



RESOLUTION

AUTHORIZING THE CONVEYANCE OF AN AVIGATION EASEMENT DEED OVER CITY-OWNED PROPERTY LOCATED ON CHARRON AVENUE IDENTIFIED AS TAX MAP E, LOT 2137 TO THE NASHUA AIRPORT AUTHORITY FOR THREE THOUSAND DOLLARS (\$3,000.00)

CITY OF NASHUA

In the Year Two Thousand and Eleven

RESOLVED by the Board of Aldermen of the City of Nashua to authorize the Mayor to enter into a Purchase and Sale Agreement and execute any other documents necessary to convey to the Nashua Airport Authority an Avigation Easement Deed over city-owned property located on Charron Avenue and identified as Tax Map E, Lot 2137. The consideration for said easement shall be Three Thousand Dollars (\$3,000.00). The language of the Purchase and Sale Agreement and the Avigation Easement Deed shall be the same or similar to the language of the Purchase and Sale Agreement and Avigation Easement Deed attached hereto.

LEGISLATIVE YEAR 2011

RESOLUTION: R-11-146

PURPOSE: Authorizing the conveyance of an Avigation Easement Deed over City-owned property located on Charron Avenue identified as Tax Map E, Lot 2137 to the Nashua Airport Authority for three thousand dollars (\$3,000.00)

ENDORSERS: Mayor Donnalee Lozeau

**COMMITTEE
ASSIGNMENT:**

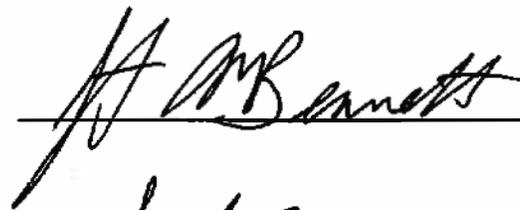
FISCAL NOTE: The Nashua Airport Authority will pay \$3,000.00 to the City of Nashua.

ANALYSIS

This resolution authorizes the mayor to convey to the Nashua Airport Authority an avigation easement over undeveloped city owned property located on Charron Avenue on the terms and conditions of the attached Purchase and Sale Agreement. The Nashua Airport Authority will pay the city \$3,000.00 for the easement.

The avigation easement limits the height of natural and man-made obstructions in the easement area. The cost of maintaining the easement area will be borne by the airport authority. A copy of the proposal easement is attached. The avigation easement is required by the FAA prior to expansion of the airport runway to ensure that there are no obstacles, now or in the future, that endanger airplanes or the public.

Approved as to form: Office of Corporation Counsel

By: 

Date: Sept. 7, 2011

PURCHASE AND SALE AGREEMENT

This Agreement ("Agreement") is entered into as of the ___ day of _____ 2011, by and between **City of Nashua**, a duly and lawfully constituted New Hampshire municipal corporation, with an address of P.O.Box 2019, 229 Main Street, Nashua, New Hampshire 03061 ("Seller") and **Nashua Airport Authority**, a body corporate and politic, established pursuant to Laws of 1961, Chapter 343 , having a principal office at 93 Perimeter Road, Nashua, New Hampshire 03063 ("Buyer").

1. **Sale and Purchase of Avigation Easement Affecting Real Property.** Seller shall sell to Buyer and Buyer shall purchase from Seller that certain perpetual avigation easement on and over Seller's tract or parcel of land, and the buildings thereon, if any, located on Charron Ave. in the City of Nashua, County of Hillsborough, and State of New Hampshire and shown on the City of Nashua Tax Maps as Map E, Lot 2137("Property"), and as more particularly described in the form of Avigation Easement Deed attached hereto as Schedule A ("Avigation Easement").

2. **Conveyance and Title of Avigation Easement.** The Avigation Easement is to be conveyed by a good and sufficient Avigation Easement Deed with Quitclaim Covenants in the form attached hereto as Schedule A, from Seller conveying good and clear record and marketable title thereto, free and clear of all encumbrances except:

- (a) Provisions of existing building and zoning laws; and
- (b) All easements, and rights of way, if any, provided that the same do not materially interfere with the avigation easement rights to be conveyed hereunder.

3. **Purchase Price.** The total purchase price for the Avigation Easement shall be **THREE THOUSAND AND 00/100 DOLLARS (\$3,000.00)**. The purchase price will be paid in full on the Closing Date in the form of a wire transfer or attorney's trust account check payable to Seller.

4. **Time for Performance.** The consummation of the transaction contemplated by this Agreement (the "Closing") shall take place at the offices of Hamblett & Kerrigan, P.A., counsel to Buyer, or at a mutually agreed upon place and time on _____, 2011, unless otherwise agreed by the parties.

5. **Closing Costs.** There are no real estate transfer taxes stamps due hereunder because the Buyer is a municipality. Buyer shall pay the cost of recording the deed and any additional instruments, if any. There shall be no apportionment of

real estate taxes hereunder, it being agreed that Seller shall be responsible for the payment of all real estate taxes due and owing with respect to the Property.

6. Possession and Condition of Avigation EAsement. Full possession of the Avigation is to be delivered at the time of the Closing, free of all tenants and occupants, the Property to be then:

- (a) in the same condition as it now is, reasonable use and wear thereof excepted;
- (b) not in violation of any building, zoning and environmental laws; and
- (c) in compliance with the provisions of Paragraph 2 hereof.

7. Buyer's Conditions. Buyer's obligation to perform hereunder shall be conditioned upon the following:

- (a) the delivery by Seller of marketable title to the Avigation Easement;
- (b) the receipt of approval of this transaction from the Federal Aviation Administration; and
- (c) the receipt of written evidence of authority to enter into this transaction, together with a writing evidencing the authority of the person or persons authorized to execute this Agreement and the other documents required hereunder.

8. Seller's Condition. Seller's obligation to perform hereunder shall be conditioned upon the following:

- (a) the receipt of approval of this transaction from the Mayor of the City of Nashua and/or the Board of Alderman, as appropriate or required.

9. Seller's Representations. Seller hereby represents and warrants to Buyer as of the date hereof and as of the Closing as follows:

- 9.1 Authority. The execution, delivery and performance of this Agreement by Seller and the consummation by Seller of the transaction contemplated hereby are within Seller's authority and capacity, do not violate any prior agreements of Seller and the person executing this Agreement on behalf of Seller is duly authorized to do so for and on behalf of Seller.

10. Condemnation. If prior to the Closing all or any part of the Avigation

Easement is subjected to a bona fide threat of condemnation or taking by eminent domain, then Buyer, at its option, may: 1) terminate this Agreement; or 2) may accept title to the Avigation Easement in its then condition, receive from Seller an assignment of all eminent domain awards applicable to such taking and pay therefore the purchase price for the Avigation Easement without reduction.

11. Seller's Default. If Seller fails or refuses to perform hereunder (and within ten (10) days of written notice of same from Buyer, the Seller has not cured the same provided that if such default is of such a nature that it cannot be cured prior to the expiration of such ten (10) day period, then such default shall not be deemed to continue so long as Seller proceeds to cure the default as soon as possible to complete such cure, but in no event beyond thirty (30) days from said written notice), then the Buyer, at its sole option, may: 1) enforce the specific performance of this Agreement; or 2) pursue any other available remedies against Seller for such default either at law or equity.

12. Brokerage. Buyer and Seller represent and warrant to the other that neither of them has had any contact with any real estate broker in connection with this transaction. Each party agrees to indemnify the other against and to hold the other harmless from any cost, claim, loss, liability, damage or expense arising from any claim for any brokerage commission or fee which may be asserted against the other in connection with this transaction which arises from any action of either party, including, without implied limitation, reasonable attorney's fees and expenses for defending any such claim from any broker. The provisions of this paragraph shall survive the Closing hereunder.

13. Miscellaneous.

13.1 Entire Agreement. This instrument constitutes the entire agreement between the Buyer and the Seller and there are no agreements, understandings, warranties or representations between the Buyer and the Seller except as set forth herein. This Agreement cannot be amended except in writing executed by the Buyer and the Seller.

13.2 Binding Effect. This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.

13.3 Interpretation. This Agreement shall be interpreted under the laws of the State of New Hampshire and shall inure to the benefit of, and be binding upon, the heirs, successors and assigns of the parties. The captions used herein are for convenience only, are not a part of this Agreement, and shall not be used in construing it.

- 13.4 **Not An Offer.** This Agreement is transmitted for examination only and does not constitute an offer to purchase or sell and this Agreement shall become effective only upon the full execution hereof by both parties hereto.
- 13.5 **Counterparts.** For the convenience of the parties, this Agreement may be executed in several counterparts, which are in all respects identical and each of which shall be deemed to be complete in itself so that any one may be introduced in evidence or used for any other purpose without the production of the other counterparts.
- 13.6 **Force Majeure.** In the event that Seller or Buyer shall be delayed, hindered or prevented from the performance of any act reasonably required hereunder by reason of riots, insurrection, the act or failure to act or default of the other party, Acts of God, war or other reason beyond their control, then the time for performance of any act required to be done by either party shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed this __ day of _____, 2011.

SELLER:

**CITY OF NASHUA,
NEW HAMPSHIRE**

Witness

**By: _____
Its: _____**

**BUYER:
NASHUA
AIRPORT
AUTHORITY**

Witness

SCHEDULE A

Return
to:
Grantee

AVIGATION EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS, that the **City of Nashua**, a municipal corporation, with a principal place of business at P. O. Box 2019,

229 Main Street, City of Nashua, County of Hillsborough, State of New Hampshire 03061-20019 (the "Grantor"), as the owner in fee of a certain parcel of land situated on Charron Avenue in the City of Nashua, County of Hillsborough, State of New Hampshire, being more particularly described as Sheet or Map E, Lot 2137 ("Grantor's Property") for consideration of the sum of Three Thousand Dollars (\$3,000.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the **Nashua Airport Authority**, a body corporate and politic, established pursuant to Laws of 1961, Chapter 343, with an address of 93 Perimeter Road, Nashua, County of Hillsborough, State of New Hampshire 03063 (the "Grantee"), its successors and assigns, with QUITCLAIM COVENANTS, the rights more fully set forth below, for the use and benefit of the public, including a perpetual easement, appurtenant to Boire Field, also known as the Nashua Airport, for the unobstructed passage of all aircraft in and through certain airspace located above the surface of Grantor's Property (that certain airspace being the airspace above an imaginary plane more particularly described below as the "Imaginary Plane") and as depicted by "diagonal lines and diagonal dotted lines" as the "Easement on Lot E-2137" on the Compilation Plan (defined below)(the "Avigation Easement"):

The "Compilation Plan" means that certain plan entitled "Compilation Plan of Avigation Easements, Boire Field, Nashua, NH" by Little River Survey Company, LLC dated March, 2010 revised through 7/06/11 and recorded with the Hillsborough County Registry of Deeds as Plan No. 37169 (containing 3 sheets). The Avigation Easement shown as Easement on Lot E- 2137 depicted on the Compilation Plan over the Grantor's Property (Lot E-2137 as shown on the Compilation Plan) is located above the Imaginary Plane.

The Imaginary Plane is an imaginary approach plane arising and extending in a generally southeasterly direction over the Grantor's Property as described above; said imaginary approach plane having as its centerline the extension of the proposed centerline of Runway 32 at Boire Field, and being 800 feet in width at a distance of 200 feet S57°24'E

from the centerline threshold of the proposed runway and then widening out uniformly to 3560 feet in width at a horizontal distance of 10,200 feet.

Said horizontal centerline of the imaginary approach plane intersects the property line of Tax Map E Lot 2223 N 28° 05' E 372 feet from a granite bound at the corner of land now or formerly of the Wollen Family Revocable Trust and land now or formerly of the Roman Catholic Bishop of Manchester on the northerly side line of Pine Hill Road. Said horizontal centerline is also N 17°42' E 603 feet from a stone bound at the southeast corner of Charron Avenue on the northerly sideline of Pine Hill Road along the easterly sideline of Charron Avenue.

Said imaginary approach plane starts at the elevation of 191.10 feet above mean sea level as determined by the North American Vertical Datum of 1983 at the centerline threshold of the proposed Runway 32 and then rises at a rate of one foot vertically for each 34 feet horizontally for the horizontal distance of 10,200 feet.

Meaning to describe an Avigation Easement on and over Map E Lot 2137 that is bounded on the east by Map E Lot 268, on the north by Map E Lot 2136, on the west by Charron Avenue, and on the south by Boston and Maine Corp. It is not the intent of this Avigation Easement to define or describe property boundaries. For title to Grantor's Property, see the deed recorded at the Hillsborough County Registry of Deeds at Book 5753, Page 25.

This Avigation Easement shall be appurtenant to and for the benefit of the real property known as Boire Field including any additions thereto wherever located, hereinafter made by the Grantee or its successors and assigns, and is established for the benefit of the guests, and invitees, including any and all persons, firms or corporations operating aircraft to and from the Nashua Airport.

This Avigation Easement is granted together with all things which may be alleged to be incident to or resulting from the use and enjoyment of said Avigation Easement Area (meaning the airspace over the Grantor's Property above the Imaginary Plane), including but not limited to the right to cause, by the operation of aircraft, in the air space above the Imaginary Plane noise, vibrations, fumes, dust or other particulate matter, and fuel particles, and any and all other effects that may be incidental to or caused by the routine operation of aircraft landing at, or taking off from, or operating at or on said Boire Field; provided, that such activities and effects are in compliance with federal, state and local laws and regulations, as may be established from time to time, including regulations of the Federal Aviation Administration.

Except as hereinafter provided, the Grantor does hereby fully waive, remise and release any right of cause action which it may now have or which it may have in the future against Grantee, its successors and assigns, relating to noise, vibrations, fumes, dust or other particulate matter, fuel particles and all other effects that may be caused or may have been caused by the routine operation of aircraft landing at, or taking off from, or operating at or on said Boire Field; provided, that such activities and effects are in compliance with federal, state and local laws and regulations, as may be established from time to time, including regulations of the Federal Aviation Administration. Notwithstanding the foregoing, the Grantor reserves any right, claim, suit or cause of action which it may now have or which it may have in the future against Grantee, its successors and assigns, resulting from the overburdening of this Avigation Easement and/or the Avigation Easement Area or from an aircraft accident on or affecting Grantor's Property.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether in existence or hereafter manufactured and developed, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters, and all types of aircraft or vehicles now in existence or hereafter developed regardless of existing or future noise levels (but subject to limitations imposed by federal, state or local law or regulations, as may be established from time to time, including those adopted by the Federal Aviation Administration), for the purpose of transporting persons or property through the air, by whomsoever owned and operated.

The Grantor further grants to the Grantee the continuing right and duty to prevent the erection or growth upon Grantor's Property of any building, structure, tree, bush, shrub, or other natural or man-made objects, penetrating or extending into the airspace at or above the aforesaid imaginary plane, or, in the case of vegetation, near penetrations that reach a height that is within 10 feet of the imaginary plane, and to remove penetrations and near penetrations from said airspace, or in the case of individual vegetative objects to remove in their entirety, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, brush, shrub, or other natural or man-made objects now upon, or which in the future may be upon Grantor's Property, together with the right of ingress to, egress from, and passage over Grantor's Property for the above purpose. Grantee shall be solely responsible for all costs incurred exercising its rights, obligations and duties pursuant to this Avigation Easement.

Prior to Grantee exercising its right to prevent the erection or growth upon Grantor's Property of any building, structure, tree, bush, shrub or other natural or manmade objects, Grantee shall provide written notice to Grantor no less than thirty (30) days prior to exercising its rights under the Avigation Easement and such notice shall include: a detailed description of the acts or actions Grantee intends on performing on Grantor's Property; dates upon which Grantee intends to enter onto Grantor's Property to carry out these acts or actions; and, a statement that Grantee has obtained all necessary permits and approvals (federal, state and local) and filed all necessary

notices and/or documents with the permitting/approving entities. Grantee shall be solely responsible for obtaining all necessary permits, approvals and/or reviews for any acts or actions it intends to take on Grantor's Property.

Upon receipt of prior written notice from Grantee, Grantor shall, at its option, have the right to perform or undertake the act or actions that Grantee has proposed to take. Should Grantor elect to perform or undertake the act or actions proposed by Grantee, it shall do so at its own risk and cost.

Grantee shall, when undertaking the cutting, trimming or removal of vegetation or other natural objects from Grantor's Property, exercise due care, including reasonable conservation measures and remediation actions to limit damage to the Grantor's Property and to restore same as nearly as possible to its condition prior to the exercise of its rights under this Avigation Easement.

To have and to hold said Avigation Easement and right of way, and all rights appertaining thereto unto the Grantee, its successors and assigns, until said Boire Field shall be abandoned and shall cease to be used for public airport purposes.

And for the consideration hereinabove set forth, the Grantor, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby covenant with the Grantee that they are lawfully seized in fee of the premises; that they are free of encumbrances; that they have good right to sell and convey such easement to the said Grantee as aforesaid, that they and their heirs and assigns shall and will warrant and defend the same to the said Grantee, its successors and assigns forever, against the lawful claims and demands made through it only. Grantor further covenants that it shall not hereafter use or permit or suffer the use of Grantor's Property in such a manner as to create electrical interference with radio or other communication between any installation upon said airport and aircraft, or as to make it difficult for those operating aircraft to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft, it being understood and agreed that the aforesaid covenants and agreements shall run with the land.

Nothing contained in this Avigation Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any change in Grantor's Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to Grantor's Property resulting from such causes.

The Grantor and the Grantee reserve the right to pursue all legal and/or equitable remedies for any acts inconsistent with the provisions of this Avigation Easement. Should an action be brought to enforce the provision of this Avigation Easement, the parties agree that the laws of the State of New Hampshire shall govern any such

action and that any such action shall be brought in a court of competent jurisdiction in New Hampshire.

All notices, requests and other communications, required to be given under this Avigation 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 such other addresses the Grantor or the Grantee may hereinafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

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

The Grantee, by accepting and recording this Avigation Easement, agrees to be bound by and to observe and enforce the provision hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the provisions of this Avigation Easement.

IN WITNESS WHEREOF, the City of Nashua by its duly authorized officer has hereto set it hand this _____ day of _____ 2011.

CITY OF NASHUA, NEW HAMPSHIRE

Witness
Donnalee Lozeau

Mayor

State of New
Hampshire
County of Hillsborough,
SS

This instrument was acknowledged before me on _____, 2011 by
Donnalee
Lozeau as Mayor of City of Nashua, New
Hampshire.

Justice of the Peace/Notary Public

My Commission Expires:_____

TREE CLEARING AGREEMENT

This **TREE CLEARING AGREEMENT** is made this__ day of _____, 2011 by and between the **City of Nashua**, a duly and lawfully constituted New Hampshire municipal corporation, with an address of P.O.Box 2019, 229 Main Street, Nashua, New Hampshire 03061 ("Fee Owner") and the **Nashua Airport Authority**, a body corporate and politic, established pursuant to Laws of 1961, Chapter 343, with an address of 93 Perimeter Road, Nashua, New Hampshire ("Avigation Easement Owner").

WHEREAS, the Fee Owner is the owner of a certain lot of land, and the buildings and improvements thereon, if any, known and shown as Tax Map E, Lot 2137 on the City of Nashua Tax Maps by virtue of a deed recorded at the Hillsborough County Registry of Deeds at Book 5753, Page 25 (the "Fee Owner Lot");

WHEREAS, pursuant to that certain Avigation Easement Deed from the Fee Owner to the Avigation Easement Owner dated on or about even date herewith and recorded at said Registry at Book _____, Page _____(the "Avigation Easement") , the Avigation Easement Owner is the owner of that certain Avigation Easement affecting the Fee Owner Lots as shown on a plan of land entitled "Compilation Plan of Avigation Easements, Boire Field, Nashua, NH" by Little River Survey Company, LLC dated March, 2010 revised through 7/06/11 and recorded with the Hillsborough County Registry of Deeds as Plan # 37169(the "Avigation Easement Plan");

WHEREAS, the Avigation Easement establishes certain rights and obligations of the Fee Owner and the Avigation Easement Owner in perpetuity with respect to the cutting and/or clearing of trees and other non-natural obstructions by the Avigation Easement Owner on the Fee Owner Lot;

WHEREAS, certain areas of selective tree cutting on the Fee Owner Lot are shown on a plan of land entitled "Proposed Clearing Plan (Map E, Lot 2137, Avigation Easement Acquisition, NHDOT No. SBG-12-04-2010, Boire Field, Nashua Municipal Airport, Nashua, New Hampshire" by Gale Associates, Inc. (unrecorded) dated 7/26/11 (the "Tree Clearing Plan"), a copy of which is attached hereto as Exhibit A;

WHEREAS, the parties hereto wish to supplement that portion of the Avigation Easement pertaining to the rights and obligations of the Fee Owner and the Avigation Easement Owner with respect to the cutting and/or clearing of trees and other non-natural obstructions (collectively, "Clearing Activities"), both contemporaneously and in the future, by the Avigation Easement Owner on the Fee Owner Lot with the additional terms and conditions contained in this Agreement hereinbelow and by reference to the current Tree Clearing Plan for purposes of cutting and/or clearing trees and other

growth on or before the time frame set forth in Section 1 below (the "Initial Tree Clearing").

NOW THEREFORE, in consideration of the mutual premises hereinafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Removal/Clearing of Trees: Clearing Activities.** In addition to, and not in substitution or derogation of any rights and/or obligations set forth in the Avigation Easement with respect to Clearing Activities, the parties agree that certain areas of selective tree cutting or removal have been identified on the Tree Clearing Plan, and that the Avigation Easement owner shall be permitted to conduct the Initial Tree Clearing by removing trees in accordance with said Tree Clearing Plan and the Notes thereon, on or before October 31, 2011. It is expressly agreed by the parties that the exercise of the foregoing rights by the Avigation Easement Owner pursuant to the Tree Clearing Plan does not in any way limit or restrict the continuing and future rights of the Avigation Easement Owner to exercise its rights with respect to Clearing Activities under the Avigation Easement in the future, nor does it limit or decrease the continuing and future obligations of the Fee Owner to comply with its obligations with respect to Clearing Activities under the Avigation Easement in the future; provided, however, that any such future exercise by the Avigation Easement Owner of its rights shall be conducted in accordance with the provisions of Paragraph 5 below.

2. **Expenses.** The Initial Tree Clearing shall be conducted by the Avigation Easement Owner at its sole cost and expense. Thereafter, but subject to the rights of the Fee Owner as provided in the Avigation Easement to conduct Clearing Activities on its own and at its own expense, any and all Clearing Activities relating to natural or vegetative plantings, trees, or the like shall also be conducted by the Avigation Easement Owner at its expense, while any and all Clearing Activities relating to man-made, non-natural building obstructions shall be the obligation of the Fee Owner at its expense. In the exercise of its rights with respect to Clearing Activities, the Avigation Easement Owner may conduct periodic obstruction surveys, so-called, on the Fee Owner Lot to review the conditions of potential encroachment by any tree, bush, shrub, or other natural objects, as well as any building, structure, or man-made object within the Easement Area (as that term is defined in the Avigation Easement). The Avigation Easement Owner shall then follow the procedure outlined in Paragraph 5 below pertaining to Clearing Activities.

3. **Compliance and Restoration.** Any and all Clearing Activities relating to all of the subject matter pertaining to obstructions in the Easement Area shall be conducted in full compliance with all applicable local, state, and federal laws and regulations, including but not limited to the New Hampshire Department of Environmental Services, the New Hampshire Department of Transportation, the Environmental Protection Agency, and the Federal Aviation Administration. Following the exercise by Avigation Easement Owner of its right hereunder (whether in connection with the Initial Tree

Clearing or in connection with any future Clearing Activities), the Avigation Easement Owner shall generally restore any disturbed areas of the Fee Owner Lot to its condition existing prior to the exercise of its rights under the Avigation Easement as supplemented hereunder; provided, however, that such restoration obligations shall specifically NOT include the obligation to replace trees, vegetation, or other natural or non-natural obstructions which encroach into or penetrate the Avigation Easement Area, but shall include the obligation to restore grassy or other landscaped areas and roadways or access ways which may become disturbed in the process of Clearing Activities, together with the obligation to remove any and all natural and non-natural debris created as a result of any Clearing Activities.

4. Indemnity. The Avigation Easement Owner shall indemnify and hold harmless the Fee Owner from any and all claims, losses, injury, damage or expenses (including reasonable attorney's fees) of any nature whatsoever associated with or arising directly or indirectly from the exercise of its rights and obligations pertaining to any and all Clearing Activities relating to all of the subject matter pertaining to obstructions in the Easement Area under the terms of the Avigation Easement, as supplemented hereby.

5. Future /Clearing Activities. Pursuant and subject to the rights and obligations set forth in the Avigation Easement, in furtherance of its rights under the Avigation Easement, the Avigation Easement Owner shall provide the Fee Owner with written notice of any findings of obstructions within the Easement Area, together with no less than thirty (30) days prior written notice of its intent to clear any natural growth or remove or demolish any non-natural obstruction within the Easement Area together with the proposed date of the scheduled Clearing Activities, at the expense of the Avigation Easement Owner in the case of any natural growth, and at the expense of the Fee Owner in the case of any non-natural obstruction within the Easement Area, together with a plan in substantially the same form and content of the Tree Clearing Plan (with respect to natural growth obstructions) depicting the affected areas for the Fee Owner's review and information. Notwithstanding the foregoing, after providing the required notice hereunder, the Avigation Easement Owner may conduct Clearing Activities at its own expense, but it shall not be required to do so. It is also expressly agreed that the foregoing notice and opportunity to review provided by the Avigation Easement Owner to the Fee Owner is not intended to provide the Fee Owner with prior approval or consent rights to the exercise of the Avigation Easement Owner's Clearing Activities rights hereunder or under the Avigation Easement; rather, the parties agree that said notice and opportunity to review is intended to inform the Fee Owner of the anticipated activity on its land, and to allow for a good faith exchange of information between the parties which may be relevant to the Clearing Activities in furtherance of the underlying purpose of such activity, including but not limited to the Fee Owner's right (but not the obligation) to elect to conduct Clearing Activities with respect to natural growth obstructions at its expense. It is further agreed that the procedure established in this Paragraph 5 shall not apply to the current or contemporaneous activities

described in Paragraph 1 above.

**6.
Miscellaneous**

- 6.1 Binding Effect.** This Agreement will inure to the benefit of and bind the respective successors and assigns of the parties hereto.
- 6.2 Interpretation.** This Agreement shall be interpreted under the laws of the State of New Hampshire and shall inure to the benefit of, and be binding upon, the heirs, successors and assigns of the parties. The captions used herein are for convenience only, are not a part of this Agreement, and shall not be used in construing it.
- 6.3 Counterparts.** For the convenience of the parties, this Agreement may be executed in several counterparts, which are in all respects identical and each of which shall be deemed to be complete in itself so that any one may be introduced in evidence or used for any other purpose without the production of the other counterparts.
- 6.4 Force Majeure.** In the event that Seller or Buyer shall be delayed, hindered or prevented from the performance of any act reasonably required hereunder by reason of riots, insurrection, the act or failure to act or default of the other party, Acts of God, war or other reason beyond their control, then the time for performance of any act required to be done by either party shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed this ___ day of , 2011.

FEE OWNER:

City of Nashua

Witness

By:

Its: _____

AVIGATION EASEMENT OWNER:

NASHUA AIRPORT AUTHORITY

Witness

By: Royce N. Rankin, Jr.
Its: Airport Manager

EXHIBIT A

{Attach Proposed Clearing Plan}

RESOLUTION R-11-146
AUTHORIZING THE CONVEYANCE OF
AN AVIGATION EASEMENT DEED OVER
CITY-OWNED PROPERTY LOCATED ON
CHARRON AVENUE IDENTIFIED AS
TAX MAP E, LOT 2137 TO THE
NASHUA AIRPORT AUTHORITY FOR
THREE THOUSAND DOLLARS
(\$3,000.00)

IN THE BOARD OF ALDERMEN

1ST READING SEPTEMBER 13, 2011

Referred to:

COMMITTEE ON INFRASTRUCTURE

2nd Reading SEPTEMBER 27, 2011

3rd Reading _____

4th Reading _____

Other Action _____

Passed SEPTEMBER 27, 2011

Indefinitely Postponed _____

Defeated _____

Attest: [Signature]
City Clerk

[Signature]
President

Approved [Signature]
Mayor's Signature

October 3, 2011
Date

Endorsed by [Signature] MAYOR
[Signature] TABACKSO
[Signature] VITALE
[Signature] SHEEHAN

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President