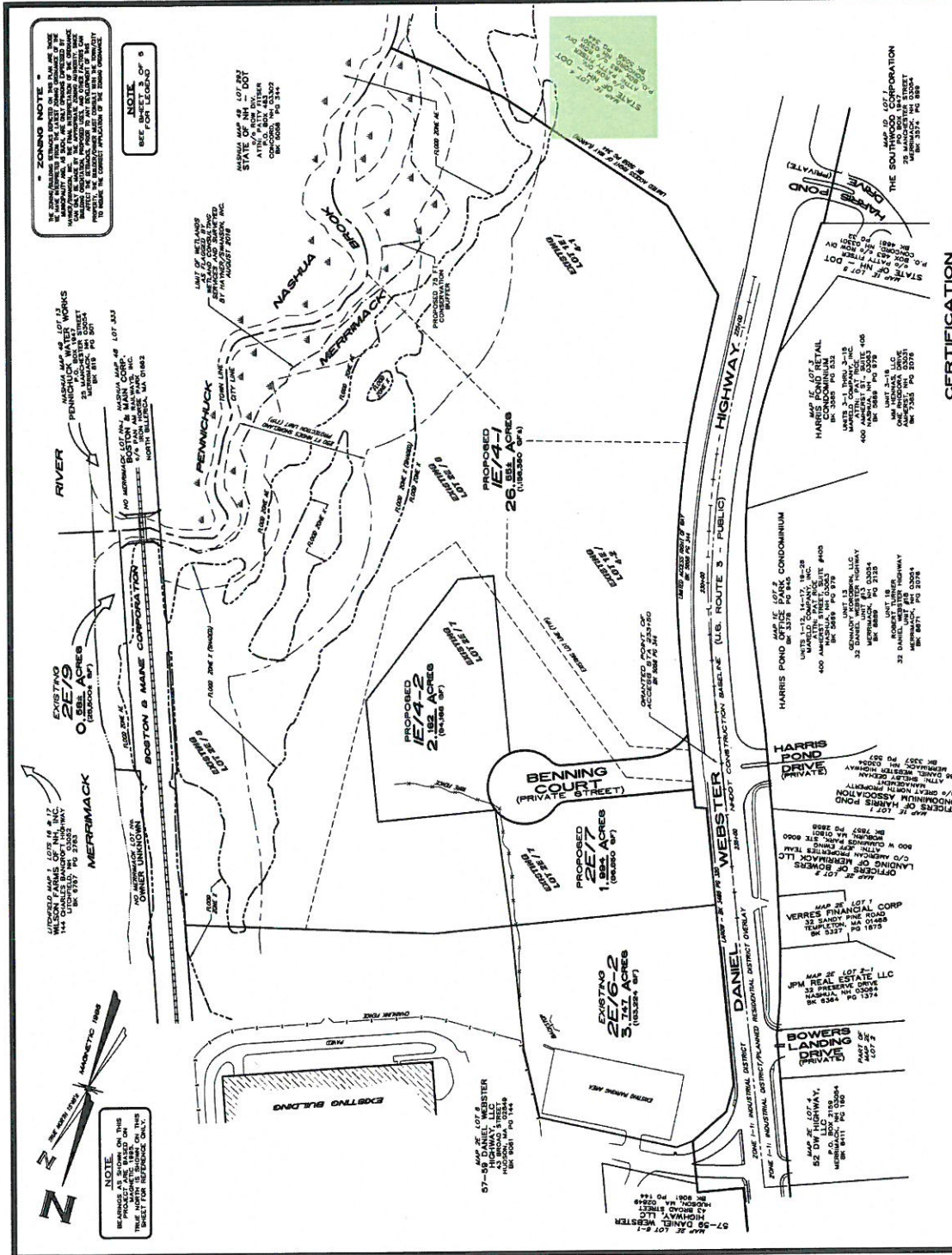
- SITE AREA:**
 - EXISTING:
 - LOT 184-2: 2.10 ACRES
 - LOT 184-3: 2.10 ACRES
 - LOT 184-4: 2.10 ACRES
 - LOT 184-5: 2.10 ACRES
 - LOT 184-6: 2.10 ACRES
 - LOT 184-7: 2.10 ACRES
 - LOT 184-8: 2.10 ACRES
 - LOT 184-9: 2.10 ACRES
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 - LOT 184-12: 2.10 ACRES
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 - LOT 184-48: 2.10 ACRES
 - LOT 184-49: 2.10 ACRES
 - LOT 184-50: 2.10 ACRES
 - PROPOSED:
 - LOT 184-1: 2.10 ACRES
 - LOT 184-2: 2.10 ACRES
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 - LOT 184-47: 2.10 ACRES
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 - LOT 184-49: 2.10 ACRES
 - LOT 184-50: 2.10 ACRES
 - INDUSTRIAL USE:
 - 100 FT
 - 50 FT
 - 25 FT
 - 15 FT
 - 10 FT
 - 5 FT
 - 4 FT
 - 3 FT
 - 2 FT
 - 1 FT
- MINIMUM DIMENSIONAL REQUIREMENTS:**
 - MINIMUM DIMENSIONAL REQUIREMENTS:
 - 100 FT
 - 50 FT
 - 25 FT
 - 15 FT
 - 10 FT
 - 5 FT
 - 4 FT
 - 3 FT
 - 2 FT
 - 1 FT

MASTER BOUNDARY, SUBDIVISION PLAN
FOR LOTS 184-1 THROUGH 184-50, MAP 26, LOT 8-2, 7, & 8
PREPARED FOR RECORD OWNER:
EDGEBROOK HEIGHTS
DANIEL WEBSTER HIGHWAY
MERRIMACK, NEW HAMPSHIRE
EDGEBROOK HEIGHTS, LLC
175 WASHINGTON STREET, NASHUA, NH, 03084 (603) 888-9200
WIGSTON PROPERTIES, LLC and
WIGSTON TRUST I
91 WASHINGTON STREET, NASHUA, NH, 03084 (603) 888-9200
BY: **PETER NASH 1987 REV. TRUST I**
20 AMHERST STREET, NASHUA, NH, 03084 (603) 888-3000
SCALE: 1" = 100 FEET
0 10 20 30 40 50 60 70 80 90 100 FEET

12 OCTOBER 2018

FESI Engineering & Surveying, Inc.
Chief Engineer/Registered Surveyor
J. Christopher Fesi
121 Middlebury, Concord, NH 03301
603.271.3377
www.fesi-engineering.com

FILED BOOK 1197 PLANNING BOARD 2086 1 OF 3



CERTIFICATION

THE ENGINEER CERTIFIES THAT THIS PLAN SHOWS THE RESULTS OF AN ACTUAL AND HONESTY MADE SURVEY AND THAT THE DIMENSIONS AND AREAS SHOWN THEREON ARE CORRECT AND ACCURATE TO THE BEST OF HIS KNOWLEDGE AND BELIEF. THE ENGINEER HAS REVIEWED THE PLAN AND IS Satisfied THAT THE PLAN IS THE RESULT OF AN ACTUAL AND HONESTY MADE SURVEY AND THAT THE DIMENSIONS AND AREAS SHOWN THEREON ARE CORRECT AND ACCURATE TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

FOR: **EDGEBROOK HEIGHTS, LLC** DATE: 10/12/18
FOR: **WIGSTON PROPERTIES, LLC** DATE: 10/12/18
FOR: **PETER NASH 1987 REV. TRUST I** DATE: 10/12/18

APPROVED PLANNING BOARD
MERRIMACK PLANNING BOARD
DATE: 10/12/18
VICE CHAIR: [Signature]

you're due 1/4 day

LEGEND

- STORM DRAIN & CATCH BASIN
- HYDRAULIC CATCH VALVE
- HYDRAULIC GATE VALVE
- GAS LINE GATE VALVE
- UTILITY POLE WITH GUY SUPPORT
- STREET LIGHT
- MANHOLE
- STONE BOUND
- IRON PIN
- IRON PIN TO BE SET
- IRON PIN TO BE SET
- LIMITED ACCESS RIGHT OF WAY
- BUILDING SETBACK LINE
- LOT NUMBER

RIPARIAN NOTE:

THESE PORTIONS OF THE MERRIMACK RIVER AND MERRIMACK BROOK ARE BOTH LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES AND ARE SUBJECT TO FEDERAL WATER QUALITY PROTECTION ACT (CWA) REGULATIONS. THE STATE POLICE SHOULD BE NOTIFIED OF ANY WATERWAY USES THAT COULD AFFECT THE RIVER OR BROOK. IN ADDITION TO THE PUBLIC TRAIL, WATERWAY USES THAT COULD AFFECT THE RIVER OR BROOK SHOULD BE NOTIFIED OF ANY WATERWAY USES THAT COULD AFFECT THE RIVER OR BROOK. FOR THE PURPOSE OF THIS SURVEY, THE MEAN HIGH WATER LINE OF THE MERRIMACK RIVER WAS DETERMINED BY MEASURING THE RIVER AT THE POINTS SHOWN ON THE SURVEY. THE MEAN HIGH WATER LINE OF THE MERRIMACK BROOK WAS DETERMINED BY MEASURING THE BROOK AT THE POINTS SHOWN ON THE SURVEY. THE RIPARIAN BOUNDARY IS EXTENDED TO THE CENTERLINE OF THE MERRIMACK RIVER FOR THE PORTION OF THIS PLAN THE CENTERLINE WAS USED FOR COMPUTATIONS OF DAM HEIGHT.

BOUNDARY CONSOLIDATION AND SUBDIVISION

EDGE BROOK HEIGHTS
DANIEL WEBSTER HIGHWAY
MERRIMACK, NEW HAMPSHIRE

EDGE BROOK HEIGHTS, LLC
DANIEL WEBSTER HIGHWAY
MERRIMACK, NEW HAMPSHIRE 03064 (603) 889-5008

WIGSTON PROPERTIES LLC
81 AMHERST STREET
NASHUA, NEW HAMPSHIRE 03063 (603) 884-3000

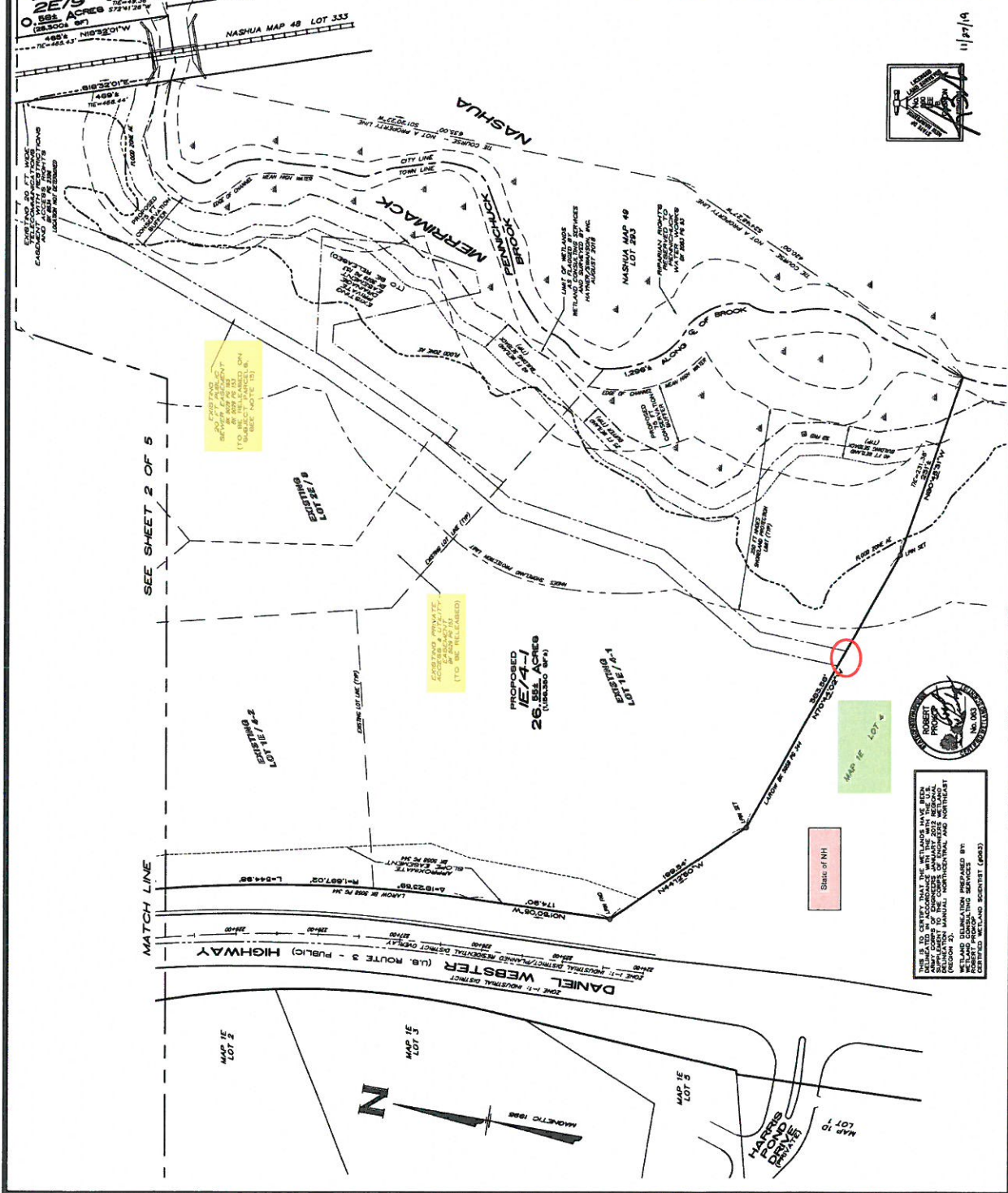
O. PETER NASH 1997 REV. TRUST I
87 AMHERST STREET
NASHUA, NEW HAMPSHIRE 03063 (603) 884-3000

SCALE: 1" = 100 FEET
 0 20 40 60 80 100 120 140 160 180 200 240 FEET

12 OCTOBER 2018

HSI
Haynes/Strauss, Inc.
 3 Cedar Street
 Nashua, NH 03063
 (603) 885-5000
 www.hsi-nh.com

FIELD BOOK 117 DRAWING NAME: 200804-001 200804 3 OF 5
 DRAWING LOCATION: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100



your DUR 164 404



THE STATE OF NEW HAMPSHIRE HAS REVIEWED THIS SURVEY AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE STATE SURVEYING ACT AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING (SECTION 2). THIS SURVEY WAS PREPARED BY: WILSON CONSULTING SERVICES, INC. CERTIFIED SURVEYOR (6043)

Return to:
Town of Merrimack
6 Baboosic Lake Rd.
Merrimack, N.H. 03054

TOWN OF MERRIMACK RELEASE OF SEWER EASEMENTS

The Town of Merrimack, a New Hampshire municipal corporation, with offices at 6 Baboosic Lake Road, Merrimack, Hillsborough County, New Hampshire 03054, holder of certain sewer easements in the Town of Merrimack, New Hampshire, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby releases and renders void and of no further force and effect the following sewer easements:

1. The Easement Deed from the Gutierrez Company to the Town of Merrimack, dated October 14, 1988 and recorded with the Hillsborough County Registry of Deeds at Book 5029, Page 165 running through Tax Map 2E, Lot 8 and Tax Map 1E, Lot 4-1, the original easement shown as "20 Ft. Sewer Easement #1" and "40 Ft. Temporary Construction Easement" on a plan titled "Easement Plan, D.W. Highway, Prepared for the Gutierrez Company" prepared by Allan H. Swanson, Inc. dated 6 January 1988 and recorded with the Hillsborough County Registry of Deeds as Plan No. 22703 ("Plan No. 22703"). This release includes a release of that portion of the Sewer Easement and Temporary Construction Easement on Tax Map 1E, Lot 4 taken by the State of New Hampshire in condemnation proceedings recorded in the Hillsborough County Registry of Deeds at Book 5058, Page 344, to the extent these easements were not already extinguished by the condemnation;

2. The Easement Deed from Nashua Corporation to the Town of Merrimack dated December 29, 1997 and recorded with said Registry of Deeds at Book 5890, Page 228 running through Tax Map 2E, Lot 6, the original easement shown as "20 Ft. Sewer Easement #2" on Plan No. 22703; and

3. Sewer Easement from OCC Properties, LLC to The Town of Merrimack, dated July 11, 2001 and recorded with said Registry of Deeds at Book 6462, Page 221 located on Tax Map 2E, Lot 6-2, the original easement shown as "Proposed 20' x 20' Sewer Easement" on a plan titled "Lot Line Adjustment Plat, Land of Nashua Corporation & Merrimack 1994 Realty Trust Location 57 & 39 Daniel Webster Highway – Merrimack, N.H. Hillsborough County, Tax Map 2E Lots 6-2 & 7" dated March 16, 2001 and prepared by FWS Land Surveying PLLC, recorded with said Registry of Deeds as Plan No. 31137.

The above released easements are further shown as "Existing 20 Ft Public Sewer Easement To Be Released on Subject Parcels, See Note 13" and "Existing 20 Ft x 20 Ft Public Sewer Easement To Be Released, See Note 13" on the plan titled "Boundary, Consolidation and Subdivision Plan, Edgebrook Heights" prepared by Hayner/Swanson, Inc. dated 12 October 2018 and recorded with said Registry of Deeds at Plan No. 40649 on July 30, 2020.

This instrument has been duly authorized by vote of the Town Council of the Town of Merrimack on _____, 2021.

IN WITNESS WHEREOF, the Town of Merrimack has caused this instrument to be duly executed this _____ day of _____, 2021.

Town of Merrimack

Witness

By: _____
Name: Eileen Cabanel
Title: Town Manager (duly authorized)

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

This instrument was acknowledged before me this _____ day of _____, 2021, by Eileen Cabanel, Town Manager of the Town of Merrimack, duly authorized, on behalf of the Town of Merrimack.

Notary Public
My Commission Expires:

KNOW ALL MEN BY THESE PRESENTS

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that Boston and Maine Corporation, a corporation duly established under the laws of the State of Delaware, for one dollar and other valuable considerations paid to it by the Town of Merrimack, a municipal corporation situated in Hillsborough County, the receipt whereof is hereby acknowledged, does hereby grant, sell and convey unto the said Town of Merrimack, its successors and assigns, in so far as it lawfully may, a permanent right and easement to construct, repair, maintain and use sub-surface interceptor sewer pipe, together with the right to construct, repair, maintain and use a pump house in the following described parcels of land situated in Merrimack, Hillsborough County, New Hampshire, and bounded and described as follows:

Parcel 1. a ten (10) foot wide easement, the centerline of which runs from a point 24 feet west from Station 151+60 located on the centerline of track which point is shown on a plan hereinafter mentioned to lie at the division line between Nashua and Merrimack and to be labeled "Beginning of Easement", thence runs northerly on a line parallel to and about 24 feet west from the centerline of track to a point about 24 feet easterly from Station 180+67; thence turning and running northeasterly under the centerline of track to Station 181+11; thence turning and running in two directions, the first running Northeasterly in a straight line to a point on the easterly sideline of land of Boston and Maine Corporation which point is easterly from Station 181+44; the second line runs northerly on a line parallel to and 20 feet easterly from said centerline of track to a point 20 feet easterly from Station 232+18 located on said centerline of track; thence turning and running in two directions, the first running southeasterly in a straight line to a point on the easterly sideline of land of Boston and Maine Corporation which point is easterly from Station 232+01; the second line runs northwesterly under the centerline of track to a point 24 feet westerly from Station 232+62; thence turning and running northerly on a line parallel to and 24 feet westerly from said centerline of location to a point located about 24 feet westerly from Station 245+42; thence turning and running in two directions; the first running westerly on a line perpendicular to said centerline of easement to the westerly sideline of land of Boston and Maine Corporation; the second line runs northerly again on a line parallel to and 24 feet westerly from said centerline of track to a point about opposite Station 303+60, and thence continuing on the same tangent course to a point about opposite station 308+52, located on the southerly sideline of Parcel "A", as shown on said plan. Thence the said centerline begins again on the northerly sideline of North Ferry Road, so-called at a point located 37 feet westerly from Station 309+85, thence running northerly to a point 27 feet westerly from Station 310+24; thence turning and running about easterly and on a line perpendicular to the centerline of track under said centerline of track to a point about 18 feet easterly from Station 310+24; thence turning and running in a generally northerly direction on a line parallel to and 18 feet easterly from said centerline of track to a point about 18 feet easterly from Station 346+85; thence turning and running about westerly on a line perpendicular to said centerline of track and under said centerline of track a distance of about 42 feet to a point 24 feet westerly from Station 346+85; thence turning northerly on a line parallel to and 24 feet westerly from the centerline of track to a point 24

2.

feet northwesterly from Station 373+95; thence turning and running in about northerly again to a point 28 feet westerly from Station 374+50; thence turning and running about northeasterly on a line parallel to and 28 feet westerly from said centerline of track to about Station 379+40; thence the said centerline of 10 foot sewer easement begins again on the easterly sideline of Parcel "B" as shown on said plan, and at a point 50 feet northwesterly from said centerline of track and runs across the Souhegan River, so-called, and over land of Boston and Maine Corporation to a point about 50 feet northwesterly from Station 388+85; thence the centerline of 10 foot sewer easement begins again at a point about 33 feet northwesterly from centerline of track about opposite Station 392+02; thence turning and running easterly to a point 24 feet northwesterly from Station 392+12; thence turning and running in a general northeasterly direction on a line parallel to and 24 feet westerly from said centerline of track to a point 24 feet northwesterly from Station 467+20 located on said centerline of track; thence turning and running about northeasterly on a straight line to a point 47 feet northwesterly from Station 469+65. Thence the said centerline of 10 foot sewer easement begins again on the northeasterly sideline of Reeds Ferry Rd., so-called, and at a point 24 feet northwesterly from Station 470+67; thence runs northeasterly on a line parallel to and 24 feet northwesterly from said centerline of track to a point 24 feet northwesterly from Station 536+70; thence turning and running about northeasterly again on a straight line to a point 40 feet northwesterly from Station 539+70; thence turning and running again about northeasterly on a line parallel to and 40 feet northwest from Station 554+85; thence turning and running northwesterly on a line perpendicular to said centerline of track to the sideline of land of Boston and Maine Corporation, which point is opposite said Station 554+85 and which point is the end of said easement, be all of said measurements more or less, said easement area containing an area of about 393,050 square feet, more or less, and being shown as at its centerline "C. 10' SEWER EASEMENT" upon plan marked "Land in MERRIMACK, N. H. Boston & Maine Corporation to Town of Merrimack, N. H. J. D. Batchelder, Engineer of Design Scale: 1" = 100' July, 1969" (two sheets), to be recorded herewith, a copy of which is hereto attached to which reference is hereby made for a further description of the premises hereby conveyed.

Parcel 2. a four sided parcel of land bounded on the north by the sideline of land now or formerly North Ferry Rd., so-called; the east by a line parallel with and 25 feet westerly from the centerline of track; on the south by a line perpendicular to Station 308+52 located on said centerline of track and on the west by the sideline of land of Boston and Maine Corporation, be all of said measurements more or less, said parcel containing an area of about 3,720 square feet and being shown as Parcel "A" upon sheet 1 of 2 sheets on plan hereinabove mentioned.

Parcel 3. An irregular shaped parcel of land bounded on the Northeast by the southwesterly shore of Souhegan River; on the Southeast by a line parallel to and 13 feet southwesterly from the centerline of track; on the Southwest by a line perpendicular to Station 381+68 located on the centerline of track; and on the Northwest by the sideline of land of Boston and Maine Corporation, be all of said measurements more or less, said parcel containing an area of about 14,630 square feet, and being shown as Parcel "B" upon Sheet 2 of 2 sheets on plan hereinabove mentioned.

The above granted rights and easements are in all ways subject to the paramount right of the grantor, its successors, assigns, lessees and users to operate on and maintain its existing railroad facilities and to install and maintain additional railroad facilities as it may in its sole discretion require.

3.

Those aforementioned rights and easements as are hereinabove granted to the Town of Merrimack are granted upon and subject to the following provisions:

1. No work connected with the installation, maintenance, repair and use of said sewer line, pump house or appurtenances shall be done by the grantee, its successors and assigns, without prior notice in writing to the Chief Engineer of the grantor, and all such work in connection therewith shall be done under the supervision of and in a manner satisfactory to the said Chief Engineer. It being understood and agreed that final plans, including profile specifications for the installation of the sewer line, pump house and appurtenances within the proposed Easement Area, shall be submitted to the Chief Engineer of the grantor, its successors or assigns, for his prior written approval, and same must have the approval of the Chief Engineer before commencement of any work is made by the grantee, its successors or assigns, which approval shall not be unreasonably withheld.

2. The grantee shall make at its own expense any changes in the location of sewer line, pump house and appurtenances which may from time to time be reasonably demanded by the grantor, its successors and assigns.

3. The grantee, shall indemnify and save harmless the grantor, its successors or assigns, and their respective officers, agents and servants, against any and all loss, cost, damage or expense and against any and all claims or suits for property damage, personal injury or death arising out of or in any way referable to the existence, construction, use, repair, or renewal or removal of the sewer line, pump house or appurtenances arising in any way from the granting of this easement.

4. The grantee hereby covenants and agrees for itself, its successors and assigns, to obtain, furnish to said grantor, its successors and assigns, and keep in force at all times, and pay the premiums on a policy or policies of insurance on the aforementioned sewer line, pump house and appurtenances during construction or repair, during such time or times as any, some, or all of said sewer line, pump house and appurtenances are in process of construction or repair

4.

designating said grantor, its successors and assigns, as a named insured as its interest may appear; such policy or policies of insurance to be without cost to said grantor, its successors and assigns, and to be reasonably satisfactory to said grantor, its successors or assigns, and to provide for public liability insurance applicable to personal injury or death of any person with a coverage of not less than \$100,000.00 for any one person and \$300,000.00

for two or more persons occurring in any one accident, and property damage applicable to property of said Boston and Maine Corporation, its successors or assigns, and property of others, with a coverage of not less than \$100,000.00 for each accident and \$300,000.00 in the aggregate; such policies are to contain the "Oregon" form of endorsement.

5. All expense incurred by said grantor's forces during installation, maintenance, repair and replacement of the said sewer line, pump house and appurtenances, and all grantor's expense subsequently occasioned by said sewer line, pump house and appurtenances shall be reimbursed to the grantor by the grantee, its successors and assigns, forthwith each time such expenses are incurred.

6. Grantor hereby reserves for itself, its successors and assigns, the right to designate the time when the installation, repair or maintenance in connection with said sewer line, pump house and appurtenances may be performed by the grantee; it being further understood and agreed that all work shall be done to the reasonable satisfaction of the Chief Engineer of the grantor, its successors and assigns.

7. The grantor hereby reserves for itself, its successors and assigns, the right to install, construct, maintain and use within the above easement areas present facilities, including Western Union Facilities, and such additional facilities, including, but not limited to, trackage and appurtenances as the grantor, its successors and assigns, may in their sole discretion deem necessary as convenient; and further, the grantee covenants and agrees to pay any expense in changing said sewer line, pump house and appurtenances, including the cost and expense of lateral support, deemed necessary in the

5. sole discretion of the Chief Engineering Officer of the grantor, its successors, assigns, which changes and expenses are incurred in maintaining lateral support the grantee covenants and agrees for itself, its successors and assigns, to pay.

The covenants in this instrument contained are to be covenants running with the land and are to be binding upon the grantee, its successors and assigns, forever.

TO HAVE AND TO HOLD the above described premises, with all the privileges and appurtenances there to belonging to the said Town of Merrimack, its successors and assigns, to their own use and behoof forever.

IN WITNESS WHEREOF the said Boston and Maine Corporation and

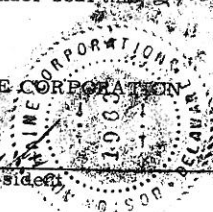
the Town of Merrimack have executed this instrument under seal this 21st
day of July, 1969.

Signed and sealed
in the presence of:

[Signature]

BOSTON AND MAINE CORPORATION

By *[Signature]*
Vice President



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Signed and sealed
in the presence of:

Joseph F. Gall
to all three

TOWN OF MERRIMACK
By its SELECTMEN

By *Harold L. Thresher* Chairman

By *[Signature]*

By *Ronald E. Seiger*

6.

STATE OF NEW HAMPSHIRE

County of Hillsborough

On this 21st day of July, 1969, before me, *Joseph F. Gall*,
the undersigned officer, personally appeared W. A. Kirk, who acknowledged
himself to be a Vice President of Boston and Maine Corporation, a corporation,
and that he as such Vice President, being authorized so to do, executed the
foregoing instrument for the purposes therein contained by signing the name
of the corporation by himself as Vice President.

In witness whereof I hereto set my hand and official seal.

Joseph F. Gall
Notary Public

My Commission expires:

August 17, 1971

STATE OF NEW HAMPSHIRE

County of Hillsborough:

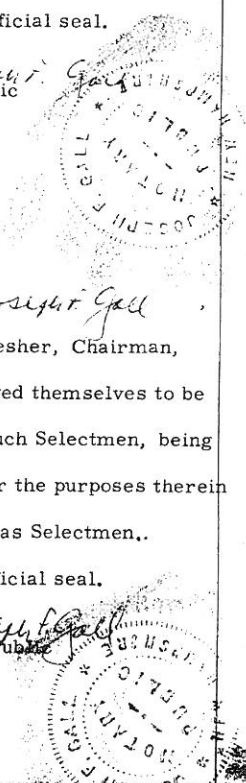
On this 21st day of July, 1969, before me *Joseph F. Gall*,
the undersigned officer, personally appeared Harold Thresher, Chairman,
Edward J. Haseltine and Ronald Seiger, whoc acknowledged themselves to be
Selectment of the Town of Merrimack, and that they as such Selectmen, being
authorized so to do, executed the foregoing instrument for the purposes therein
contained by signing the name of the Town by themselves as Selectmen..

In witness whereof I hereto set my hand and official seal.

Joseph F. Gall
Notary Public

My Commission expires:

August 17, 1971



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At a Meeting of the Board of Directors of BOSTON AND MAINE CORPORATION, duly called, notified and held on April 16, 1969, a quorum being present, the following action was taken:

"VOTED: To convey to the Town of Merrimack, New Hampshire, or nominee, for a consideration of \$40,000 the permanent right and easement to construct, maintain and use an interceptor sewer pipe, together with pump houses, adjacent to and under the main line track involving land for the most part 10 feet in width, extending for a distance of about 7.5 miles and with a total area of approximately 407,100 square feet in Merrimack, New Hampshire,

~~containing an area of about xx~~, subject to more accurate computation and survey approved by the President or any Vice President of this Company; and the President, or any Vice President of this Company be and he hereby is authorized, in its name and behalf, to execute and deliver such agreement; and further

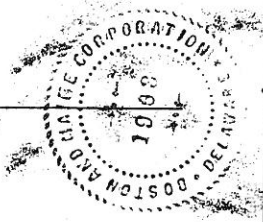
"VOTED: that the President, or any Vice President of this Company, be and he hereby is authorized in its name and behalf, to execute, acknowledge and deliver a deed ~~of grant of said right and easement~~ ^{or grant} ~~of said premises~~ when said further computation and survey have been completed and the signature of such officer on such deed shall be conclusive evidence of his approval of such computation and survey."

I, Harry Blake, Secretary of said Boston and Maine Corporation, do hereby certify that Town of Merrimack

the grantee in the deed to which this certificate is attached, is the party who has been nominated ~~by said~~

to accept such deed; and I further certify that the above mentioned computation and survey have been completed and that the premises described as conveyed by said deed are the premises authorized to be conveyed in the vote of said Board of Directors hereinabove set forth.

Attest:

[Signature]
Secretary


HILLSBOROUGH, SS. RECEIVED AND RECORDED

11-26 A.M., July 29, 1969.

EXAMINED BY

[Signature]

REGISTER.