

**ACQUISITION FROM THE
BOSTON AND MAINE CORPORATION**

**MANCHESTER
HILLSBOROUGH COUNTY REGISTRY**

0002068

2000 JAN 11 PM 1:02

RELEASE DEED

The **BOSTON AND MAINE CORPORATION**, a corporation duly organized and existing under the laws of the State of Delaware, with offices at Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of One Hundred and 00/100 (\$100.00) Dollars plus other good and valuable consideration paid to it by the **STATE OF NEW HAMPSHIRE BUYING THROUGH ITS DEPARTMENT OF TRANSPORTATION**, **John Morton Building, 1 Hazen Drive, Concord, Merrimack County, New Hampshire**, (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in certain parcels or strips of land sometimes referred to as the "**Portsmouth Branch**" so-called, including all stations, buildings, bridges, structures, crossings, culverts, fixtures, and improvements thereon and including all appurtenances thereto, if any, situated in **City of Manchester, County of Hillsborough**, State of New Hampshire (hereinafter collectively referred to as the "Premises"), more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND
MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.

2. The Grantor excepts from this conveyance and reserves unto itself, its successors and assigns, a permanent, non-exclusive right of way and through the Premises, a fifteen (15) ft. wide strip of land located seven and one half (7½) feet on either side of the center line of the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such poles, pipes, wires, fibers, fiber optic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"), together with the right of access to the area where the cable is to be located; provided, further this conveyance is made expressly subject to the right reserved to the Grantor, for itself, its successors and assigns and Grantor may

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freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. Provided further that the Grantor shall: (a) provide the Grantee with ten days notice of Grantor's intention to commence such installation; (b) obtain the Grantee's approval of the location of such proposed installation, which approval shall not be unreasonable withheld or delayed; (c) furnish the Grantee with a complete and detailed description of such installation, including any applicable plans and construction schedules; and (d) replace and/or restore the surface area, if any, disturbed by such installation to either (i) the condition thereof as of the date of this Release Deed; or (ii) if the surface has been paved, to a suitable back-filled and repaved condition. By the acceptance of this deed and as part consideration therefore, the Grantee hereby covenants and agrees for itself, its successors and assigns, to recognize this Telecommunications Easement reservation as a reserved right-of-way and easement appurtenant, and further covenants that upon the request of the Grantor, its successors and assigns, to execute documents suitable in form for recording in the Registry of Deeds which documents confirm and acknowledge this reservation to the Grantor's successors and assigns and acknowledges the right of the Grantor, its successors and assigns to assign same to third parties. Said documents are to be executed without the payment of further consideration of any kind by the Grantor, its successors and assigns to the Grantee, its successors and assigns.

~~3. The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.~~

4. The State of New Hampshire Department of Transportation ("Grantee") hereby acknowledges that the Grantee is purchasing the Premises "as is", "with all faults" and subject to the possible existence of hazardous materials,

petroleum products and/or other pollutants regulated by law. Notwithstanding the foregoing, the Grantee, for itself, its successors, assigns and grantees hereby irrevocably waives, gives up and renounces any and all claims or causes of action against the Grantor, its successors, assigns and affiliates, with respect to any and all claims, suits, and/or enforcement actions, including any administrative or judicial proceedings and any remedial, removal, or response actions ever asserted, threatened, instituted, or requested by any person (including any government agency) on account of: (a) any release of oil or hazardous materials (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, *et seq.*) or any applicable state law) on, upon, or into the Premises; and (b) any and all damage to real or personal property, natural resources, and/or harm to persons alleged to have resulted from such release of such oil hazardous materials upon the Premises.

5. The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.
6. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
7. This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.

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8. By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor.
- ~~9. The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.~~
10. Whenever used in this deed, the term "Grantor" shall not only refer to the **BOSTON AND MAINE CORPORATION**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case maybe.
11. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.
12. The requirements of deed stamps and a Declaration of Consideration do not apply to this transaction pursuant to RSA 78-B:10, III.

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IN WITNESS WHEREOF, the said **BOSTON AND MAINE CORPORATION** has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, the Chief Executive Officer of the **BOSTON AND MAINE CORPORATION**, on this 21st day of December, 1999.

**GRANTOR:
BOSTON AND MAINE CORPORATION**

[Signature]
Witness

By: David A. Fink
David A. Fink, Chief Executive Officer



**GRANTEE:
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**

Victoria H. Chase
Witness

By: James F. Marshall

**APPROVED FOR FORM AND
EXECUTION:
OFFICE OF THE ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE**

[Signature]
Witness

By: [Signature]
Name: Mark P. Harrison
Title: SR. ASST. ATTY GENERAL

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COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

December 21, 1999

Then personally appeared the above-named David A. Fink, the Chief Executive Officer of the **BOSTON AND MAINE CORPORATION** and acknowledged the foregoing deed to be his free act and deed and the free act and deed of said **BOSTON AND MAINE CORPORATION** before me.

[Signature]
Notary Public
My commission expires: 12/03/04

STATE OF NEW HAMPSHIRE

Merrimack, ss

12/23/, 1999

Then personally appeared _____ the _____ of **STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION** and acknowledged the foregoing deed to be his/her free act and deed and the free act and the free act and deed of said **STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION**, before me.

[Signature]
Notary Public
My Commission Expires:

DIANE L. HARTFORD
Notary Public
My Commission Expires July 21, 2004

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EXHIBIT A

LEGAL DESCRIPTION OF THE "PORTSMOUTH BRANCH"

Certain parcels or strips of land (railroad right-of-way) located in the City of Manchester, County of Hillsborough, State of New Hampshire and being portions of the railroad line sometimes referred to as the "Portsmouth Branch", so called, including all stations, buildings, bridges, structures, crossings, culverts and improvements thereon and including all appurtenances thereto and being more particularly described as follows:

Parcel 1

Beginning at a point designated as Engineering Station 1967+67± located on the westerly sideline of Page Street as shown on Federal Valuation Plan V28NH, Map 38;

Thence running generally in a westerly direction to a point designated as Engineering Station 1997+50± as shown on Federal Valuation Plan V28NH, Map 39;

Said parcel containing a total area of about 197,510 square feet, more or less, or about 4.53 acres, more or less.

Parcel 2

Beginning at a point designated as Engineering Station 2002+90± at the westerly sideline of Mammoth Road as shown on Federal Valuation Plan V28NH, Map 39;

Thence running generally in a westerly direction to a point designated as Engineering Station 2008+05± at the easterly sideline of Hall Road as shown on Federal Valuation Plan V28NH, Map 39;

Said parcel containing a total area of about 29,990 square feet, more or less, or about 0.69 acres, more or less.

Parcel 3

Beginning at a point designated as Engineering Station 2021+70± at the westerly sideline of Massebesic Street as shown on the Federal Valuation Plan V28NH, Map 39;

Thence running generally in a westerly direction and terminating at the easterly sideline of Union Street, a point designated as Engineering Station 2080+80± as shown on Federal Valuation Plan V28NH, Map 41;

Said parcel containing an area of about 301,839 square feet, more or less, or about 6.48 acres, more or less.

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Parcel 4

Beginning at a point designated as Engineering Station 2094+12± as shown on Federal Valuation Plan V28NH, Map 41;

Thence running generally in a northwesterly direction and terminating at the easterly sideline of Elm Street, a point designated as Engineering Station 2104+28± as shown on Federal Valuation Plan V28NH, Map 41;

Said parcel containing an area of about 33,000 square feet, more or less, or about 0.75 acres, more or less

Said parcels include the entire width of said portion of said rail line including all appurtenances thereto and all fixtures attached or affixed thereon. Said right-of-way parcels run in a generally westerly direction and are more particularly defined as shown outlined within heavy dashed two dot lines (—— - - —— - - ——) as shown on federal valuation plans on file with the Chief Engineer of the Boston and Maine Corporation, Iron Horse Park, North Billerica, Massachusetts 01862 and the State of New Hampshire, Department of Transportation, Bureau of Railroads and Public Transportation, Hazen Drive, Concord, New Hampshire, 03302.

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BOSTON AND MAINE CORPORATION

Secretary's Certificate

December 21, 1999

I, John R. Nadolny, being the duly appointed and presently serving Secretary of Boston and Maine Corporation (the "Corporation"), hereby certify that the following votes were unanimously adopted by the directors of the Corporation at a meeting duly noticed and called for such purpose on September 25, 1997:

VOTED: That the Corporation sell, assign, transfer and convey to the State of New Hampshire Department of Transportation a portion of the Corporation's "Portsmouth Branch", so-called, and rail situated in Manchester, New Hampshire between approximate centerline engineering station ("CLE") 1967+70+/- to 1997+50+/- as shown on plans for Federal Valuation Section V28, Map 38, approximate CLE 2007+67 +/- to 2008+26+/-, 2022+89.5 to 2028+25+/-; and 2028+68.5 to 2104+44+/- as shown on said valuation section V28, Map 41 thereof in said Manchester, New Hampshire for a consideration of Nine Hundred Thirty Four Thousand Three Hundred Twelve and 00/100 (\$934,312.00) Dollars.

VOTED: That David A. Fink, Chief Executive Officer of the Corporation, is hereby authorized, empowered and directed, on behalf of and in the name of the Corporation, to execute, seal and deliver such agreements of sale, deeds, certificates and other instruments as he may deem necessary, appropriate or convenient to effect the transactions contemplated by the foregoing vote and that all actions taken in furtherance of said transaction prior to the date hereof are hereby ratified, approved, confirmed and adopted in all respects.

I hereby further certify that the foregoing votes remain in full force and effect as of the date hereof, and that they have not been modified, amended or revoked.

WITNESS my hand and seal of the Corporation this 21st day of December, 1999.

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