



## **RESOLUTION**

**AUTHORIZING THE ACCEPTANCE OF A CONSERVATION EASEMENT DEED  
FOR A PORTION OF ASSESSOR'S MAP 51, LOT 8 FROM NORTH CONCORD  
STREET PROPERTIES, LLC**

### ***CITY OF NASHUA***

*In the Year Two Thousand and Twelve*

***RESOLVED*** by the Board of Aldermen of the City of Nashua to authorize acceptance of a Conservation Easement Deed for a portion of Assessor's Map 51, Lot 8 from North Concord Street Properties, LLC, in substantially the same form as the attached.

**LEGISLATIVE YEAR 2012**

**RESOLUTION:** R-12-063

**PURPOSE:** Authorizing the acceptance of a Conservation Easement Deed for a portion of Assessor's Map 51, Lot 8 from North Concord Street Properties, LLC

**ENDORSERS:** Mayor Donnalce Lozeau  
Alderman-at-Large Brian S. McCarthy

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** No cost except for maintenance costs associated with the conservation easement.

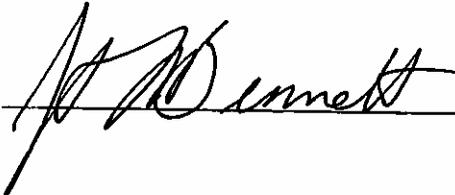
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**ANALYSIS**

This legislation authorizes the acceptance of a Conservation Easement Deed for the purpose of preserving the easement area as undeveloped land and preventing future development thereon. This conservation easement is located to the west and north of the water tank and contains approximately 3 acres. This easement is not for public access or use. The land is to remain in its natural state except for certain drainage/water management installations and utilities. The city will be required to maintain the easement using acceptable forestry and environmental practices. The easement has been granted to the city by North Concord Street Properties, LLC at no cost to the city.

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**Approved as to form:** Office of Corporation Counsel

By: 

**Date:** August 9, 2012

**CONSERVATION EASEMENT DEED**  
**(Portion of Map 51, Lot 8 off Henri Burke Highway, Nashua, NH)**

North Concord Street Properties, LLC, a New Hampshire limited liability company, with a place of business at 179 Amherst Street, Nashua, Hillsborough County, New Hampshire 03064 (the "Grantor"), for consideration paid, grants to the City of Nashua, a New Hampshire municipal corporation, with offices at City Hall, 229 Main Street, Nashua, Hillsborough County, New Hampshire 03060 (the "Grantee"), with WARRANTY COVENANTS, in perpetuity, the following described conservation easement (the "Conservation Easement" or the "Easement") with respect to certain land situated in Nashua, Hillsborough County, New Hampshire, more particularly described in Exhibit A attached (the "Conservation Land").

The Easement is granted exclusively for the following conservation purposes and upon the following terms and conditions:

1. Conservation Purposes.

A. To protect permanently the Conservation Land as undeveloped land for the preservation of the natural scenic and aesthetic character of the Conservation Land; and

B. To protect permanently the Conservation Land from any future development, construction or use that will significantly impair or interfere with the conservation purposes set forth in subparagraph (A) above.

2. Use Limitations.

A. The Conservation Land shall be maintained in perpetuity in an undeveloped and natural condition without there being conducted thereon any residential, industrial or commercial activities, except (i) installation, use and maintenance of utility lines and appurtenances (for residential purposes only), (ii) the cutting and removal of dead or diseased trees and other vegetation and activities consistent with good forestry and good land management practices and (iii) the installation, use and maintenance of storm water management and drainage installations and appurtenances.

B. No new structures or improvements shall be constructed onto the Conservation Land, except for (i) utility lines and appurtenances contemplated in Section 2(A) above and (ii) storm water management and drainage installations and appurtenances contemplated in Section 2(A) above.

C. No removal, filling, or other disturbances of soils, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities are (i) related to the uses and activities permitted in Section 2(A) above or (iii) are not detrimental to the forestry, conservation and habitat management and land management purposes of this Easement.

D. No fertilizers or pesticides shall be applied in the Conservation Land.

E. Notwithstanding any other provisions of this Section 2, the Grantee may install, repair and maintain fences in the Conservation Land.

3. Maintenance.

A. The Grantee shall maintain the Conservation Land in its undeveloped and natural condition, subject to and consistent with the provisions of Section 2 above. Without limitation to the foregoing, the Grantee shall keep the Conservation Land free of debris and, from time to time, cut and remove dead or diseased trees or other vegetation, and conduct good forestry and good land management practices, so as to keep the Conservation Land in a healthy and vibrant condition.

B. The Grantee shall maintain, repair and replace, from time to time, storm water management and drainage installations and appurtenances and keep the same in good working order and condition free of silt, debris and other materials which would clog or otherwise adversely affect the functionality of such systems.

C. The Grantee shall prohibit access to the Conservation Land by the general public. The Conservation Land shall be accessed only by the agents, employees and contractors of the Grantee to effect its obligations under this Easement.

4. Grantor's Reserved Rights.

The Grantor reserves the right to install, use and maintain utility lines and appurtenances (for residential purposes) in connection with the development of the remainder of the Grantor's Property (defined in Section 6(B) below).

5. Taxes and Maintenance.

A. The Grantor shall be under no obligation to maintain the Conservation Land.

B. The Grantor shall pay all real estate taxes assessed against the Conservation Land, recognizing that the Conservation Land constitutes portions of the Grantor's Property.

6. Easements and Grantor's Property.

A. This Easement (and the Conservation Land) are subject to all easements, covenants and restrictions of record, including, without limitation, the easements referenced in Exhibit B attached.

B. The term "Grantor's Property" means a certain parcel of land situated on the westerly side of Concord Street and the northerly side of Henri Burque Highway in Nashua, Hillsborough County, New Hampshire, being shown as Lot 8 on a plan entitled "Subdivision/Consolidation Plan (Lots 1 & 8, Map 51) Hayden Green Concord Street Nashua, New Hampshire" by Hayner/Swanson, Inc. dated 3 February 2011, and recorded with the Hillsborough County Registry of Deeds as Plan No. 37321 (the "Subdivision/Consolidation Plan").

7. Benefits, Burdens and Access.

A. The burdens of the Easement shall run with the Conservation Land and shall be enforceable against all future owners of the Conservation Land (being a portion of the Grantor's Property) in perpetuity. The reserved rights in favor of the Grantor shall run with the Grantor's Property and shall inure to the benefit of all owners of the Grantor's Property and the Association (defined in Section 8 below).

B. The benefits of this Easement shall be appurtenant to the Grantee's other land situated to the north and west of the Grantor's Property (and contiguous to the Grantor's Property) known as Map 52, Lot 118 on the City of Nashua Assessor's Maps and referred to as Lot 118 Map 52 on the Subdivision/Consolidation Plan.

C. The Grantee shall have reasonable access to the Conservation Land and for inspection and as is necessary to exercise its rights under this Easement and fulfill the responsibilities and carry out the duties assumed under this Easement Deed. To effect its right of access, the Grantee (by and through its agents, employees and contractors) shall enter the Conservation Land at such location(s) as the Grantor, or its successors-in-title to the Grantor's Property, determine. The Grantee shall provide at least forty-eight (48) hours prior notice before exercising its rights of access; provided, that no prior notice shall be required in the case of an emergency. The Grantee shall not permit the general public to access the Conservation Land.

D. The Grantor (for itself and its successors-in-title to the Grantor's Property) hereby reserves the right of access over the Conservation Land to effect all rights of a fee simple owner of real estate, including its reserved rights under this Easement.

8. Condominium Association. The Grantor intends to subject the Grantor's Property (inclusive of the Conservation Land) to the condominium form of ownership and in connection therewith, establish an association of unit owners pursuant to RSA Ch. 356-B and RSA Ch. 292 (the "Association"). At such time as the Grantor no longer controls the appointment of members of the board of directors of the Association (as contemplated in RSA 356-B:36), the Association shall succeed to the rights and duties of the Grantor under this Easement.

9. Breach of Easement.

A. In the event (i) the Grantee is in default of its obligations under this Easement, (ii) the Grantee is aware of conduct that is inconsistent with the terms of this Easement or (iii) conduct occurs that is inconsistent with the terms of this Easement such conduct comes to the attention of the Grantor, and the Grantor so advises the Grantee, then the Grantee shall undertake such actions, including restoration, which are reasonably calculated to cure such default or terminate such conduct, and to repair any damage.

B. The Grantee and the Grantor (for themselves and their successors-in-title to this Easement and the Grantor's Property, respectively) reserve the right, separately or collectively, to pursue all legal and equitable rights and remedies against third parties responsible for any actions detrimental to the conservation purposes or other purposes of this Easement.

10. No Rights Granted to Third Parties or the General Public. This Easement does not establish any rights in favor of any third parties or the general public. The rights and benefits established under this Easement are for the exclusive benefit of the Grantee. Without limitation to the foregoing, the general public is granted no rights under this Easement, including, without limitation, no rights of access to the Conservation Land.

11. Notices. All notices, requests and other communications, required or permitted to be given under this Conservation Easement Deed 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 to the appropriate address set forth above or at such other address as the Grantor or the Grantee (or their respective successors in interest) may hereafter designate by notice given in accordance herewith. Notice shall be deemed to be given when so delivered or within two (2) days after so mailed.

12. Severability. If any provision of this Conservation Easement Deed, or other 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 Conservation Easement Deed 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.

13. Condemnation.

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

B. The balance of the damages recovered from such taking or lawful sale in lieu of exercise of eminent domain shall be divided between the Grantor (or the then owner(s) of the

Grantor's Property, as the case may be), and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that portion of the Conservation Land so condemned or sold. For this purpose and that of any other judicial extinguishment of this Conservation Easement Deed, in whole or in part, the values of the Grantor's (or the then current owner(s)' interests) and the Grantee's interest shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation or extinguishment.

C. The Grantee shall use its share of the proceeds resulting from condemnation or extinguishment in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

14. Merger. The Grantor and the Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Conservation Land by the Grantor or to the Grantee or any successor or assign shall be deemed to eliminate the Easement or any portion thereof, granted hereunder under the doctrine of merger or any other legal doctrine.

15. Binding Effect. The Grantee, by accepting and recording this Conservation Easement Deed, for itself, its successors and assigns, 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 the Easement is delivered.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

North Concord Street Properties, LLC

By: \_\_\_\_\_  
Kevin Slattery, Manager

\_\_\_\_\_  
Witness

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Kevin Slattery, Manager of North Concord Street Properties, LLC, a New Hampshire limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE**

Received and accepted by the City of Nashua on the date set forth below.

IN WITNESS WHEREOF, the City of Nashua has caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

City of Nashua

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Donnalee Lozeau, Mayor  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Donnalee Lozeau, Mayor of the City of Nashua, a New Hampshire municipal corporation, on its behalf.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

### Legal Description of Conservation Land (Along Old Harris Road)

A portion of a certain parcel of land, said parcel of land being situated on the westerly side of Concord Street and the northerly side of Henri Burque Highway in Nashua, Hillsborough County, New Hampshire, said parcel of land being shown as Lot 8 ("Lot 8") on a plan entitled "Subdivision/Consolidation Plan (Lots 1 & 8, Map 51) Hayden Green Concord Street Nashua, New Hampshire" by Hayner/Swanson, Inc. dated 3 February 2011, and recorded with the Hillsborough County Registry of Deeds as Plan No. 37321 (the Subdivision/Consolidation Plan), such portion (the Conservation Land) being more particularly described as follows:

Beginning at a point on the northerly line of Lot 52 Map 54 and on the southerly right-of-way of Harris Road, said point being labeled "POB" on the Easement Plan (defined below); thence

1. N 49° 24' 45" E, a distance of 426.18 feet by the southerly right-of-way of Harris Road to a point; thence

2. N 61° 25' 45" E, a distance of 507.38 feet by the southerly right-of-way of Harris Road to a point; thence

3. N 61° 59' 09" E, a distance of 721.52 feet by the southerly right-of-way of Harris Road to a point at the northwest corner of Proposed Access Easement 'C' (as shown on the Easement Plan); thence

4. S 28° 00' 51" E, a distance of 104.94 feet by the westerly line of said Proposed Access Easement 'C' to a point; thence

5. S 63° 56' 12" W, a distance of 352.37 feet along Proposed Recreational Easement 'B' (as shown on the Easement Plan) to a point in the northerly line of Lot 52, Map 54; thence

6. S 63° 56' 12" W, a distance of 495.75 feet along the northerly line of Lot 52 Map 54 to a point; thence

7. S 58° 40' 06" W, a distance of 748.09 feet along the northerly line of Lot 52 Map 54 to a point; thence

8. S 76° 49' 42" W, a distance of 89.32 feet along the northerly line of Lot 52 Map 54 to the point of beginning.

Lot 52 Map 54 is shown on the Easement Plan and the Subdivision/Consolidation Plan and is the site of Pennichuck Middle School.

Containing an area of 134.675 square feet, or 3.092 acres, more or less.

For title, reference is made to the deed of Pennichuck Corporation and The Southwood Corporation to North Concord Street Properties, LLC dated January 23, 2012 and recorded with the Hillsborough County Registry of Deeds at Book 8390, Page 716.

The term "Easement Plan" means the plan entitled "Easement Plan (Lot 8, Map 51) Old Harris Road and Concord Street, Nashua, New Hampshire" prepared for the City of Nashua dated 7 October 2011 by Hayner/Swanson, Inc. and recorded with the Hillsborough County Registry of Deeds as Plan No. 37322.

## EXHIBIT B

1. Rights granted to Manchester Traction Light and Power Company by instrument of Pennichuck Water Works dated September 25, 1914 and recorded at Book 729, Page 67, if applicable and in effect.
2. Notes and other matters shown on Plans Numbered 11642, 19452, 36292 and 36293.
3. Easements, notes and other matters shown on the Subdivision/Consolidation Plan.
4. Permanent Easement Deed of Pennichuck Corporation to the City of Nashua dated October 21, 1986 and recorded at Book 3816, Page 31, as supplemented by the Supplement to Permanent Easement Deed of Pennichuck Corporation to the City of Nashua dated January 16, 2012 and recorded at Book 8388, Page 226. For locus, see the Existing 20 Ft. Public Sewer Easement (Vol 3816, Pg 31), Proposed Additional Public Sewer Easement 'C', Proposed Additional Public Sewer Easement 'D' and Proposed Additional Public Sewer Easement 'E' as shown on the Subdivision/Consolidation Plan.
5. Declaration of Covenants and Restrictions by Pennichuck Water Works, Inc. dated June 1, 1984 and recorded at Book 3166, Page 74, as supplemented by instruments recorded at Book 3574, Page 916, Book 3597, Page 473, Book 3631, Page 4, Book 5177, Page 793 and Book 5647, Page 521, and as may be affected or confirmed by the Certificate of Declarant dated January 8, 2001 and recorded at Book 6354, Page 1603, to the extent applicable.
6. Recreation Easement, Utility Easement 1 and Slope Easement in the deed of Pennichuck Corporation to the City of Nashua dated September 5, 1986 and recorded at Book 3631, Page 89.
7. Easement of Pennichuck Water Works Company to Public Service Company of New Hampshire dated October 15, 1951 and recorded at Book 1309, Page 147 and shown as the 100' Public Service Company of New Hampshire Easement on Plan No. 19452 and as the Public Service Company of New Hampshire Easement on the Subdivision/Consolidation Plan.
8. Easement Deed of Pennichuck Corporation to Energy North Natural Gas Co., Inc. dated June 5, 1990 and recorded at Book 5266, Page 774, as amended by the Easement Amendment by and between Pennichuck Corporation and EnergyNorth Natural Gas Co., Inc. dated October 7, 2008 and recorded at Book 8047, Page 449. For locus, see the Existing 15 Ft. Gas Easement (Vol. 5266, Pg. 774) (Vol. 8047, Pg. 449) and Existing 15 Ft. Gas Easement (Vol. 8047, Pg. 449) on the Subdivision/Consolidation Plan.
9. Easement Agreement by and between Pennichuck Water Works, Inc., Pennichuck Corporation and Energy North Natural Gas, Inc. dated October 28, 2008 and recorded at Book 8047, Page 453.

10. Sewer Easement Deed of Pennichuck Corporation to Pennichuck Water Works, Inc. dated January 16, 2012, and recorded at Book 8388, Page 230. For locus, see Proposed Private Sewer Easement 'A' on the Subdivision/Consolidation Plan.

11. Water Easement Deed of Pennichuck Corporation to Pennichuck Water Works, Inc. dated January 16, 2012, and recorded at Book 8388, Page 233. For locus, see the Proposed 20 Ft. Water Easement 'B' on the Subdivision/Consolidation Plan.

12. Access and Recreational Easement of Pennichuck Corporation to the City of Nashua dated January 16, 2012, and recorded at Book 8388, Page 235, as amended by the First Amendment to Access and Recreational Easement by and between North Concord Street Properties, LLC and the City of Nashua dated \_\_\_\_\_, 2012, and recorded at Book \_\_\_\_\_, Page \_\_\_\_\_, and matters shown on Hillsborough County Registry of Deeds Plan No. 37322.

13. Open space (current use) land classification, relative to which an Application for Current Use is dated April 15, 1991 and recorded at Book 5266, Page 1109.

All recording references are to the Hillsborough County Registry of Deeds.

**RESOLUTION** R-12-063  
**Authorizing the acceptance of a**  
**Conservation Easement Deed for**  
**a portion of Assessor's Map 51,**  
**Lot 8 from North Concord Street**  
**Properties, LLC**

**IN THE BOARD OF ALDERMEN**

1<sup>st</sup> READING AUGUST 14, 2012

Referred to:  
COMMITTEE ON INFRASTRUCTURE

2<sup>nd</sup> Reading SEPT. 12, 2012

3<sup>rd</sup> Reading RE-REFER TO INFRASTRUCTURE  
NOVEMBER 27, 2012

4<sup>th</sup> Reading \_\_\_\_\_

Other Action \_\_\_\_\_

Passed NOVEMBER 27, 2012

Indefinitely Postponed \_\_\_\_\_

Defeated \_\_\_\_\_

Attest: [Signature]  
City Clerk

[Signature]  
President

Approved: [Signature]  
Mayor's Signature

November 28, 2012  
Date

Endorsed by  
[Signature] MAYOR  
[Signature] McCARTHY  
[Signature] SHEEHAN  
[Signature] MELIZZI-  
GOLJA  
[Signature] VITALE  
[Signature] DEANE  
[Signature] DOWD

Vetoed: \_\_\_\_\_

Veto Sustained: \_\_\_\_\_

Veto Overridden: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President