



## RESOLUTION

**AUTHORIZING THE ACQUISITION OF APPROXIMATELY 46.52 ACRES OF LAND AND IMPROVEMENTS THEREON AT 35 GROTON ROAD FOR THE PURCHASE PRICE OF FIFTEEN THOUSAND FORTY-EIGHT DOLLARS (\$15,048) PER ACRE; AUTHORIZING THE ACQUISITION OF A TRAIL EASEMENT APPROXIMATELY 180 FEET IN LENGTH ALONG THE NORTHERLY SIDE OF GROTON ROAD FOR THE PURPOSE OF A BICYCLE/PEDESTRIAN TRAIL; AUTHORIZING THE CONVEYANCE OF A CONSERVATION EASEMENT UPON CERTAIN LANDS OWNED OR TO BE OWNED BY THE CITY ON SAID 46.52 ACRES TO THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS; AND AUTHORIZING THE PAYMENT OF TEN THOUSAND DOLLARS (\$10,000) TO THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS FOR A STEWARDSHIP ENDOWMENT FOR MAINTAINING THE CONSERVATION EASEMENT**

### *CITY OF NASHUA*

*In the Year Two Thousand and Ten*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into the attached Purchase and Sale Agreement with Albert W. Terrell, individually and in his capacity as Trustee of the Albert W. Terrell Revocable Trust, owner of property located along Groton Road, Nashua, New Hampshire and consisting of approximately 46.52 acres. The purchase price of said land shall be Fifteen Thousand Forty-eight Dollars (\$15,048) per acre and pro-rated for any portion of an acre to be conveyed.

**FURTHER RESOLVED** that the Mayor is authorized to purchase a trail easement of approximately 180 feet in length along the northerly side of Groton Road for the purpose of constructing and maintaining a pedestrian walkway and bicycle path. The cost of said easement shall be One Dollar (\$1.00).

**FURTHER RESOLVED** that the Mayor is authorized to enter into a conservation easement deed with the Society for the Protection of New Hampshire Forests in substantially the form of the attached conservation easement deed, conveying to that agency a conservation easement on certain parcels of land owned or to be owned by the City of Nashua consisting of approximately 46.52 acres along Groton Road, Nashua, New Hampshire and shown in Appendix A of the proposed Conservation Easement Deed. A stewardship endowment (fee) of Ten Thousand dollars (\$10,000) to the Society for the Protection of New Hampshire Forests for the cost of monitoring and legal enforcement of the terms of the conservation easement is authorized. The funding source for the purchase of the property, easement and stewardship endowment will be Account #372-7007 "Conservation Fund".

## LEGISLATIVE YEAR 2010

### RESOLUTION:

R-10-42

### PURPOSE:

Authorizing the acquisition of approximately 46.52 acres of land and improvements thereon at 35 Groton Road for the purchase price of Fifteen Thousand Forty-eight Dollars (\$15,048) per acre; authorizing the acquisition of a trail easement approximately 180 feet in length along the northerly side of Groton Road for the purpose of a bicycle/pedestrian trail; authorizing the conveyance of a conservation easement upon certain lands owned or to be owned by the City on said 46.52 acres to the Society for the Protection of New Hampshire Forests; and authorizing the payment of Ten Thousand Dollars (\$10,000) to the Society for the Protection of New Hampshire Forests for a stewardship endowment for maintaining the conservation easement

### ENDORSER(S):

Alderman-at-Large Brian S. McCarthy  
Alderman Kathryn D. Vitale  
Alderman Arthur T. Craffey, Jr.  
Alderman Michael J. Tabacsko

### COMMITTEE ASSIGNMENT:

### FISCAL NOTE:

Fiscal impact is the purchase price of approximately \$700,000 (46 +/- acres x \$15,048) and the \$10,000 stewardship endowment. Sufficient funds are available in the Conservation Fund (Account #372-7007). Current balance of the Conservation Fund is \$3,013,661.49.

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## ANALYSIS

This resolution would authorize the City to acquire approximately 46.52 acres of land along Groton Road and a trail easement for the sum of approximately \$700,000 (\$15,048 per acre) on the terms and conditions of the attached Purchase and Sale Agreement. Funds for the purchase will come from Conservation Fund Account #372-7007.

This resolution also authorizes the Mayor to convey a conservation easement upon certain lands owned or to be owned by the City to the Society for the Protection of New Hampshire Forests and to pay to the Society for the Protection of New Hampshire Forests a stewardship endowment of \$10,000 for monitoring and enforcing the terms of the conservation easement. A copy of a proposed Conservation Easement Deed is attached.

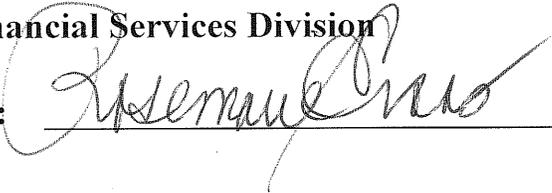
Charter § 77 provides that the planning board shall review and make recommendations to the Mayor and Board of Aldermen on the purchase and sale of any land by the City.

NRO § 5-118 provides that monies in the Conservation Fund may be expended by the Conservation Commission in accordance with applicable law and ordinances, subject to the approval of the Board of Aldermen. NRO § 12-2 provides that the Conservation Commission has the power to accept on behalf of the City conservation easements, but all other acquisitions shall be authorized by resolution passed by the Mayor and Board of Aldermen.

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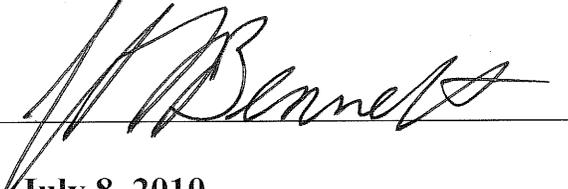
Approved as to account  
structure, numbers,  
and amount:

Financial Services Division

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

Approved as to form:

Office of Corporation Counsel

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

Date: July 8, 2010

THIS IS A NON-CONTRACTUAL  
CONVEYANCE PURSUANT TO  
NEW HAMPSHIRE RSA 78-B:2  
AND IS EXEMPT FROM THE  
NEW HAMPSHIRE REAL  
ESTATE TRANSFER TAX.

### CONSERVATION EASEMENT DEED

**THE CITY OF NASHUA**, a municipal corporation, with a principal place of business at P.O. Box 2019, 229 Main Street, Nashua, County of Hillsborough, State of New Hampshire, 03061 (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with Quitclaim covenants, grants in perpetuity to

the **SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire, 03301-5400, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") being unimproved land, consisting of approximately 46 acres, situated on Groton Road in the City of Nashua, County of Hillsborough, State of New Hampshire, shown on a plan entitled ", " by , last revised , recorded at \_\_\_\_\_ at the \_\_\_\_\_ County Registry of Deeds (hereafter "Plan"), more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

#### 1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the "Purposes") for the public benefit:

- A. The protection of the Property for outdoor recreation by and/or the education of the general public;
- B. To protect and preserve the natural features of the site, including the plants, animals and other wildlife, water (surface and groundwater resources), animal habitat areas, topography and wetlands to enhance the ecological diversity of the species in their natural ecosystem;
- C. To protect the scenic attributes for future generations to enjoy by practicing sound natural resources management principles;
- D. To provide open spaces areas within the city which encourage the general public to experience the natural community and instill an appreciation for the natural environment;
- E. To protect the undeveloped frontage along Groton Road, and still provide access;
- F. To respect the wishes of the family to preserve this land in its natural state for future generations to enjoy as public open space in loving memory of seven generations of land holdings on the Terrell Farm;
- G. The protection and conservation of open spaces, particularly the conservation of the productive farm and forest land of which the Property consists and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products; and,
- H. To provide connectivity with other open space areas, enhancing wildlife movements and preservation of unfragmented blocks of land.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2000 Master Plan of the City of Nashua, which states " \_\_\_\_\_ " and with New Hampshire RSA Chapter 79-A:1 "Declaration of Public Interest," which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

And consistent with the aforesaid Wildlife Action Plan, approved by the U.S. Fish and Wildlife Service in 2006, whose "Strategy 700, Land Protection" states [select from the following as appropriate]: "Highly threatened and essential habitat resources should be priorities, such as riparian/shoreland habitat, larger unfragmented blocks, and wildlife corridors that connect significant habitat," "701 Objective: Protect riparian/shoreland habitat and other wildlife corridors," and "702 Objective: Protect unfragmented blocks and other key wildlife habitats."]

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the reserved rights specified in Section 3 below)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

- A. The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, non-motorized, non-wheeled, pedestrian non-commercial, outdoor recreational and outdoor educational purposes, such as but not limited to hiking, wildlife observation, cross-country skiing, fishing, but not for camping or hunting. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantor reserves the right to post the Property against public access to agricultural cropland during the planting and growing season, to lands while being grazed by livestock, and to forestland during harvesting or other forest management activities.
- B. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a road, trail, dam, fence, utility line, bridge, culvert, barn, maple sugar house, farmstand, or shed; and ii) not detrimental to the Purposes of this Easement. The Grantor shall provide the Grantee with 45 days written notice prior to any construction of a permitted structure with a footprint exceeding 2,000 square feet.
- C. Notwithstanding section 2. B. above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: school, landfill, transfer station, cell tower, municipal office, fire station, police station, cemetery, dwelling, mobile home, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.
- D. There shall not be conducted on the Property any industrial or commercial activities, except agriculture and forestry (including timber harvesting) as described below and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.
  - i. For the purposes of this Easement, "forestry" shall include: the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other accessways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property (such as firewood and maple syrup).

For the purposes of this Easement, "agriculture" shall include: animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing of food crops; the construction of roads or other accessways for the purpose of removing agricultural products from the Property; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables).

- ii. Any agriculture for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with a written coordinated management plan for the sites and soils of the Property. Said agriculture shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of the Property as viewed from [public waterways, great ponds, public roads, or public trails]. Said agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by the University of New Hampshire's Cooperative Extension Service, by the U.S. Department of Agriculture's Natural Resources Conservation Service, by the New Hampshire Department of Agriculture, Markets, and Food, including but not limited to recommended practices in said NH Department's "Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire" as may be revised, updated, or superseded from time to time, or by other successor governmental natural resource conservation and management agencies then active.
- iii. Any forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the Purposes of this Easement.
  - a. The goals are:
    - maintenance of soil productivity;
    - protection of water quality, wetlands, and riparian zones;
    - maintenance or improvement of the overall quality of forest products;
    - conservation of scenic quality;
    - protection of unique or fragile natural areas;
    - protection of unique historic and cultural features; and
    - conservation of native plant and animal species.
  - b. Any forestry for industrial or commercial purposes shall be performed in accordance with a written forest management plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee. Said plan shall have been prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.
  - c. At least thirty (30) days prior to harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. Upon request by the Grantee, the Grantor shall submit the plan itself to Grantee within ten (10) days of such request, with Grantee's acknowledgment that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.

- d. The plan shall include:
- A statement of landowner objectives;
  - Forest type map showing stands related to the prescriptions provided in the plan;
  - A map showing soil types as determined by the U.S. Natural Resources Conservation Service, access roads, wetlands, and surface waters;
  - Prescriptions for each described stand, including commercial and non-commercial treatments; and
  - Explanation of how wetlands, riparian areas, vernal pools, and soils will be protected in association with road construction, other soil disturbing activities, and the implementation of stand prescriptions;
- and shall specifically address:
- the accomplishment of those Purposes for which this easement is granted;
  - the goals in Section 2.A.iii.a above.
- e. Timber harvesting with respect to such forestry shall be conducted in accordance with said plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- f. Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” (J.B. Cullen, 1996), and “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 1997), or similar successor publications.
- g. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in “A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners” (Geoffrey Jones, 1993) or similar successor publications.
- E. The Property shall not be subdivided except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- F. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
- i. are commonly necessary in the accomplishment of the agricultural, forestry,

conservation, habitat management, or noncommercial outdoor recreational uses of the Property; and

- ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau, the New Hampshire Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
- iii. are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, the Grantor shall secure all necessary federal, state, local, and other governmental permits at Grantor's sole cost and expense.

- G. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.
- H. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to and consistent with the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- I. There shall be no dumping, disposal, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous.
- J. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.

### 3. RESERVED RIGHTS

- A. The right to install, maintain, repair, and improve gates, barriers, signs and fences necessary to guide public access on the Property.
- B. The right to install, maintain, repair, and improve a trail system on the Property provided such trails are not detrimental to the Purposes of this Easement.
- C. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights unless unforeseen circumstances arise such that any delay in undertaking such installation, maintenance, repair, or improvement will pose an imminent threat to the Property or persons thereon. Under such circumstances, the Grantor shall notify Grantee by any reasonable means available of the actions taken or to be taken by Grantor.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing at least 10 days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS AND BURDENS

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

6. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed 24 square inches in size, along the Property's boundaries.

7. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the

Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.
- D. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

#### 8. BREACH OF EASEMENT – GRANTEE'S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the

Grantor's name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, "Breach of Easement..." without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section, "Breach of Easement..." apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement..." both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement..." shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in an enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court shall require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.

- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement..." against any third party responsible for any actions inconsistent with the provisions of this Easement.

9. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service providing a receipt for delivery, to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

10. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

11. CONDEMNATION/EXTINGUISHMENT

- A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of exercise of eminent domain, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The Grantor shall use the balance of the land damages recovered from such taking or lawful sale in lieu of exercise of eminent domain in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

12. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, the City of Nashua by its duly authorized officer has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

City of Nashua

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Mayor **Donnalee Lozeau**

State of New Hampshire  
County of Hillsborough

This instrument was acknowledged before me on \_\_\_\_\_ by Donnalee Lozeau as Mayor of the City of Nashua.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public

My commission expires: \_\_\_\_\_

ACCEPTED: SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

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

Title: \_\_\_\_\_  
Duly Authorized

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

The State of New Hampshire

County of \_\_\_\_\_

Personally appeared \_\_\_\_\_  
Print Name & Title

of the Society for the Protection of New Hampshire Forests, this \_\_\_\_\_ day of

\_\_\_\_\_, 20 \_\_, and acknowledged the foregoing on behalf of the

Society for the Protection of New Hampshire Forests.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public

My commission expires: \_\_\_\_\_

## APPENDIX A

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated on Road, so-called, in the Town of , County of , State of New Hampshire, consisting of approximately acres, shown on a plan entitled ", " by , last revised , recorded at \_\_\_\_\_ at the \_\_\_\_\_ County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows:

Beginning at \_\_\_\_\_ on the \_\_\_\_\_ side of Road, at the \_\_\_\_\_ corner of the Property, at land now or formerly of \_\_\_\_\_ ;

Thence proceeding a distance of \_\_\_\_\_ feet, more or less, along said \_\_\_\_\_ land to \_\_\_\_\_ at land now or formerly of \_\_\_\_\_ ;

Thence proceeding xxx a distance of xxx feet, more or less, along said xxx land to a \_\_\_\_\_ at land now or formerly of \_\_\_\_\_ ;

Thence the following courses and distances along said xxxxx land:

Thence xxx feet along the arc of a curve to the left/right having a radius of xxx feet to a \_\_\_\_\_ ;

to (point), which is on a tie course of (bearing) xxx feet from (point)

### **EXCEPTING AND RESERVING THEREFROM**

### **SUBJECT TO**

### **TOGETHER WITH**

**MEANING AND INTENDING** to describe all and the same/a portion of the premises conveyed by Deed from \_\_\_\_\_, to \_\_\_\_\_, dated \_\_\_\_\_, recorded at said Registry at Book, Page \_\_\_\_\_.

[Not homestead property of the Grantor.]

## PURCHASE AND SALE AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, between the Seller, **ALBERT W. TERRELL** individually and in his capacity as Trustee of the Albert W. Terrell Revocable Trust, of 35 Groton Road, City of Nashua, County of Hillsborough, State of New Hampshire, and the Buyer, **CITY OF NASHUA**, a municipal corporation with a principal place of business at 229 Main Street, City of Nashua, County of Hillsborough, State of New Hampshire 03061.

### WITNESSETH:

1) The Seller agrees to sell and convey, and the Buyer agrees to purchase certain real estate ("Property") located in Nashua, New Hampshire and described as a portion of City of Nashua Tax Map and Lot #D-00023, and more particularly described as a portion of Property in the deed recorded in the Hillsborough County Registry of Deeds at Book 7617, Page 2546, a copy of which recorded deed is attached hereto and made a part hereof as Attachment A, and as a portion of "LOT 23 / SHT.D 71.84 Acres" on a survey plan entitled "Consolidation & Subdivision Plan Groton Road, Nashua, N.H." recorded as Plan No. 14373 in the Hillsborough County Registry of Deeds on September 18, 1981. The portion of Tax Map and Lot #D-00023 to be subdivided and conveyed is sketched on said plan, a copy of which is attached hereto and made a part hereof as Attachment B, and to be shown on a recorded subdivision plan prepared in accordance with Section 17 b) below. The portion of Tax Map and Lot #D-00023 to be subdivided and conveyed as shown on Attachment B is approximately 46.52 acres, final acreage to be conveyed will be determined by the survey and subdivision plan commissioned for the purpose of effectuating this Agreement.

The seller also agrees to sell and convey, and the buyer agrees to purchase, a perpetual right and easement to construct, maintain, repair, and replace a pedestrian and bicycle trail, together with the right in common with others to pass and re-pass by foot and non-motorized bicycles, over the easement area. The purpose of this easement is to provide a pedestrian and bicycle trail. Said easement will be approximately twenty (20) feet wide, and follow approximately one-hundred and eighty (180) feet, terminating at the approximate eastern boundary of a small wetland, along the northerly side of Groton Road and along the southernmost boundary of the portion of Tax Map and Lot #D-00023 to be retained by the Grantor. Said easement is to be shown on a recorded subdivision plan prepared in accordance with Section 17 b) below.

2) **Purchase price.** The purchase price is Fifteen Thousand and Forty-Eight Dollars (\$15,048.00) per acre and prorated for any portion of an acre to be conveyed. Final acreage will be determined and shown on the subdivision plan prepared in accordance with Section 17 b) below.

The purchase price for said pedestrian and bicycle trail easement is one dollar (\$1.00).

Deposit, receipt of which is hereby acknowledged, in the sum of zero dollars (\$0.00).

The balance of the purchase price is to be paid to Seller on date of transfer of title in the form of a corporate check.

3) **Deed.** Marketable title shall be conveyed by warranty deed to the Buyer, free and clear of all encumbrances not specifically excepted in this Agreement. Said deed shall describe the property by the applicable metes and bounds as shown on the surveyed plan commissioned by the Buyer and Seller for the purpose of effectuating this Agreement and to be recorded with said deed. The Seller shall be solely responsible for the cost of preparing and delivering the warranty deed.

4) **Title.** If Buyer desires an examination of title, Buyer shall pay the cost thereof. Buyer shall have ninety (90) days to conduct the examination of title from the effective date of this Agreement. If the Buyer finds defect(s) in the title to any of the lands which together make up the Property to which it objects, it shall so notify the Seller in writing specifying the defect(s) to which the Buyer objects. Upon receipt of such notification the Seller shall within sixty (60) days thereafter remove said defect(s) to the extent practicable. If Buyer determines that the title is found not to be marketable or not clear of record or not insurable or the Seller is unable to remove the defect(s) to which the Buyer objects within said period, this Agreement may be rescinded at the option of Buyer and deposit shall be refunded to Buyer or Buyer may elect to accept such title as Seller can convey without diminution in the selling price.

5) **Hazardous Materials.**

a) Seller warrants that during the period that Seller has owned, and will own, the Property it was not, and will not be, used for the storage, generation or disposal of hazardous waste or hazardous materials as those terms are defined under applicable federal, state and local statutes, ordinances and regulations and that, to the best of Seller's knowledge, said Property was not used for any such purposes prior to the time Seller acquired title thereto. Seller further warrants that Seller has found no evidence of hazardous waste or hazardous material on or affecting said land. These warranties shall survive the closing of the transaction contemplated by this Agreement.

b) If Buyer performs an environmental assessment and finds said Property contains hazardous waste or hazardous materials to which Buyer objects, Buyer may then rescind this Agreement and receive return of Buyer's deposit(s) by so notifying Seller no later than December 1, 2010, or else Buyer shall be deemed to have waived such objections. If such assessment is performed, Buyer agrees that qualified experts will be engaged, that Buyer shall exercise said right to rescind, if at all, promptly following receipt of the assessment report but not later than the above-specified date and will therewith provide Seller with a copy of said report.

6) **Notices.** Any notice, request, instruction or other document given or required to be given pursuant to this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, to the address of the recipient party set forth at the beginning of this Agreement.

7) **Transfer of Title.** On November 10, 2010, at 2:00 p.m., at the Nashua City Hall in Nashua, New Hampshire, unless another time and place shall be agreed upon in writing by Seller and Buyer.

8) **Prorations.** Taxes and special assessments shall be prorated as of date title is transferred to Buyer.

9) **Possession.** Possession of the Property in the same condition as of the date of this Agreement is to be given upon transfer of title, free of all tenants, personal property and encumbrances not specifically excepted in this Agreement.

10) **Broker.** The parties hereto agree that no real estate broker or representative thereof brought about this sale as agent of either Seller or Buyer. However, Seller agrees that Seller is solely responsible for payment of any Broker's commission and disbursements by reason of this Agreement or the sale and purchase contemplated hereby.

11) **Interpleader Provisions.** In the event of any dispute relative to the deposit monies held in escrow, the Escrow Agent may, in its sole discretion, pay said deposit monies to the Clerk of the Court of proper jurisdiction in an Action of Interpleader, providing each party with notices thereof; and thereupon the Escrow Agent shall be discharged from its obligations as recited herein and each party to this Agreement shall thereafter hold the Escrow Agent harmless in such capacity. Both parties hereto agree that the Escrow Agent may deduct the cost of bringing such Interpleader action from the deposit monies held in escrow prior to the forwarding of same to the Clerk of said Court.

12) **Effective Date.** This is a binding contract and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated, by Seller and Buyer. This Agreement, except as otherwise provided herein, shall be binding upon and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns.

13) **Liquidated Damages.** If Buyer shall default in the performance of Buyer's obligations under this Agreement, the amount of the deposit(s) shall become the property of the Seller as reasonable liquidated damages in full discharge and satisfaction of Buyer's obligations hereunder.

14) **Prior Statements.** All representations, statements, and agreements heretofore made between the parties are merged in this Agreement, which alone fully and completely expresses their respective obligations. This Agreement is entered into by each party after opportunity for investigation, neither party relying on any statements or representations not embodied in this Agreement, made by the other or on the other's behalf.

15) **Governing Law.** This Agreement shall be construed by and in accordance with the laws of the State of New Hampshire, excluding its choice of law rules or rulings.

16) **Additional Provisions.**

a) Upon notice to Seller, Buyer, its agents and employees, may enter the Property for purposes of making measurements, surveys and environmental assessments, fundraising activities and generally examining the premises at Buyer's sole risk and expense.

b) The Property is subject to current use taxation under the provisions of RSA 79-A, as amended.

c) The Seller shall be responsible for the payment of any Land Use Change Tax that may be incurred in connection with this conveyance.

17) **Contingencies.**

a) This Agreement is contingent upon Seller obtaining final unappealable approval for the purchase of the Property.

b) This agreement is also contingent upon the Buyer obtaining final and unappealable approval for the expenditure of funds from the Conservation fund by the Buyer's Conservation Commission, and the full Board of Alderman. If Buyer is unable to obtain said approvals and so notifies Seller in writing on or before December 1, 2010, time being of the essence with respect thereto, this Agreement shall thereupon become null and void and Buyer's deposits shall be returned in full by Escrow Agent, after which neither Seller nor Buyer shall have any further obligations to the other under this Agreement. In the event Buyer has not notified Seller in writing of Buyer's inability to obtain said approvals by the above-specified date, this contingency shall lapse.

c) The cost of obtaining subdivision approval, including the costs of surveys and plans, shall be divided equally between the Buyer and the Seller. This Agreement is also contingent upon Buyer and Seller obtaining final unappealable subdivision approval from the City of Nashua, failing which Buyer's deposit shall be refunded in full by the escrow agent, after which neither Seller nor Buyer shall have further obligations to the other under this agreement.

d) Seller shall neither cut nor remove forest products, nor extract or remove sand, gravel, or other natural resources from the Property after the date of this Agreement.

e) This Agreement will be null and void if not signed by both the Seller and Buyer within forty-five (45) days following the date and year first written or failing to which the Buyer's deposit shall be refunded in full by the escrow agent, and thereafter which neither Seller nor Buyer shall have any further obligations to the other under this Agreement.

WITNESS the signatures of the above parties as of the day and year first above written.

ALBERT W. TERRELL, Individually and as  
Trustee of the Albert W. Terrell Revocable  
Trust

Date: \_\_\_\_\_, 2010

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

\_\_\_\_\_  
Witness

Its \_\_\_\_\_  
Duly authorized

CITY OF NASHUA, Buyer

Date: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Donnalee Lozeau

\_\_\_\_\_  
Witness

Its Mayor \_\_\_\_\_  
Duly authorized

6004338  
**ATTACHMENT A**

2006 JAN 19 PM 3: 16

10-23

650  
O'Neil  
17 40  
2  
16 TS

<b>STATE OF NEW HAMPSHIRE</b>	
DEPARTMENT OF REVENUE ADMINISTRATION	REAL ESTATE TRANSFER TAX
***** THOUSAND * HUNDRED AND 40 DOLLARS	
MO. DAY YEAR	750179 \$ *****40.00
01/19/2006	
VOID IF ALTERED	

**WARRANTY DEED**

I, Albert W. Terrell, an unmarried widower, of 35 Groton Road, in Nashua, County of Hillsborough, and State of New Hampshire, for consideration paid, grant to said Albert W. Terrell, Trustee of The Albert W. Terrell Revocable Trust of January 18, 2006, of 35 Groton Road, in Nashua, County of Hillsborough, and State of New Hampshire, with WARRANTY COVENANTS, the following:

A certain tract or parcel of land situated in Nashua, in the County of Hillsborough, and State of New Hampshire, and bounded and described as follows:

Beginning at a point in the north line of Groton Road, said point being the southeast corner of the herein described premises; thence running

- (1) North 1° 23' 59" East along lot 336 on the plan hereinafter referred to a distance of 285.21 feet to a point; thence
- (2) South 84° 32' 29" East along said lot 336 a distance of 185.00 feet to a point; thence
- (3) North 0° 20' 35" East along said lot 336 a distance of 2368.32 feet to a point; thence
- (4) North 9° 02' 32" West along lot 336 a distance of 1462.94 feet to a point at land now or formerly of Pitarys; thence
- (5) South 53° 11' 49" West along land of Pitarys a distance of 805.60 feet to a point; thence
- (6) South 2° 45' 56" West along land of Seppala and Aho a distance of 654.90 feet to a point; thence
- (7) South 88° 13' 54" East along land of Seppala and Aho a distance of 468.61 feet to a point; thence
- (8) South 9° 51' 06" West along land of Seppala and Aho a distance of 490.66 feet to a point; thence
- (9) South 66° 52' 36" West along land of Seppala and Aho a distance of 490.66 feet to a point; thence
- (10) South 16° 33' 12" East along land of Seppala and Aho a distance of 447.77 feet to a point; thence
- (11) South 6° 43' 18" West along land of Seppala and Aho a distance of 359.24 feet to a point at the end of a stonewall; thence

BK 7617PG2546

(12) South 9° 23' 48" West along a stonewall and land of Seppala and Aho a distance of 107.49 feet to a point; thence

(13) South 4° 56' 12" East along a stonewall and land now or formerly of Seppala and Aho a distance of 280.54 feet to a stone bound; thence

(14) North 87° 29' 02" West along land of Seppala and Aho a distance of 593.94 to a stone bound; thence

(15) South 4° 08' 22" East along land of Seppala and Aho a distance of 426.41 feet to a point in the north line of Groton Road; thence

(16) South 80° 16' 52" East along the north line of Groton Road a distance of 187.21 feet to a point of curve; thence

(17) Along the north line of Groton Road by a curve to the right having a radius of 1432.40 feet a distance of 558.36 feet to a point of tangent; thence

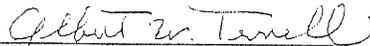
(18) South 57° 56' 33" East along the north line of Groton Road a distance of 468.21 feet to a point of curve; and thence

(19) Along the north line of Groton Road by a curve to the left having a radius of 1909.86 feet a distance of 182.01 feet to the point of beginning.

Containing 71.84 acres, more or less, and being lot 23 as shown on a plan entitled "Consolidation and Subdivision Plan Groton Road, Nashua, N.H.," prepared for J. Edward Terrell and Albert W. Terrell, made by A. E. Maynard, dated September 4, 1981 and recorded in the Hillsborough County Registry of Deeds as plan #14373.

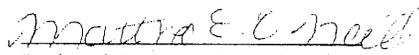
Meaning and intending to describe and to convey the same premises conveyed to the Grantor and Fernande R. Terrell as joint tenants with rights of survivorship by deed of the Grantor and J. Edward Terrell, dated October 21, 1981 and recorded in the Hillsborough County Registry of Deeds at Book 2880, Page 248. Said Fernande R. Terrell died on September 23, 2005. See Hillsborough County Probate Court Docket Number 2005-2029.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2006.

  
Albert W. Terrell

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

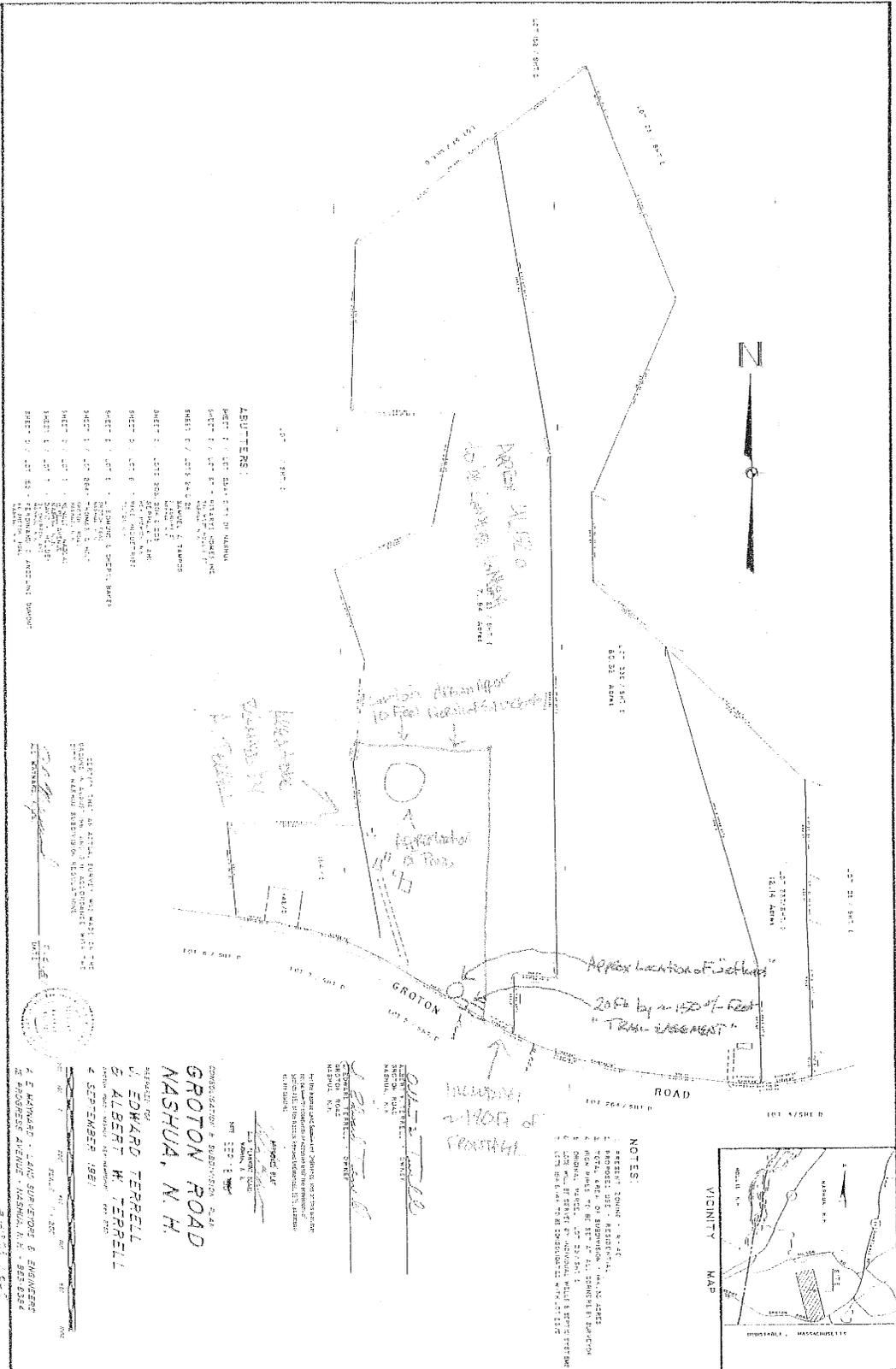
The foregoing instrument was acknowledged before me on this 18th day of <sup>January</sup> 2006 by Albert W. Terrell.

  
Justice of the Peace/Notary Public.  
My Commission expires:

MARTHA E. O'NEILL  
Justice of the Peace  
My Commission Expires: 10/9/07

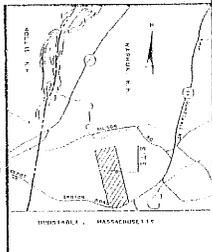
BK 7617 PG 2547

# ATTACHMENT B



**SUBMITTERS:**

- SHEET 1 / LOT 224 - CITY OF NASHUA
- SHEET 2 / LOT 225 - CITY OF NASHUA
- SHEET 3 / LOT 226 - CITY OF NASHUA
- SHEET 4 / LOT 227 - CITY OF NASHUA
- SHEET 5 / LOT 228 - CITY OF NASHUA
- SHEET 6 / LOT 229 - CITY OF NASHUA
- SHEET 7 / LOT 230 - CITY OF NASHUA
- SHEET 8 / LOT 231 - CITY OF NASHUA
- SHEET 9 / LOT 232 - CITY OF NASHUA
- SHEET 10 / LOT 233 - CITY OF NASHUA



- NOTES:**
1. PROPERTY OWNERS: CITY OF NASHUA
  2. PROJECT: GROTON ROAD, NASHUA, N.H.
  3. DESIGN: LAND SURVEYOR & ENGINEERS
  4. SCALE: AS SHOWN
  5. DATE: SEPTEMBER 1981

*Edward Terrell*  
 EDWARD TERRELL, SURVEYOR  
 NASHUA, N.H.

**CONSTRUCTION & SUBDIVISION**  
**GROTON ROAD**  
**NASHUA, N.H.**

DESIGNED BY  
**EDWARD TERRELL**  
**ALBERT W. TERRELL**  
 4 SEPTEMBER 1981

LAND SURVEYOR & ENGINEERS  
 12 BROADWAY AVENUE - NASHUA, N.H. 03084



