



RESOLUTION

AUTHORIZING THE MAYOR TO GIVE PRIOR WRITTEN CONSENT TO PENNICHUCK WATER WORKS, INC. PROPOSED AVIGATION EASEMENT TO THE NASHUA AIRPORT AUTHORITY

CITY OF NASHUA

In the Year Two Thousand and Eleven

RESOLVED by the Board of Aldermen of the City of Nashua that

WHEREAS on November 11, 2010 the city of Nashua and Pennichuck Corporation entered into an Agreement and Plan of Merger whereby the City will purchase all the outstanding stock of Pennichuck Corporation, and will own and operate what is now the Pennichuck Water Works, Inc. water system, and

WHEREAS § 5.01(b)(vii) of that Merger Agreement provides that the City must give written approval of any transfer of real estate by Pennichuck prior to the closing of the stock purchase, and

WHEREAS Pennichuck Water Works, Inc. has negotiated the attached agreement for an avigation easement with the Nashua Airport Authority, and

WHEREAS that agreement conveys an interest in real estate subject to the terms of the Agreement and Plan of Merger,

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the mayor is authorized to give written approval of Pennichuck Water Works, Inc. proposed avigation easement to the Nashua Airport Authority.

LEGISLATIVE YEAR 2011

RESOLUTION: R-11-157

PURPOSE: Authorizing the Mayor to give prior written consent to Pennichuck Water Works, Inc. proposed avigation easement to the Nashua Airport Authority

ENDORSER(S): Mayor Donnalee Lozeau

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: None

ANALYSIS

This resolution authorizes the mayor to provide written approval of an avigation easement from Pennichuck to the Nashua Airport Authority. The Agreement and Plan of Merger between the city and Pennichuck Corporation requires the city to approve all transfers of this nature.

The avigation easement limits the height of natural and man-made obstructions in the easement area. 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: September 3, 2011

PURCHASE AND SALE AGREEMENT

This Agreement ("Agreement") is entered into as of the ___ day of _____, 2011, by and between Pennichuck Water Works, Inc., a New Hampshire corporation, with an address of 25 Manchester Street, Merrimack, New Hampshire ("Seller") and the 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. Subject to the provisions of this Purchase and Sale Agreement and the Avigation Easement set forth in Schedule A hereto, Seller shall sell to Buyer and Buyer shall purchase from Seller that certain perpetual avigation easement on and over three (3) areas of Seller's tract or parcel of land, and the buildings thereon, if any, located on or near Northwest Boulevard in the City of Nashua, County of Hillsborough, and State of New Hampshire and shown on the City of Nashua Tax Maps as Map H, Lot 523 (the "Property") , as more particularly described in the form of Avigation Easement attached hereto as Schedule A (the "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 warranty 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 **ELEVEN THOUSAND AND 00/100 DOLLARS (\$11,000.00)**. 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, at a mutually agreed upon time on _____, 2011, unless otherwise agreed by the parties. At the Closing, the parties shall execute the Avigation Easement Deed and the Tree Clearing Agreement attached hereto as Schedule B.

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. Seller shall pay the costs of clearing title, if any, to the Avigation Easement. 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 Easement is to be delivered at the time of the Closing, free of all tenants and occupants.

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 written 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.
- 9.2 **Prior Agreements.** Except with respect to an Agreement and Plan of Merger between the City of Nashua and Pennichuck Corporation dated November 11, 2010 ("Merger Agreement"), the Seller has not entered into any agreement, commitments or arrangements presently in effect concerning the Avigation Easement or development thereof with any persons, including, but not limited to governmental agencies, councils, boards or other entities, adjoining landowners, utilities, and highway or street authorities, other than Buyer.

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 **Litigation Expense.** In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other its reasonable attorney's fees and expenses incidental to such litigation.
- 13.7 **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:

PENNICHUCK WATER WORKS, INC.

Witness

By: _____
Duane C. Montopoli
Its: CEO, duly authorized

BUYER:

NASHUA AIRPORT AUTHORITY

Witness

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

SCHEDULE A

Return to:

Beth H. Davis, Esq.
Hamblett and Kerrigan, PA
146 Main Street
Nashua, NH 03060
#535

Avigation Easement Deed

KNOW ALL PERSONS BY THESE PRESENTS THAT **Pennichuck Water Works, Inc.**, a New Hampshire corporation, with an address of 25 Manchester Street, Merrimack, New Hampshire (the "Grantor"), owner in fee of a certain parcel of land situated in the City of Nashua, County of Hillsborough, State of New Hampshire, being more particularly described in a deed dated March 30, 1990 and recorded in the Hillsborough County Registry of Deeds at Book 5177 page 810 (the "Grantor's Property"), in consideration of the sum of **Eleven Thousand Dollars and No Cents (\$ 11,000.00)** and other good and valuable consideration, 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, New Hampshire 03063 (the "Grantee"), its successors and assigns, the rights more fully set forth below, for the use and benefit of the public, including the perpetual easement, appurtenant to the Boire Field, also known as the Nashua Airport (sometimes hereinafter, the "Airport"), for the unobstructed passage of all aircraft in and through all airspace located above the Imaginary Plane (as defined below) located above the surface of that portion of the Grantor's Property depicted by "diagonal lines" as "Easement "A" on Lot H-523", "Easement "B" on Lot H-523", and "Easement "C" on Lot H-523", on the Compilation Plan (defined below)(the "Avigation Easement"), more particularly described as follows:

The Avigation Easement areas A, B, and C affecting Grantor's Property are as shown on that certain plan of land entitled "Compilation Plan of Avigation Easements, Boire Field, Nashua NH", Sheet 2 of 3, Scale: 1"= 50', dated March, 2010 and last revised 7/06/11, prepared by Little River Survey Company LLC and recorded in the Hillsborough County Registry of Deeds as Plan # 37169, and as more particularly described as follows:

Easement Area "A":

Commencing at a point 124' S 65°56' E from the corner of Lot H-645 and Lot H-577 on the southerly side of the Avigation Easement,
thence N 60°25' E a distance of 1257' along land of the City of Nashua;
thence S 07°22' W a distance of 424' along land of said City;
thence S 27°35' E a distance of 356' along land of said City;
thence S 42°22' E a distance of 414' along land of said City;
thence S 30°49' W a distance of 222' along land of said City;
thence N 65°56' W a distance of 1500' along the southerly side of the Avigation easement to land owned by the City of Nashua;
to the point of beginning,
containing 16.7 acres more or less.

Meaning to describe an Avigation Easement on an imaginary plane that is described as follows: An imaginary approach plane arising and extending in a generally northwesterly direction over the Grantor's Property as described above; said imaginary approach plane having as its horizontal centerline the extension of the proposed centerline of the Runway 14 at Boire Field, and being 800 feet in width at a distance of 200 feet from the centerline threshold of the proposed runway and then widening out uniformly to 3800 feet in width at a horizontal distance of 10,200 feet from the centerline threshold. Said horizontal centerline threshold of the imaginary approach plane is N 33°23' E 277 feet of an iron rod at the southwest corner of Tax Map H Lot 648 on the northerly sideline of Northwest Boulevard. The proposed centerline threshold is S 57°24' E 5,921 feet from the above described point. Said proposed centerline is also N 32°29' E 386 feet from a granite bound on the northerly sideline of Northwest Boulevard. The tie course from the iron rod to the granite bound is S 44°53' E 504 feet. Said imaginary approach plane starts at the elevation of 200.40 feet above mean sea level as determined by the North American Vertical Datum of 1983 at the centerline threshold of the proposed Runway 14 and then rises at a rate of one foot vertically for each 34 feet horizontally for the horizontal distance of 10,200 feet.

Easement Area "B":

Beginning at a point that is the intersection of Lots 577, 523 and the southerly side of the Avigation Easement on the westerly side of Easement 'B';
thence N 48°23' E a distance of 87' along land owned by the City of Nashua;
thence N 72°53' E a distance of 683' along land of said City;
thence S 46°22' W a distance of 571' along land of said City;
thence N 65°56' W a distance of 333' along the southerly side of the Avigation easement;
to the point of beginning,
containing 2.3 acres more or less.

Meaning to describe an Avigation Easement on an imaginary plane that is described as follows: An imaginary approach plane arising and extending in a generally northwesterly direction over the Grantor's Property as described above; said imaginary approach plane having as its horizontal centerline the extension of the proposed centerline of the Runway 14 at Boire Field, and being 800 feet in width at a distance of 200 feet from the centerline threshold of the proposed runway and then widening out uniformly to 3800 feet in width at a horizontal distance of 10,200 feet from the centerline threshold. Said horizontal centerline threshold of the imaginary approach plane is N 33°23' E 277 feet of an iron rod at the southwest corner of Tax

Map H Lot 648 on the northerly sideline of Northwest Boulevard. The proposed centerline threshold is S 57°24' E 5,921 feet from the above described point. Said proposed centerline is also N 32°29' E 386 feet from a granite bound on the northerly sideline of Northwest Boulevard. The tie course from the iron rod to the granite bound is S 44°53' E 504 feet. Said imaginary approach plane starts at the elevation of 200.40 feet above mean sea level as determined by the North American Vertical Datum of 1983 at the centerline threshold of the proposed Runway 14 and then rises at a rate of one foot vertically for each 34 feet horizontally for the horizontal distance of 10,200 feet.

Easement Area "C":

Beginning at a point approximately 540'± northerly from the intersection of Pennichuck Pond and Pennichuck Brook (which point is approximately 700'± northerly of the intersection of land of Lucien & Mary Lou Bergeron at the shore of Pennichuck Pond) at the centerline of Pennichuck Brook and the southerly side of the Avigation Easement;
thence S 65°56' E a distance of 481' to land owned by Westwood Park LLC;
thence N 20°4' E a distance of 477' along land of said Westwood Park;
thence N 85°59' E a distance of 463'; along land of said Westwood Park
thence S 37°51' E a distance of 969' along land of said Westwood Park;
thence S 02°13' W a distance of 159' along land of said Westwood Park;
thence S 26°29' W a distance of 90' along land of said Westwood Park to the southerly edge of the Avigation Easement;
thence S 65°56' E a distance of 487' along the southerly side of the Avigation Easement to land of the City of Nashua;
thence N 24°16' W a distance of 54' along land of said City;
thence N 16°59' E a distance of 203' along land of said City;
thence N 58°5' E a distance of 205' along land of said City to land of SAT Sr. Limited Partnership;
thence N 1°54' E a distance of 176' along land of said SAT Sr. Limited Partnership;
thence N 29°23' W a distance of 180' along land of said SAT Sr. Limited Partnership;
thence N 4°52' E a distance of 176' along land of said SAT Sr. Limited Partnership;
thence N 46°16' W a distance of 269' along land of said SAT Sr. Limited Partnership;
thence N 12°45' W a distance of 143' along land of said SAT Sr. Limited Partnership;
thence N 25°42' E a distance of 144' along land of said SAT Sr. Limited Partnership to land of Westwood Park LLC;
thence N 55°56' W a distance of 691' along land of said Westwood Park LLC;
thence S 85°41' W a distance of 135' along land of said Westwood Park LLC;
thence N 68°1' W a distance of 181' along land of said Westwood Park LLC;
thence N 1°2' W a distance of 128' along land of said Westwood Park LLC;
thence N 30°26' E a distance of 148' along land of said Westwood Park LLC;
thence N 62°57' E a distance of 140' along land of said Westwood Park LLC; thence N 62°16' E a distance of 166' along land of said Westwood Park LLC;
thence N 20°17' E a distance of 223' along land of said Westwood Park LLC to land of Boston and Maine Corp;
thence N 69°44' W a distance of 370' along land of said Boston and Maine Corp;
thence along the centerline of Pennichuck Brook a distance of 2480'±;
to the point of beginning, containing 45.2 acres more or less.

Meaning to describe an Avigation Easement on an imaginary plane that is described as follows:
An imaginary approach plane arising and extending in a generally northwesterly direction over

the Grantor's Property as described above; said imaginary approach plane having as its horizontal centerline the extension of the proposed centerline of the Runway 14 at Boire Field, and being 800 feet in width at a distance of 200 feet from the centerline threshold of the proposed runway and then widening out uniformly to 3800 feet in width at a horizontal distance of 10,200 feet from the centerline threshold. Said horizontal centerline threshold of the imaginary approach plane is N 33°23' E 277 feet of an iron rod at the southwest corner of Tax Map H Lot 648 on the northerly sideline of Northwest Boulevard. The proposed centerline threshold is S 57°24' E 5,921 feet from the above described point. Said proposed centerline is also N 32°29' E 386 feet from a granite bound on the northerly sideline of Northwest Boulevard. The tie course from the iron rod to the granite bound is S 44°53' E 504 feet. Said imaginary approach plane starts at the elevation of 200.40 feet above mean sea level as determined by the North American Vertical Datum of 1983 at the centerline threshold of the proposed Runway 14 and then rises at a rate of one foot vertically for each 34 feet horizontally for the horizontal distance of 10,200 feet.

Said 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, 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 are or may be incident to or resulting from the use and enjoyment of said Avigation Easement, including but not limited to the right to cause in all air space above or in the vicinity of the surface of Grantor's Property such noise, vibrations, fumes, dust and fuel particles generated from or by the operation of aircraft landing at, or taking off from, or operating at or on said Boire Field ("Aircraft Operations"); and 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, due to such noise, vibrations, fumes, dust, fuel particles generated from or by Aircraft Operations; provided, however, that the foregoing waiver and release is not intended to, and does not constitute a waiver or release by Grantor of any right or cause of action which it may now have or which it may have in the future against Grantee, its successors and assigns, relating to pollution, contamination or degradation of the Grantor's Property including, without limitation, the water supply on Grantor's Property, resulting from and/or arising from the use and enjoyment of this Avigation Easement including, without limitation any noise, vibrations, fumes, dust and fuel particles generated from or by Aircraft Operations. And provided, further that , Grantor reserves any right of 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 or an aircraft accident on 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 now in existence or hereafter developed, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whomsoever owned and operated.

This Avigation Easement hereby grants to the Grantee the continuing right 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.

Notwithstanding anything in the foregoing and/or in this Avigation Easement to the contrary, the Grantee hereby specifically agrees that, since Grantor's Property consists primarily of wetlands that form part of the Pennichuck Brook watershed, Grantee's right to remove any vegetation on Grantor's Property such as trees, brush, shrubs or other natural or man-made vegetative objects within 10 feet of the Imaginary Plane ("Vegetation") shall be subject to and fully comply with the provisions of any and all applicable New Hampshire Department of Environmental Services and/or United States Environmental Protection Agency rules and regulations.

To have and to hold said Avigation Easement, 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, at which time this Avigation Easement shall be terminated.

And for the consideration hereinabove set forth, the Grantor, for itself, its heirs, administrators, executors, successors, and assigns, does hereby covenant with the Grantee that it is lawfully seized in fee of the Grantor's Property; that it is free of encumbrances (except as disclosed to Grantee); that it has good right to sell and convey such Avigation Easement to the said Grantee as aforesaid, that it and its 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 of all persons. Grantor further covenants that it will not hereafter erect, permit the erection, or permit or suffer to remain upon Grantor's Property any building, structure, or other similar man-made objects, but specifically excluding any Vegetation, contrary to the provisions of this Avigation Easement as set forth above, and 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.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal this _____ day of the month of _____, 2011.

SIGNED, SEALED and DELIVERED in the presence of:

Witness

PENNICHUCK WATER WORKS, INC.

By: Duane C. Montopoli
Its: CEO

STATE OF NEW HAMPSHIRE

HILLSBOROUGH County, ss.

_____, 2011

Then personally appeared the above named

_____ and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Notary Public

SCHEDULE B

TREE CLEARING AGREEMENT

This TREE CLEARING AGREEMENT is made this ___ day of _____, 2011 by and between Pennichuck Water Works, Inc., a New Hampshire corporation, with an address of 25 Manchester Street, Merrimack, New Hampshire ("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 that certain parcel of land located on or near Northwest Boulevard in the City of Nashua, County of Hillsborough, and State of New Hampshire and known and shown as Tax Map H, Lot 523 on the City of Nashua Tax Map (the "Fee Owner Lot");

WHEREAS, pursuant to that certain Avigation Easement 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 the Avigation Easement affecting the Fee Owner Lot 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, _____ () distinct areas of selective tree cutting on the Fee Owner Lot are shown as Areas __, __, __, and __ on a plan of land entitled "Proposed Clearing Plan (Map E, Lot 523, Avigation Easement Acquisition, NHDOT No. SBG-12-04-2010, Boire Field, Nashua Municipal Airport, Nashua, New Hampshire" by Gale Associates, Inc. (unrecorded) dated ____/2011(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 October 31, 2011(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 as Areas _____ on the Tree Clearing Plan, and that, after seven (7) days' prior written notice to the Fee Owner and the receipt of all required local and state approvals and/or permits as hereinafter described, 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 the one (1) year anniversary date of the date hereof. 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 of its rights shall be conducted in accordance with the provisions of Paragraph 5 below. The foregoing notwithstanding, the underlying obligation to maintain the Easement Area free from any building, structure and/or similar man-made obstructions, but specifically excluding any Vegetation as such term is defined in the Avigation Easement, shall remain the obligation of the Fee Owner pursuant to the Avigation Easement. Prior to the exercise of Clearing Activities hereunder (whether pursuant to this Paragraph 1 or with respect to Clearing Activities in the future), the Avigation Easement Owner shall obtain all required local, state, and federal approvals and permits, including those which may be required by the New Hampshire Department of Environmental Services and/or the United States Environmental Protection Agency, and shall conduct any such Clearing Activities in accordance with any and all rules and regulations promulgated by said state and federal agencies.

2. **Expenses.** The Initial Tree Clearing, and any and all Clearing Activities thereafter, shall be conducted by the Avigation Easement Owner at its sole cost and 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 or penetrate the 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.** Each party hereto shall indemnify and hold harmless the other party 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 sixty (60) days prior written notice of its intent to cut/clear any natural growth or remove or demolish any non-natural obstruction within the Easement Area, all at the expense of the Avigation Easement Owner in the case of any Vegetation and/or other 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 Vegetation and other 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 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. 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 **Litigation Expense.** In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other its reasonable attorney's fees and expenses incidental to such litigation.
- 6.5 **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:

PENNICHUCK WATER WORKS, INC.

Witness

By: _____
Duane C. Montopoli
Its: CEO, duly authorized

AVIGATION EASEMENT OWNER:

NASHUA AIRPORT AUTHORITY

Witness

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

