

# CITY OF HIGH POINT

## AGENDA ITEM



<b>TITLE:</b> Approval of a License Agreement between the North Carolina Railroad (NCRR) and the City of High Point	
<b>FROM:</b> Greg Venable, Transportation Director	<b>MEETING DATE:</b> June 3, 2024
<b>PUBLIC HEARING:</b> N/A	<b>ADVERTISED DATE/BY:</b> N/A
<b>ATTACHMENTS:</b> License Agreement	

**PURPOSE:** To approve a License agreement between the North Carolina Railroad (NCRR) and the City of High Point.

**BACKGROUND:** The NCRR and the City have had an agreement since April 30, 1998, which provides the City use of the property to maintain the High Point Depot for Amtrak passenger rail service. There is currently a one-year extension in place of the original agreement that expired on April 30, 2023. This License shall continue in effect from the Effective Date until the City's rights are terminated by either party upon three hundred sixty-five (365) days written notice to the other party, except that NCRR may terminate this License immediately upon a determination that the City's activities are an immediate hazard to railroad operations in the rail corridor, or upon breach of this License unless cured within fifteen (15) days of written notification. The City will pay to NCRR an annual fee of three thousand dollars (\$3,000.00), payable annually. The annual fee will increase each year by three percent (3%). The City shall also pay a late payment charge of one percent (1%) or \$25.00 per month, whichever is greater, for each month the payment is late.

**BUDGET IMPACT:** There is a budget impact of \$3000 for the first year that is accounted for in the Transportation Departments FY23/24 budget. The increase of 3% each year will be accounted for in the Transportation Departments future yearly budgets.

**RECOMMENDATION / ACTION REQUESTED:** Staff recommends City Council approve the License Agreement between the NCRR and the City and allow appropriate city staff to sign all necessary documents.



<i>Railroad Use Only</i> NS Activity No.: 1321133 NCRR File No.: n_gu-009.B AC: t0005666
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## LICENSE AGREEMENT

This License Agreement (“License”) is made by and between North Carolina Railroad Company, a North Carolina business corporation (“NCRR”) the City of High Point, a North Carolina municipal corporation (“Licensee”) and is effective as of the date set forth at Section 14 (“Effective Date”). Norfolk Southern Railway Company, the Operating Railroad (as defined below), is a consenting party to this License Agreement as shown on the signature page.

## W I T N E S S E T H:

The parties to this License, for and in consideration of the mutual covenants set forth below, agree as follows:

- 1) Preliminary Matters.
  - a) Operating Railroad as Intended Third-Party Beneficiary. The parties agree that any railroad entity operating on or near the Premises (as defined below) pursuant to a valid agreement with NCRR (an “Operating Railroad”) is an intended third-party beneficiary of this License, including but not limited to any railroad entity identified on the signature page of this License. Any Operating Railroad is entitled to enforce the rights of NCRR under this License and the protections of this License extend not only to NCRR but also to any Operating Railroad and any parents, subsidiaries, affiliates, directors, officers, managers, members, partners, principals, employees and agents of NCRR and any Operating Railroad.
  - b) License Not to Affect Existing Interests. This License does not confer upon Licensee any greater, lesser or other title, interest, or estate in the Premises than it possessed, if any, prior to the entry of this License, and similarly does not confer upon NCRR any greater, less or other title, interest, or estate in the Premises than it possessed, if any, prior to the entry of this License.
- 2) Grant of License. NCRR, insofar as its right, title, and interest enable it so to do, without warranty, hereby grants to Licensee a non-exclusive license to use and occupy the area described in Exhibit A (“Premises”), solely for the purposes described below. NCRR reserves unto itself, its Operating Railroad, and their permittees, the right to construct, maintain or operate on the Premises any existing or future trackage or pipe or electric or telecommunication line or any other facilities of like character. Licensee agrees that its occupation and use of the Premises is subject to any or all such rights and uses and to such rights as others may have to use any road or highway which may be located upon or traverse

the Premises. LICENSEE ACKNOWLEDGES THAT THE PREMISES IS WITHIN AN ACTIVE OPERATING RAILROAD CORRIDOR, AND LICENSEE AGREES THAT NO ENTRY ON THE TRACKS OR STONE BALLAST IS ALLOWED. Licensee agrees to observe and be bound by the rules of NCRR and the Operating Railroad with respect to the rules on clearances.

- 3) Scope of License. Licensee will use the Premises solely for the purpose of accessing, using, occupying, maintaining and repairing the existing brick train depot building and associated utilities; passenger platform and associated fixtures; an outside covered waiting area and associated fixtures; associated pavers, sidewalks, fencing, and ancillary fixtures; landscaping consistent with the Planting Standards Supplement as set forth on Exhibit B attached hereto and for no other purpose. Improvements located on the Premises as of the Effective Date include the existing brick train depot; passenger platform and associated fixtures; outside covered waiting areas and associated fixtures; associated paving, pavers and sidewalks; fencing. Licensee will not change or expand the use or purpose of the Premises, nor change, alter or modify the Premises, including any change in grade, and specifically shall not install additional trees, shrubs, or other plantings except grass, or construct or install upon the Premises any buildings, structures, utilities or improvements, without the prior written consent of NCRR. Licensee shall be solely responsible for obtaining and maintaining all permits and governmental approvals currently required or necessitated by alterations, modifications or improvements to the Premises and Licensee's operations on the Premises. No portion of the Premises may be used by Licensee to satisfy a governmental zoning or other land use requirement.
- 4) Mechanics and Other Liens. Licensee shall keep the Premises free and clear of all mechanic's and materialman's liens and any other liens or claims on account of work done, materials or supplies furnished, or operations conducted, by or to Licensee or persons claiming under or through Licensee. To the extent permitted by applicable law, Licensee hereby indemnifies and holds NCRR harmless from and against any and all liability, loss, damage, costs or expenses, including attorney's fees, on account of claims or liens of laborers or materialmen or others for work performed for, or materials or supplies furnished to Licensee or persons claiming under Licensee in connection with the Premises.
- 5) Taxes and Other Impositions. Beginning on the Commencement Date and continuing during the term of this License, Licensee shall pay, satisfy and discharge as the same becomes due and payable, with penalties and interest levied as applicable, all real estate taxes, ad valorem taxes of any kind, all assessments (ordinary and extraordinary) and any other governmental or public taxes, charges or impositions which shall be imposed, assessed, charged or levied upon the Premises (collectively "Impositions" or singly "Imposition"). Concerning any Imposition, Licensee shall provide NCRR with a receipt showing payment no later than ten (10) days prior to the date on which the Imposition would otherwise become delinquent.
- 6) Utilities. During the term of this License, the Licensee shall pay for all electricity, gas, water, heat, air conditioning, sewerage, janitorial services, garbage disposal and all other

utilities or services of any kind or nature whatsoever relating to the operation, use and/or occupancy of the Premises.

- 7) Licensee is Financially Responsible for Alterations or Improvements. Licensee shall be solely responsible for payment of the costs of any alterations, modifications or improvements to the Premises and Licensee's operations on the Premises and all taxes or assessments thereon. Licensee shall promptly satisfy and discharge any claim, judgment or lien arising from same. Licensee shall, at its expense, maintain the Premises in good condition and repair and in accordance with all applicable requirements of governmental authorities, NCRR and the Operating Railroad.
- 8) Care of Premises During Term of and Upon Expiration of License. In its use and occupancy of the Premises, Licensee shall maintain the Premises in a neat and sanitary condition.

Licensee will comply, at its own expense, with the requirements of all federal, state, and local safety, health, environmental, and sanitation laws, governmental regulations, and ordinances. Without limiting the foregoing, Licensee shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety. Licensee shall not install any underground tanks or associated underground piping for the storage of any product on the Premises without the prior written consent of NCRR. Licensee shall not store or dispose of any wastes of any kind, whether hazardous or not, on the Premises, and Licensee shall not conduct any activity on the Premises which may or does require a hazardous waste treatment, storage, or disposal facility permit for any federal, state, or local agency or regulatory authority.

Upon termination of this License for any reason, Licensee will vacate the Premises and remove all personal property and improvements owned by or placed thereon by Licensee (unless NCRR consents otherwise in advance in writing). Furthermore, Licensee shall restore the Premises, including the subsurface, to the same condition that existed prior to the use and occupation by Licensee or the Effective Date, whichever is earlier. If Licensee fails to remove and/or restore as provided above, NCRR may, at its option, elect: i) to become the owner of any or all personal property and improvements without payment to Licensee, or ii) to remove any or all of such property and improvements and/or restore the Premises at Licensee's sole cost and expense.

- 9) Indemnity and Subrogation. Only in the manner and to the extent provided by North Carolina law, Licensee agrees to defend, indemnify, and hold NCRR and its Operating Railroad harmless from any and all liability (including reasonable attorneys' fees) emanating from Licensee's exercise of its rights under this License, except for any liability attributed to the gross negligence, or intentional acts of NCRR or its Operating Railroad. Furthermore, Licensee hereby waives and releases all rights of recovery which it might otherwise have against NCRR or its Operating Railroad, their agents and employees, for loss or damage to Licensee's improvements, furniture, furnishings, fixtures or other property to the extent that the same are covered by Licensee's insurance, notwithstanding

that such loss or damage may result from the negligence of NCRR or its Operating Railroad. The provisions of this section shall survive the termination of this License.

- 10) Term of License. This License shall continue in effect from the Effective Date until Licensee's rights are terminated by either party upon three hundred sixty-five (365) days written notice to the other party, except that NCRR may terminate this License immediately upon a determination that Licensee's activities are an immediate hazard to railroad operations in the rail corridor, or upon breach of this License unless cured within fifteen (15) days of written notification.
- 11) Limitation on Assignment. This License may not be assigned in whole or in part. No sublicensing of any kind is permitted.
- 12) NCRR's Right of Entry. NCRR reserves for itself, its Operating Railroad, and their permittees the right to enter upon the Premises at any time for inspection, operation, maintenance, reconstruction, repair, or relocation pertaining to railroad purposes.
- 13) Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to NCRR or Licensee, as the case may be, at the address set forth below. The parties agree that in the case of emergency or in the event where registered or certified mail is not feasible, email shall serve as sufficient notice.

**NCRR:**

North Carolina Railroad Company  
2809 Highwoods Blvd.  
Raleigh, North Carolina 27604  
Attn: Real Estate Department  
Email: realestate@ncrr.com

**Licensee:**

The City of High Point  
P.O. Box 230  
High Point, North Carolina 27261  
Attn: Greg Venable  
Email: greg.venable@highpointnc.gov

- 14) Effective Date. The Effective Date of this License is January 1, 2024.
- 15) License Fee. Licensee will pay to NCRR an annual fee of THREE THOUSAND DOLLARS (\$3,000.00), payable annually in advance, beginning as of the Effective Date. The amount of such annual fee shall increase each year by three percent (3%). Licensee shall also pay a late payment charge of one percent (1%) for each month (or portion thereof) the payment is late.
- 16) Insurance. Licensee and any contractor or subcontractor of Licensee shall provide to NCRR and the Operating Railroad annual certificates of insurance documenting the following insurance coverage which is to be maintained during their entire occupancy of the Premises:

(a) Throughout the term of this License, Licensee, at its sole cost and expense, shall keep insured for the mutual benefit of Licensee and NCRR and NCRR's designees as co-insureds, the Premises and all existing improvements now or hereafter located thereon, or appurtenant thereto, against loss or damage by fire and such other risks as are now or hereafter included in extended coverage endorsements, including vandalism, explosion and malicious mischief coverage. The amount of such insurance coverage shall be sufficient to prevent either NCRR or Licensee from becoming a co-insurer under the provisions of the policies, but in no event shall the amount be less than one hundred percent (100%) of the full replacement cost of the Premises and all improvements thereto without deduction for depreciation (hereinafter referred to as the "Full Insurable Value").

Insurance shall be carried by a company licensed to do business in the State of North Carolina subject to NCRR's reasonable approval. NCRR shall not carry any insurance insuring any insurable interest of Licensee in the Premises. If any dispute as to whether the amount of insurance complies with the above cannot be resolved by agreement between NCRR and Licensee, NCRR may, not more often than every two (2) years during the term of this License, request at NCRR's cost, either the carrier of the insurance then in force or a mutually acceptable insurance consultant to determine the Full Insurable Value, and the resulting determination shall be conclusive between the parties for the purpose of this Paragraph.

(b) NCRR and any other party with an interest shall, at Licensee's sole cost and expense, cooperate with Licensee to obtain the largest possible recovery in the event of loss or other casualty. Proceeds from all policies of fire and extended coverage insurance required by this Paragraph shall, in an event of loss or other casualty, be held in trust by the Licensee for the benefit of the parties with an interest. In the event that the Premises is repaired or reconstructed in accordance with the terms and conditions of this License, proceeds shall be disbursed in the same manner as if they were proceeds of a standard construction loan from a reputable institutional lender, and Licensee shall pay all charges and fees in connection therewith. In the event that the Premises is not repaired or reconstructed, then proceeds shall be first paid for the purpose of restoring the land of the Premises, including without limitation, demolition of the damaged Premises, improvements thereto and any other required remedial measures, so as to render the land buildable.

(c) Throughout the term of this License, Licensee, at its sole cost and expense, shall keep or cause to be kept in force, for the mutual benefit of NCRR and Licensee, comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy or condition of the Premises, the improvements located thereon, made or to be made, and adjoining areas or ways providing, at the date hereof, protection of at least Five Million Dollars (\$5,000,000.00) combined single limit coverage for bodily injury or property damage, together with worker's compensation insurance in an amount satisfactory to NCRR, which amounts of insurance coverage may be increased at NCRR's reasonable request from time to time during the term hereof. The amount of such insurance coverage shall not limit the liability of Licensee hereunder.

(d) Licensee may, in lieu of original policies of insurance, deliver to NCRR certificates of insurance policies or endorsements duly authenticated by the issuing company. All insurance policies (except for worker's compensation coverage) shall name as insured or as co-insureds, as the case may be, NCRR, any NCRR designees or Licensee, as their interests may appear. All such policies shall be nonassessable and shall contain language to the effect that (i) any loss shall be payable notwithstanding any act or negligence of NCRR or Licensee that might otherwise result in a forfeiture of the insurance, (ii) the policies are primary and noncontributing with any insurance that may be carried by NCRR, and (iii) the policies cannot be canceled or materially changed except after thirty (30) days notice by the insurance carrier to NCRR or other NCRR designee.

- 17) Miscellaneous. This License contains the complete agreement of the parties regarding the terms and conditions of the License of the Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. Nothing herein shall in any way be construed to impose upon either party hereto any obligations or restrictions not herein expressly set forth. The laws of the State of North Carolina shall govern the validity, interpretation, performance and enforcement of this License. Entry of this License Agreement is not to be construed against either party as a waiver of its existing property rights. Any legal suit, action, or proceeding arising out of or related to this License shall be instituted exclusively in the courts of North Carolina located in Guilford County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

**(Signatures on the following page)**

IN WITNESS WHEREOF, the parties hereto have executed this License:

**NCRR:**

**NORTH CAROLINA RAILROAD COMPANY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE:**

**THE CITY OF HIGH POINT**

By: \_\_\_\_\_

Printed Name: Greg Venable

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONSENTED TO BY:**

**NORFOLK SOUTHERN RAILWAY COMPANY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

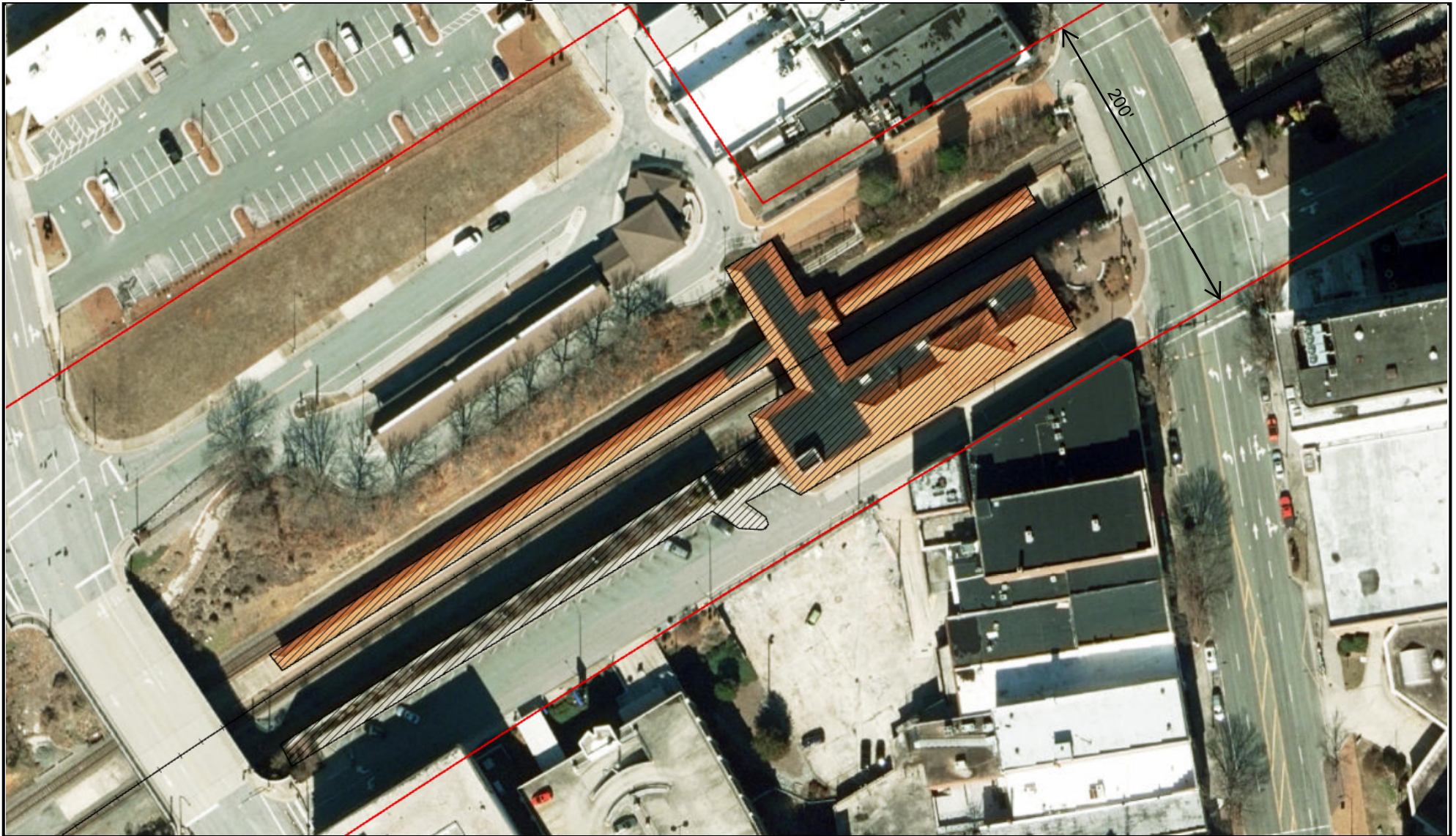
Operating Railroad and Certificates of Insurance

Name: Norfolk Southern Corporation, Subsidiaries and Affiliates  
Address: Attn. Risk Management  
650 West Peachtree Street NW - Box 46  
Atlanta, GA 30308



# EXHIBIT A

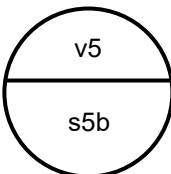
n\_gu-009.B  
High Point, Guilford County, NC



**Area Licensed by North Carolina Railroad to The City of High Point**  
**(+/- 31,276 Sq. Ft.)**

This map has been prepared by the North Carolina Railroad Company (NCRR) principally for its purposes by utilizing information received from various private and governmental sources available to the public, and compiled into its Geographic Information Systems (GIS). As GIS mapping is a representation of information from various sources, it is not intended to be a substitute for a scaled land survey prepared by a registered North Carolina surveyor. The primary sources of the data shown on the map should be consulted for verification and to confirm the fitness thereof for any particular use. This information is not intended for use by third parties without approval by NCRR.

Parcel No. 1



## Exhibit B

### Planting Standards Supplement

Limitations on Plants and Materials. Licensee shall maintain plants on the Premises according to the following procedures, using the following materials:

- 1) There shall be no plantings of any nature except grass within the portion of the Premises that is located at any public or private road crossing within fifty (50) feet measured perpendicular in either direction of the centerline of the closest track and three hundred (300) feet measured parallel of the track in either direction of the closest edge of the roadway, and then tapering from that 50/300 foot point in each quadrant to a point that is twenty-seven (27) feet measured perpendicular from the center line of the closest track and five hundred (500) feet measured parallel to the closest edge of the roadway.
- 2) Subject to item 1) above, no planting material, excluding grass, or any type or kind of structure shall be placed [1] within fourteen (14) feet on each side of the center line of a NCRRT main track or [2] within twelve (12) feet on each side of the center line of a NCRRT track that is not a main track. Grass may be placed up to the ballast section but in no case shall it be placed closer than four (4) feet to the field side (outside) of the closest rail. If the Licensee shall perform any work between four (4) feet to the field side (outside) of the closest rail and [1] fourteen (14) feet on each side of the center line of a NCRRT main track or [2] twelve (12) feet on each side of the center line of a NCRRT track that is not a main track, then such Licensee shall be required to station a watchperson to warn any landscape maintainer of an on-coming train. However, any work within four (4) feet to the field side (outside) of the closest rail is prohibited.
- 3) Trees shall be planted or permitted to grow on the Premises only with NCRRT's prior written approval of a landscaping plan showing the location and types of trees to be planted and maintained.
- 4) All plant material shall be maintained, cut and trimmed in a safe and orderly manner, and at no time shall the plant material obstruct the view of [1] pedestrians or motorists of oncoming trains, or [2] train crews of pedestrians or motorists at roadway crossings.
- 5) Shrubbery shall not exceed thirty-six (36) inches in height.
- 6) At all times, Licensee shall keep the Premises free of waste and debris.
- 7) At all times, Licensee shall maintain grass and other vegetation except as prohibited herein and in the manner set forth herein.
- 8) At no time, shall Licensee damage, interfere or alter NCRRT's drainage facilities. If installation of drainage facilities is necessary in connection with the Licensee's permitted activities, such facilities must be approved in writing by the NCRRT in advance. As a

minimum design standard, all drainage must be constructed and maintained so as to cause surface water to drain away from NCRR's railroad facilities.

- 9) At all times, Licensee shall conduct and maintain its permitted activities on the Premises in compliance with Federal, State and local laws and regulations.