

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

MAY 18, 2021

7:00 PM

To Join Zoom meeting: <https://us02web.zoom.us/j/83816992884?pwd=d1MrNlovK0FtOVVZbEptampjYWRHUT09>

Meeting ID: 838 1699 2884 Passcode: 072795

To Join by Telephone: 1-929-205-6099

Meeting ID: 838 1699 2884 Passcode: 072795

If there is a problem with the audio, please dial 603-821-2049 to advise.

ROLL CALL

PUBLIC COMMENT

DISCUSSION

COMMUNICATIONS

UNFINISHED BUSINESS

NEW BUSINESS – RESOLUTIONS

R-21-144

Endorsers: Mayor Jim Donchess
Alderman Jan Schmidt
Alderman Richard A. Dowd
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Linda Harriott-Gathright
Alderman Thomas Lopez
Alderman-at-Large Lori Wilshire

AUTHORIZING THE PURCHASE OF PROPERTY LOCATED AT "L" PINE STREET (MAP 77, LOT 5)

NEW BUSINESS – ORDINANCES

TABLED IN COMMITTEE

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT



RESOLUTION

AUTHORIZING THE PURCHASE OF PROPERTY LOCATED AT "L" PINE STREET
(MAP 77, LOT 5)

CITY OF NASHUA

In the Year Two Thousand and Twenty-One

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is hereby authorized to purchase property located at "L" Pine Street (Tax Map 77, Lot 5) from Nashua Millyard Associates, Inc. on terms and conditions in substantially similar to the attached Purchase and Sale Agreement. The purchase price of said land and buildings shall be three hundred twenty five thousand dollars (\$325,000).

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents and take all necessary actions contemplated by the above described Purchase and Sale or required to effectuate the same.

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, 2021, by and between **Nashua Millyard Associates Inc.**, having a mailing address of 22 Kehoe Avenue, Nashua, New Hampshire ("Seller") and **The City of Nashua**, a New Hampshire municipal corporation, having an address of 229 Main Street, Nashua, New Hampshire 03060, ("Buyer").

1. PURCHASE AND SALE. Seller agrees to sell and convey, and Buyer agrees to buy, on the terms and conditions hereinafter set forth, a parcel of land with all the improvements thereon, located in Nashua, Hillsborough County, New Hampshire, known as or described as Lot 77-5 of the City of Nashua Tax Maps, having an address of **L Pine Street, Nashua, New Hampshire**, being the property described in a deed recorded in the Hillsborough County Registry of Deeds, Book 3769, Page 97 ("Premises").

2. PURCHASE PRICE. Subject to any adjustments and prorations hereinafter described, Buyer agrees to pay for the Premises the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00) ("Purchase Price"). There is no deposit.

3. TITLE. Seller shall convey the Premises to the Buyer at the Closing in fee simple with good, insurable, and marketable title by Quitclaim Deed, free and clear of all liens and encumbrances, except as set forth in the deed or matters of record, and except for:

a). a certain lease regarding radio antennas and tower with the Tenant known as Absolute Broadcasting LLC (the "Radio Tower Lease"); and

b). a proposed easement from Seller to Public service of New Hampshire, to be recorded soon (the "PSNH Easement"); and

c). a certain Option to Purchase Property (the "Option") attached hereto and incorporated herein by reference. Seller shall convey the Premises to the Buyer subject to the terms and conditions of the Option. The Buyer shall accept title to the Premises subject to the Option and, upon closing and transfer of title, Buyer shall assume and perform all obligations of the "Seller" under the Option.

The above listed items are and shall be Permitted Exceptions under Section 5 below.

Parties shall also deliver such additional documents as may be required under this Agreement or as may be reasonably required by their respective counsel or the title insurance companies insuring the transaction, including but not limited to, assignments, affidavits, leases, documents, and certificates

4. CLOSING. The closing shall occur on or before June 30, 2021, at a time and location mutually agreed to by the parties.

5. INSPECTION AND DUE DILIGENCE PERIOD. The obligations of Buyer to consummate the transaction contemplated by this Agreement are expressly conditioned on the satisfaction of each of the following conditions and, if any such condition is not satisfied as hereafter provided, Buyer

will be entitled to either: (a) waive the same in writing; or (b) terminate this Agreement. On such termination the Buyer and Seller will be released from further performance hereunder.

A. Title Examination/Survey.

1. If Buyer desires an examination of title or survey of the Premises, it shall pay the cost thereof.

2. The Buyer shall report to the Seller the results of any such survey or examination of title within thirty (30) days of the acceptance of this Agreement by the Seller and in such report (the "Title Report") identify any survey issues, defects in title, encumbrances or other matters which would render title unmarketable (collectively the "Objections") and (ii) any mortgages, liens or other financial encumbrances ("Financial Encumbrances"). In the Title Report, the Buyer shall also identify those matters of title to which the Buyer has no objection (the "Permitted Encumbrances"). If the Buyer does not provide a Title Report within the time period set forth above, this contingency shall be deemed waived by the Buyer.

3. The Seller, at its election, may attempt to remove or correct the Objections in or within thirty (30) days of receipt of the Title Report. With respect to the Financial Encumbrances, they shall be paid in full from the funds due Seller at the closing.

4. During the pendency of this Agreement, the Seller shall not (i) enter into any tenancy agreement, lease, occupancy agreement or other agreement concerning the possession or use of the Premises with any third parties; (ii) grant any easements, establish any covenants, nor suffer, permit or grant any encumbrances (including mortgages, liens or attachments); or (iii) grant, transfer, assign, convey, pledge, mortgage or otherwise hypothecate any interest in the Premises, or suffer the same to occur. In the event that an involuntary attachment is placed against the Premises, then the Seller shall have up to thirty (30) days to cause a release or discharge of such attachment to be duly issued or ordered and recorded.

5. In the event the Seller is unable or unwilling to remove the Objections within the thirty (30) day period specified in subparagraph (c) above, then, at the Buyer's election, (i) this Agreement shall terminate and neither party having any further obligations to or rights against the other under this Agreement; or (ii) the Buyer may elect to complete the Closing and accept such title to the Premises as the Seller may convey, with a reasonable diminution in the Purchase Price. In the event that an encumbrance or a matter akin to an Objection against the Premises after the effective date of the Title Report and before the Closing, then the Seller shall undertake to remove such encumbrance or matter prior to the Closing to enable the SELLER to convey the Premises as contemplated in Section 3 above.

6. Notwithstanding the aforesaid, The Option, the PSNH easement, and the Radio Tower Lease are and shall be deemed Permitted Exceptions.

B. Due Diligence. Buyer shall have forty-five (45) days from the execution of this Agreement (the "Due Diligence Period") to undertake at its sole cost and expense, at its sole option, any of the following: (i) an Environmental Phase I Report; (ii) an Environmental Phase II Report (if deemed prudent as a result of the Environmental Phase I); (iii) cost estimates to address any environmental issues; (iv) test pits and borings; (v) wetlands studies; (vi) Zoning/Planning review with the City of Nashua; and (vii) investigation into any other issues relevant to Buyer's decision to the purchase of the Premises.

If Buyer shall discover or determine prior to the expiration of the Due Diligence Period that it is not satisfied in any way with the status of the Premises or the results of any of its due diligence or inspections, Buyer shall have right to terminate this Agreement and have any Deposit refunded forthwith, and all the parties shall thereafter be released from any further obligations hereunder.

6. POSSESSION OF THE PREMISES AND RISK OF LOSS. The Premises shall be delivered to the Buyer at the time of the closing free of Nashua Millyard Associates personal property, and encumbrances. The risk of loss or damage to the Premises, by fire or other casualty, or condemnation, prior to the Closing Date is assumed by Seller. If all or a portion of the Premises should be destroyed or damaged by fire, other casualty, or taken by eminent domain, Buyer may, at its option, terminate this Agreement by written notice delivered to the Seller at or prior to the closing, and both parties shall be discharged from all further obligations or Buyer may accept assignment of insurance or condemnation proceeds and proceed with purchasing the Premises.

7. FINANCING. This Agreement is not contingent upon the Buyer obtaining financing.

8. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer that the following are true as of the date of this Agreement and will be true as of the Closing:

- (a) The Premises are not the subject of any existing cease and desist orders, enforcement actions, or any federal, state or local code enforcement violations.
- (b) Except as set forth in Section 3 above, there are no unrecorded outstanding pending or threatened liens, claims, rights of first refusal, licenses, or encumbrances against or affecting the Premises, which have not been disclosed to Buyer in this Agreement.
- (c) There are no outstanding claims, losses or demands against Seller by any person, entity, or governmental unit respecting Seller's ownership, use, or occupancy of the Premises, which have not been disclosed to Buyer in this Agreement, including without limitation Mechanic's Liens.
- (d) Seller has no knowledge of any boundary disputes or encroachments affecting the Premises.
- (e) There is only one lease, the Radio Tower Lease, on a portion of the Premises with Absolute Broadcasting Inc.
- (f) Seller has no knowledge of any pending or threatened litigation that may adversely affect the transfer of the Premises hereunder or materially affect the value of the Premises.
- (g) Neither the whole nor any portion of the Premises has been condemned, requisitioned, or otherwise taken by any public authority and no notice of any such

condemnation, requisition or taking has been received by the Seller and no such condemnation, requisition or taking is threatened.

- (h) Seller has not knowingly released into the environment or discharged, placed or disposed of any hazardous materials, substances, or waste or knowingly caused the same to be released into the environment or discharged, placed or disposed of at, on, or under the Premises. Notwithstanding the foregoing, the Seller cannot represent to Buyer that there are no hazardous waste issues as a result of the current activities of other unit owners. To the best of Seller's knowledge, the Premises complies in all material respects with all applicable federal and state environmental laws and regulations. Seller has not received any written notice from any governmental authority or any written complaint from any third party with respect to its alleged non-compliance with, or potential liability under, any environmental laws and regulations.
- (i) Except as set forth in Section 3 above, there are no rights of first refusal or options to purchase associated with the Premises.
- (j) Seller has authority to enter into this Agreement and will provide necessary authority documents at the Closing.

These representations shall survive the Closing.

Other than the representations contained above and the proposed Quitclaim Deed, Seller makes no representation or warranty as to fitness, merchantability, condition or use of the Premises for any particular purpose as the Premises is sold "AS-IS".

9. DEFAULT AND REMEDIES. In the event that Buyer defaults in the performance of its obligations hereunder, Seller shall be entitled to retain any Deposit as reasonable liquidated damages.

10. ACCESS TO THE PREMISES. The Seller hereby grants to the Buyer, its agents and independent contractors, access to the Premises to undertake such activities as may be necessary for the Buyer to exercise its rights this Agreement. The Buyer shall restore any portion of the Premises disturbed by the Buyer in connection with such activities. Buyer, its agents and independent contractors, shall use their best efforts to minimize the disturbances and impact on Seller during such activities and shall indemnify and hold harmless Seller from any damages resulting from such activities.

11. BROKERAGE. Seller and Buyer represent and warrant to each other that neither has dealt with any real estate broker, agent or salesperson in connection with this transaction. Each party agrees to defend, indemnify, and hold the other harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through the indemnified party. The indemnities set forth in this Section shall survive closing.

12. TOWER LEASE. Sellers retains and reserves the rights as Landlord of the Radio Tower Lease for a period of two years from the Closing. For the two year period, the Seller will retain possession of the leased premises and carry out the obligations of the Landlord, and the Seller shall receive all rents as set forth in the Radio Tower Lease. The parties will memorialize the agreement with execution of reasonable mutually acceptable document(s) at Closing.

13. ADJUSTMENTS, PRORATIONS AND CLOSING COSTS.

- (a) Real Estate taxes, assessments, special assessments, rents, water bills, sewer, utilities and condominium association fees, shall be prorated as of the Closing, and the Selling price shall be adjusted accordingly.
- (b) All recording fees for the deed of conveyance will be paid by the Buyer. Recording fees for any necessary discharges will be paid by the Seller from the closing proceeds.
- (c) Seller and Buyer shall pay their own attorney's and, if applicable, broker fees.
- (d) This transfer will be exempt from New Hampshire real estate transfer tax pursuant to NH RSA 78-B:2, I.

14. CONDEMNATION. In the event of the taking of all or any part of the Premises by eminent domain proceedings, or the commencement or bona fide threat of the commencement of any such proceedings, prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing. If Buyer does not so terminate this Agreement, the Purchase Price shall be reduced by the total of any awards or other proceeds received by Seller prior to Closing with respect to any taking, and, at Closing, Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds to be paid or to become payable after Closing by reason of any taking. Seller shall notify Buyer of eminent domain proceedings within five (5) days after Seller learns thereof.

15. GENERAL PROVISIONS.

- (a) Entire Agreement. All representations, statements, and agreements heretofore made between the parties are merged in this Agreement, which alone fully and completely expresses their respective obligations, and this Agreement is entered into by each party after opportunity for investigation, neither party relying on any statement or representation not embodied in this Agreement made by the other or on its behalf.
- (b) Modification. This Agreement cannot be changed, amended, or modified in any way except by an instrument in writing, executed by the party or parties to be charged with the change, amendment, or modification.
- (c) Notices and Requests. Any notice, request, instruction, or other document given or required to be given hereunder shall be in writing, and shall be deemed given when hand-delivered or deposited in the mail by registered or certified mail, postage pre-

Seller
Nashua Millard Associates Inc.

Name:
Title:

Buyer
City of Nashua

Name: James W. Donchess,
Title: Mayor

OPTION TO PURCHASE PROPERTY

THIS AGREEMENT is among Nashua Millyard Associates, Inc., their successors and assigns (collectively, the "Seller") and Stephen Bonnette and Aaron Bagshaw, their successors and assigns (collectively, the "Buyer").

RECITALS

This Agreement is entered into upon the basis of the following facts and intentions of the parties:

- A. Seller owns that certain real property described in Exhibit A hereto (the "Property").
- B. Buyer desires to obtain an option to purchase the Property from Seller and Seller is willing to grant such an option to Buyer.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Option.** As of the date hereof, the Seller grants to Buyer an exclusive option (the "Option") to purchase a portion of the Property ("Option Land" as hereinafter defined) from Seller upon all of the terms, covenants and conditions hereinafter set forth. This option may be recorded at the election of Buyer.
2. **Consideration for the Option.** As consideration for this Option, Buyer has delivered One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged by the Seller. The consideration paid to the Buyer for this option may be retained by the Seller without deduction or offset.
3. **Term.** The term of this Option shall commence upon execution by both parties and shall expire at 5:00 pm on the ninetieth day following closing the transaction called for in a certain Real Estate Purchase and Sale Agreement entered into by and between Nashua Millyard Associates, Inc. and the City of Nashua dated April ____, 2021 (the "City of Nashua PSA"). In the event that the City of Nashua PSA does not close on or before July 31, 2021, this Option shall automatically terminate and neither parties shall have any further rights pursuant to this Option Agreement.
4. **Purchase Price.** The purchase price ("Purchase Price") which Buyer agrees to pay upon exercise of the Option is One Dollar Fifty-Seven cents (\$ 1.57) per square foot payable in cash.
5. **Conditions Precedent and Exercise.** The Seller does hereby authorize the Buyer or Buyer's agents to enter the Property for purposes of preparing or causing a survey of the

Property for purposes of defining the Option Land, preparing a subdivision plan, and making an application for subdivision approval. The Seller will cooperate in good faith to accomplish the subdivision, at no cost or expense to the Seller. The Buyer or Buyer's agents shall have the right, at its sole expense, to cause a survey or subdivision plan and a subdivision application to be prepared (the "Survey"). The Survey shall determine the metes and bounds of the Option Land. The Option Land may include all or a portion of the Property east of the easterly line of the proposed utility easement and south of Spine Road as shown and defined on plan entitled "Tax Map 77 Lot 5 & Tax Map E Lot 1487 Easement Plan Pine Street and 10 Whipple Street" Progress Print dated May 4, 2021 attached as Exhibit A. The Option Land shall become part of one or both of Lots 77-5 or 77-11 also indicated on the said plan.

The subdivision plan shall meet the ordinary municipal rules and regulations regarding subdivision application and subdivision approvals before the City of Nashua NH land use boards. Prior to exercising this Option, the Buyer or Buyer's agents shall submit the subdivision plan and subdivision application for review and approval by the appropriate municipal land use boards. Upon approval, the subdivision plan and the metes and bounds descriptions of the Option Land evidenced by the subdivision plan shall be the "Option Land" subject to this Option. Once the subdivision is approved the Buyer may exercise this Option by giving Seller or Seller's successor written notice of his intention to exercise the Option. In the written notice, Buyer shall include a description of the Option Land as determined in this Section 5.

Upon providing notice to Seller or Seller's successor, Buyer may purchase and Seller or its successors shall sell the Option Land for the Purchase Price set forth in this Option Agreement. Closing of the option purchase shall occur on or before thirty (30) days following subdivision approval by the Nashua Planning Board, but in no event shall Closing be extended beyond the ninetieth (90th) day following closing under the certain City of Nashua PSA.

6. Representations and Warranties of Seller. The Seller represents and warrants to the Buyer that:

(a) The Seller has full power and authority to execute and deliver this Agreement, and this Agreement is a valid and binding agreement enforceable against the Seller in accordance with its terms;

(b) Neither the execution of this Agreement nor the sale of the Property will constitute a violation of, or conflict with, or default under, any contract, commitment, agreement, understanding or arrangement to which the Seller is a party or by which Seller is bound or of any law, decree, or judgment;

(c) Seller has valid title to the Property, free and clear of all claims, liens, charges, encumbrances deeds of trust and security interests. Seller may transfer the Property to the City of Nashua, but any transfer will be subject to the Buyer's rights under this Option to Purchase Property.

7. Cooperation. Each party shall, upon request of the other party, promptly execute and deliver all additional documents reasonably deemed by the requesting party to be necessary, appropriate, or desirable to complete the subdivision and transfer called for pursuant to this Agreement.

8. Purchase and Sale. If Buyer exercises the Option at a closing, the Seller shall sell, transfer and deliver the Option Land to the Buyer, represented by appropriate quitclaim deed. The Buyer shall pay to the Seller the Purchase Price as set forth Section 4 above.

9. Survival. All representations, warranties and agreements made by the Seller and by the Buyer in this Agreement shall survive the execution of this Agreement and any Closing and any investigation at any time made by or on behalf of any party hereto.

10. Modification; Assignment. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto. Buyer may assign his rights under this Agreement with the consent of Seller.

11. Successors. This Agreement will be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective heirs, beneficiaries, executors, representatives and permitted assigns.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

13. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all agreements, understanding, representations, or warranties, whether oral or written, by or among the parties, previously or contemporaneously made or given.

Balance of the page intentionally left blank.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the Buyer and each Seller as of the day and year first written below:

Dated: _____

SELLER:

Nashua Millyard Associates, Inc.

By:

BUYER:

Dated: _____

Stephen Bonnette

Aaron Bagshaw

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

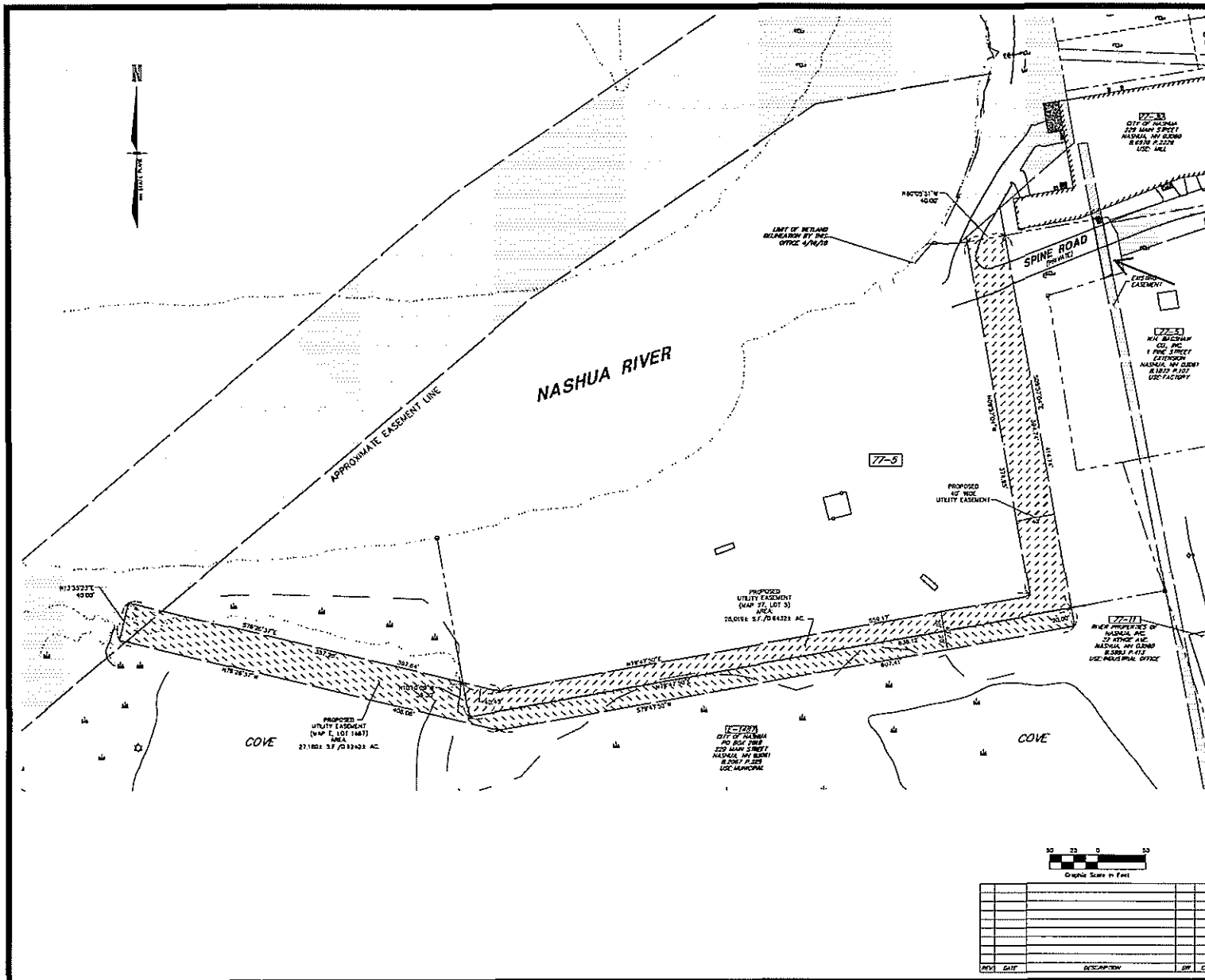
This instrument was acknowledged before me on April _____, 2021 by _____ of Nashua Millyard Associates, Inc. on behalf of the corporation.

Notary Public

My commission expires:

Exhibit A

Description of Property



- NOTES**
- OWNER OF RECORD OF MAP 77, LOT 5 IS NASHUA MILLIARD ASSOCIATES, INC. PD BOX 794, NASHUA, NH 03041-0794. DEC. REFERENCE: BK. 3799, PG. 87.
 - OWNER OF RECORD OF MAP E, LOT 1487 IS THE CITY OF NASHUA, 228 MAIN STREET, NASHUA, NH 03041. DEC. REFERENCE: BK. 2047, PG. 223.
 - 77-5 INDICATES TAX MAP AND LOT NUMBER.
 - PROPOSED EASEMENT AREAS:
 - MAP 77, LOT 5 UTILITY EASEMENT AREA: 26.0164 SQUARE FEET/0.64224 ACRES
 - MAP E, LOT 1487 UTILITY EASEMENT AREA: 27.1814 SQUARE FEET/0.62404 ACRES

EASEMENT LEGEND

EXISTING EASEMENT AREA

PROPOSED UTILITY EASEMENT AREA

PROGRESS PRINT
MAY 4, 2020

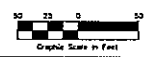
CERTIFICATION

PURSUANT TO RSA 644:1 and RSA 472:14, I CERTIFY THAT THIS SURVEY PLAN IS NOT A SURRENDER PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

THE ABOVE CERTIFICATION IS PROVIDED TO MEET RECORDING REQUIREMENTS AND IS NOT A CERTIFICATION TO FILE OR CHARGE OF PROPERTY SHOWN.

HANS-GEORG A. MERTSCH, JR., LL.S.
NH LICENSE NO. 707
FOR SURVEYOR, P.E.

TAX MAP 77 LOT 5 & TAX MAP E, LOT 1487
EASEMENT PLAN
PINE STREET & 10 WHIPPLE STREET
OWNED BY
NASHUA MILLIARD ASSOCIATES, INC. (MAP 77, LOT 5)
CITY OF NASHUA (MAP E, LOT 1487)
PREPARED FOR
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
SCALE: 1"=50' MAY 4, 2020



REV	DATE	DESCRIPTION	BY	CHK

TFM Civil Engineers, Structural Engineers, Traffic Engineers, Land Surveyors, Landscape Architects, Scientists

48 Constitution Drive
Bedford, NH 03110
Phone (603) 472-4450
Fax (603) 472-9747
www.tfm.com

17939.01	DN	TMB	78	2127	SHEET 1 OF 1

LEGISLATIVE YEAR 2021

RESOLUTION: R-21-144

PURPOSE: Authorizing the purchase of property located at “L” Pine Street (Map 77, Lot 5)

ENDORSERS: Mayor Jim Donchess
Alderman Jan Schmidt

COMMITTEE ASSIGNMENT: Planning and Economic Development Committee
Nashua Planning Board

FISCAL NOTE: Purchase price of three hundred twenty five thousand dollars (\$325,000). The source of funds for this purchase will be from an expense transfer from the Broad Street Parkway Capital Project Fund.

ANALYSIS

This resolution authorizes the purchase of “L” Pine Street (Map 77, Lot 5).

Charter §77 provides that the Planning Board “shall review and make recommendations to the mayor and board of aldermen on all locations for proposed municipal building and facilities, including educational, [and] on the purchase and sale of any land by the city.”

Approved as to account structure, numbers and amount:

Financial Services Division

By: /s/John Griffin

Approved as to form:

Office of Corporation Counsel

By: /s/Celia K. Leonard

Date: May 6, 2021