

AMENDED

R-05-270



CITY OF NASHUA

In the year Two-Thousand Five

A RESOLUTION

**AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT
CONVEYING A CONSERVATION EASEMENT UPON CERTAIN
LANDS OWNED BY THE CITY OF NASHUA TO AN APPROPRIATE
AGENCY**

RESOLVED by the Board of Aldermen of the City of Nashua, that the Mayor is hereby authorized to enter into an agreement with an appropriate conservation society, including but not limited to the Society for the Protection of New Hampshire Forests or the Audubon Society, conveying to the society a conservation easement on certain parcels of land owned by the City of Nashua.

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

CONSERVATION EASEMENT DEED

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

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

_____, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at _____, County of _____, State of New Hampshire, _____, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to those certain parcels (herein referred to as the "Property") being unimproved land situated on Gregg Road, Main Dunstable Road, Buck Meadow Road, Ridge Road, and Old Ridge Road in the City of Nashua, County of Hillsborough, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes:

- A. The protection of the unusual natural habitat of a kettlehole bog with a narrow shrub border ringing Lovewell's Pond: and
- B. The protection and conservation the plants and wildlife thereon including owls, woodpeckers, cardinals, wood ducks, herons, kingfishers and sandpipers, dwarf huckleberry, Blanding's and Spotted turtles, as well as numerous other birds, mammals, frogs and turtles; and
- C. The preservation of the land and the water body of Lovewell's Pond to which it provides access and on which it fronts subject to the Easement granted hereby for outdoor recreation by and/or the education of the general public, through the auspices of the Grantee; and
- D. The protection of undeveloped road frontage along public Gregg Road, Main Dunstable Road, Buck Meadow Road, Ridge Road, and Old Ridge Road

- E. The preservation of the quality of ground water and surface water resources on and under the Property; and
- F. The protection and conservation of open spaces, particularly the conservation of the productive farm and forest land of which the Property consists and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products.

The above purposes are consistent with New Hampshire RSA Chapter 79-A which states:

"It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

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

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

- 2. USE LIMITATIONS (Subject to the reserved rights specified in Section 3 below)
 - A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry, including timber harvesting, as described below, and provided that the productive capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities.
 - i. For the purposes hereof, "agriculture" and "forestry" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other accessways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup), all as not detrimental to the purposes of this Easement.
 - ii. Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the purposes of this Easement, as described in Section 1 above, nor materially impair the scenic quality of the Property as viewed from public

waterways, great ponds, public roads, or public trails.

- iii. Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the purposes of this Easement as described in Section 1 above.
 - a. The goals are:
 - maintenance of soil productivity;
 - protection of water quality, wetlands, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality;
 - protection of unique or fragile natural areas;
 - protection of unique historic and cultural features; and
 - conservation of native plant and animal species.
 - b. Such forestry shall be performed in accordance with a written forest management plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee. Said plan shall have been prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.
 - c. At least thirty (30) days prior to harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the plan itself to Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
 - d. The plan shall include a statement of landowner objectives, and shall specifically address:
 - the long-term protection of those values for which this easement is granted, as described in Section 1 above;
 - the goals in Section 2.A.iii.a above.
 - e. Timber harvesting with respect to such forestry shall be conducted in accordance with said plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
 - f. Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B.

this Easement.

- F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- G. There shall be no dumping, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous.
- H. There shall be no posting to prohibit the public from accessing and using the Property, through the auspices of the Grantee, for low-impact, non-motorized, non-wheeled non-commercial, outdoor recreational purposes.
- I. Agriculture and forestry activities shall not be conducted on Tract I, Lot 2543 and Tract II (Lot 2542), except to enhance or improve wildlife habitat and shall not be conducted within 300 feet of the any wetland.

3. RESERVED RIGHTS

- A. The right to install, maintain, repair, and improve gates, barriers, signs and fences necessary to guide public access on the Property.
- B. The right to install, maintain, repair, and improve a trail system on the Property provided such trails are not detrimental to the purposes of this Easement.
- C. Grantor reserves the right to withdraw from the use limitations of Section 2, above, but subject to the limitations hereof, a single area of land for the purpose of constructing and maintaining thereon an environmental education facility with customary accessory structures, improvements and utilities, including but not limited to a septic system, water well, driveway, parking areas, and power and communication lines. Said area shall not exceed 5 acres in size, may not be subdivided or sold separately from the Property. Such withdrawal shall be accomplished strictly as follows:
 - i. In order to withdraw the said area the Grantor must submit for Grantee's approval, which will not be unreasonably withheld, a survey plan prepared by a licensed surveyor, recordable at the Hillsborough County Registry of Deeds, locating and depicting said site as proposed to be withdrawn and developed, including the size and location of all structures, improvements, roads, driveways, parking areas, wells, septic systems and utilities serving the same. Within thirty (30) days after Grantee's receipt of such submission the Grantee shall approve or disapprove the same and so inform the Grantor. Any disapproval shall specify in detail the reasons therefor. Grantee's failure to so approve or disapprove within said period shall constitute an approval of the proposed exercise.
 - ii. Said environmental education facility shall not be located on Tract I, Lot 2543 or Tract II (Lot 2542).
- C. Grantor reserves the right to install, repair, replace and maintain a driveway and utilities across the Property solely to serve the environmental education facility permitted by this Easement.
- D. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

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

5. BENEFITS, BURDENS, AND ACCESS

- A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.
- B. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

6. BREACH OF EASEMENT

- A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.
- C. If the Grantor fails to take such proper action under the preceding section, the Grantee shall, as appropriate to the purposes of this deed, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

- D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- E. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

7. NOTICES

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

8. SEVERABILITY

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

9. CONDEMNATION/EXTINGUISHMENT

- A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.
- B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. The values of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.
- C. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

10. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 5.A., above, accepts and records the additional easement.

11. ARBITRATION OF DISPUTES

- A. Any dispute arising under this Easement shall be submitted to arbitration in accordance with New Hampshire RSA 542.
- B. The Grantor and the Grantee shall each choose an arbitrator within 30 days of written notice from either party. The arbitrators so chosen shall in turn choose a third arbitrator within 30 days of the selection of the second arbitrator.
- C. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable which they may postpone only for good cause shown.
- D. A decision by two of the three arbitrators, made as soon as practicable after submission of the dispute, shall be binding upon the parties and shall be enforceable as part of this Easement.

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

IN WITNESS WHEREOF, We have hereunto set our hands this _____ day of _____, 2001

City of Nashua, Board of Alderman

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire
County of Hillsborough

Personally appeared _____
Name & Title

of the City of Nashua, Board of Alderman, this _____ day of _____, 2001 and acknowledged the foregoing on behalf of the City of Nashua, Board of Alderman.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

ACCEPTED: _____

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire

County of _____

Personally appeared _____
of _____, this ____ day

of _____, 2001 and acknowledged the foregoing on behalf of

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

Appendix A

Tract I

Eight (8) lots of land located on Main Dunstable Road, Buckmeadow Road, Ridge Road, and Old Ridge Road in Nashua, County of Hillsborough and State of New Hampshire and being more particularly bounded and described as follows:

Being Lots 2543, 13, 15,30, 2538, 2539, 40 and 2540, and a portion of Lot 15 (see plan) on a plan of land entitled "Plan Showing Proposed Gifted Tracts to the City of Nashua Ridge Road, Old Ridge Road, Buck Meadow Road, and Main Dunstable Road, Nashua, New Hampshire" prepared for: Terra Verde by Hayner/Swanson, Inc. Civil Engineers/Land Surveyors, dated June 24, 1997 Scale 1' = 200' recorded in the Hillsborough County Registry of Deeds as Plan # 30166.

Meaning and intending to describe all and the same premises conveyed to the City of Nashua by Quitclaim Deed of Terra Verde dated November 8, 1999, and recorded in the Hillsborough County Registry of Deeds at Book 6179, Page 0372.

Subject to any easements and rights-of-way of record.

Tract II

A certain tract or parcel of real estate situated off Ridge Road and Old Ridge Road, Nashua, County of Hillsborough, State of New Hampshire and being shown as Lot 2542 on a plan of land entitled "Subdivision Plan (lot 9, Map 'C') Main Dunstable, Ridge, Old Ridge and Gregg Roads, Nashua, New Hampshire"; prepared for Terra Verde by Hayner/Swanson, Inc., Land surveyors; dated April 1, 1999; scale 1" = 200' and this plan is recorded in the Hillsborough County Registry of Deeds as Plan Number # 30256

Meaning and intending to describe Tract II of the premises conveyed to the City of Nashua by Warranty Deed of Terra Verde dated January 3, 2000, and recorded in the Hillsborough County Registry of Deeds at Book 6198, Page 1038.

Subject to any easements and rights-of-way of record.