



RESOLUTION

AUTHORIZING THE ACCEPTANCE OF A FIRST AMENDMENT TO ACCESS AND RECREATIONAL EASEMENT FOR THE ATHLETIC FIELD ADJACENT TO THE PENNICHUCK MIDDLE SCHOOL FROM NORTH CONCORD STREET PROPERTIES, LLC, SUCCESSORS IN INTEREST TO PENNICHUCK CORPORATION

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 First Amendment to the Access and Recreational Easement 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-12-062

PURPOSE: Authorizing the acceptance of a First Amendment to Access and Recreational Easement for the athletic field adjacent to the Pennichuck Middle School from North Concord Street Properties, LLC, successors in interest to Pennichuck Corporation

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

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: No cost.

ANALYSIS

This legislation authorizes the acceptance of a First Amendment to Access and Recreational Easement for the athletic field adjacent to the Pennichuck Middle School from North Concord Street Properties, LLC, successors in interest to Pennichuck Corporation. The amendment provides that the primary, but not exclusive, use of the easement is for youth sport activities as determined by the Parks & Recreation Department. The easement may be used between the hours of 8:00 a.m. and 9:00 p.m. Improvements, including bleachers and lights, may be made to the recreational easement. Marching bands, school or private, are prohibited from using the easement. The city will assist in obtaining the necessary approvals for a fence behind Clovelly Apartments which the grantor will erect at its cost. The balance of the terms, duties, rights and obligations of the initial easement remain in full force and effect.

Approved as to form: Office of Corporation Counsel

By: 

Date: August 9, 2012

**FIRST AMENDMENT TO
ACCESS AND RECREATIONAL EASEMENT**

THIS FIRST AMENDMENT TO ACCESS AND RECREATIONAL EASEMENT is made this _____ day of _____, 2012, by and between **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 "Successor Grantor") and 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").

Recitals

WHEREAS, Pennichuck Corporation, a New Hampshire corporation, granted to the Grantee a certain Access and Recreational Easement dated January 16, 2012 and recorded with the Hillsborough County Registry of Deeds at Book 8388, Page 235 (the "Easement"); and

WHEREAS, Pennichuck Corporation is referred to as the "Grantor" in the Easement; and

WHEREAS, the Easement pertains to certain land situated northerly of Henri Burque Highway in Nashua, Hillsborough County, New Hampshire, shown as the Proposed Recreational Easement 'B' on Hillsborough County Registry of Deeds Plan No. 37322 and defined as the "Easement Area" in the Easement; and

WHEREAS, the Easement Area is a portion of land situated in said Nashua, described in Exhibit B of the Easement and defined in the Easement as the "Grantor's Property"; and

WHEREAS, Pennichuck Corporation conveyed the Grantor's Property to the Successor Grantor by deed dated January 23, 2012 and recorded with said Registry of Deeds at Book 8390, Page 716, such conveyance being subject to the Easement; and

WHEREAS, pursuant to the terms of the Easement, the Successor Grantor (North Concord Street Properties, LLC) has succeeded to the rights of the Grantor (Pennichuck Corporation) under the Easement; and

WHEREAS, the Successor Grantor and the Grantee (City of Nashua) desire to amend certain provisions of the Easement.

Amendments

NOW, THEREFORE, in and for the mutual covenants set forth herein, and other good and valuable consideration paid, the Successor Grantor and the Grantee agree as follows:

1. Use of Easement Area. The section entitled "Use of Easement Area" appearing on the second page of the Easement is hereby amended by eliminating the text thereof and replacing the same with the following:

"Grantee may use the Easement Area for recreational purposes, with a primary focus on youth sports activities, such as football, soccer and lacrosse, and for such other recreational purposes as the City of Nashua Parks and Recreation Department (or its successor department) (the "Department") determines as are reasonable for the Easement Area given its nature, size, configuration, composition and location. The use of the Easement Area shall be subject to such rules and regulations as the Department determines. All uses shall be in compliance with applicable federal, state and local laws and regulations. The Easement Area shall be used only during reasonable hours so as not to interfere with the use of Grantor's Property. Without limitation to the foregoing, no use of the Easement Area may be made prior to 8:00 a.m. nor later than 9:00 p.m. Grantee shall ensure that any new or additional lights in the Easement Area are downcast in nature, minimizing "spillover" on to the remainder of the Grantor's Property; provided, that the existing lights in the Easement Area may remain of the same type and not subject to the previous provisions of this sentence. All lights in the Easement Area shall be used only from dusk to 9:00 p.m. Bleachers may be installed and used in the Easement Area, but public address systems shall not be installed nor used in the Easement Area. The Easement Area shall not be used for practices or performances by musical groups (such as marching bands)."

2. Fencing and Security. The section entitled "Fencing and Security" appearing on the third page of the Easement is hereby amended by labeling the current text thereof "A. Westerly Fence" and replacing the date "May 1, 2012" with the date "October 1, 2012" in the first sentence thereof, and adding the following as the second paragraph of the section labeled "Fencing and Security":

"B. Easterly Fence. No later than October 1, 2012, Grantee shall obtain all governmental approvals necessary for the installation of a chain link or other security fence (at least six (6) feet in height) on a line commencing at a point on the easterly line of Grantor's Property, said point being approximately three hundred ninety-five (395) feet from the southeast corner of Grantor's Property; thence running southwesterly on a line perpendicular to said easterly side of Grantor's Property for approximately one hundred ten (110) feet to the easterly side of the Limit of Wetlands as shown on the Consolidation/Subdivision Plan (defined

below). Within ninety (90) days after Grantee has obtained the last of such governmental permits and approvals, Grantor shall (at its cost) install such fence. Grantor or the Association (defined below), as the case may be, shall keep and maintain such fence in good condition and repair.

3. Consolidation/Subdivision Plan: Association.

A. The term "Consolidation/Subdivision Plan" means the 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.

B. The Successor Grantor intends to subject the Grantor's Property 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 Successor 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 (thus the Successor Grantor) under the Easement.

4. Effectiveness. The Access and Recreational Easement (the Easement) as amended hereby remains in full force and effect.

5. Acceptance. The Access and Recreational Easement (the Easement) and this First Amendment to Access and Recreational Easement have been accepted by the City of Nashua by resolution of the Board of Aldermen adopted on _____, 2012 (Resolution R-_____) and the signatory hereof on behalf of the City of Nashua has been duly authorized to sign this instrument pursuant to such resolution.

IN WITNESS WHEREOF, the Successor Grantor and Grantee have caused this instrument to be duly executed this _____ day of _____, 2012.

North Concord Street Properties, LLC

By: _____
Kevin Slattery, Manager

City of Nashua

By: _____
Donnalee Lozeau, Mayor

Witness

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:

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:



RESOLUTION

AUTHORIZING THE ACCEPTANCE OF A FIRST AMENDMENT TO ACCESS AND RECREATIONAL EASEMENT FOR THE ATHLETIC FIELD ADJACENT TO THE PENNICHUCK MIDDLE SCHOOL FROM NORTH CONCORD STREET PROPERTIES, LLC, SUCCESSORS IN INTEREST TO PENNICHUCK CORPORATION

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 First Amendment to the Access and Recreational Easement for a portion of Assessor's Map 51, Lot 8 from North Concord Street Properties, LLC, in substantially the same form as the attached.

**FIRST AMENDMENT TO
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WHEREAS, Pennichuck Corporation is referred to as the "Grantor" in the Easement; and

WHEREAS, the Easement pertains to certain land situated northerly of Henri Burque Highway in Nashua, Hillsborough County, New Hampshire, shown as the Proposed Recreational Easement 'B' on Hillsborough County Registry of Deeds Plan No. 37322 and defined as the "Easement Area" in the Easement; and

WHEREAS, the Easement Area is a portion of land situated in said Nashua, described in Exhibit B of the Easement and defined in the Easement as the "Grantor's Property"; and

WHEREAS, Pennichuck Corporation conveyed the Grantor's Property to the Successor Grantor by deed dated January 23, 2012 and recorded with said Registry of Deeds at Book 8390, Page 716, such conveyance being subject to the Easement; and

WHEREAS, pursuant to the terms of the Easement, the Successor Grantor (North Concord Street Properties, LLC) has succeeded to the rights of the Grantor (Pennichuck Corporation) under the Easement; and

WHEREAS, the Successor Grantor and the Grantee (City of Nashua) desire to amend certain provisions of the Easement.

Amendments

NOW, THEREFORE, in and for the mutual covenants set forth herein, and other good and valuable consideration paid, the Successor Grantor and the Grantee agree as follows:

1. Use of Easement Area. The section entitled "Use of Easement Area" appearing on the second page of the Easement is hereby amended by eliminating the text thereof and replacing the same with the following:

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2. Fencing and Security. The section entitled "Fencing and Security" appearing on the third page of the Easement is hereby amended by labeling the current text thereof "A. Westerly Fence" and replacing the date "May 1, 2012" with the date "January 1, 2013" in the first sentence thereof, and adding the following as the second paragraph of the section labeled "Fencing and Security":

"B. Easterly Fence. No later than January 1, 2013, Grantee shall obtain all governmental approvals necessary for the installation of a chain link or other security fence (at least six (6) feet in height) on a line commencing at a point on the easterly line of Grantor's Property, said point being approximately three hundred ninety-five (395) feet from the southeast corner of Grantor's Property; thence running southwesterly on a line perpendicular to said easterly side of Grantor's Property for approximately one hundred ten (110) feet to the easterly side of the Limit of Wetlands as shown on the Consolidation/Subdivision Plan (defined

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A. The term "Consolidation/Subdivision Plan" means the 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.

B. The Successor Grantor intends to subject the Grantor's Property 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 Successor 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 (thus the Successor Grantor) under the Easement.

4. Effectiveness. The Access and Recreational Easement (the Easement) as amended hereby remains in full force and effect.

5. Acceptance. The Access and Recreational Easement (the Easement) and this First Amendment to Access and Recreational Easement have been accepted by the City of Nashua by resolution of the Board of Aldermen adopted on _____, 2012 (Resolution R-____) and the signatory hereof on behalf of the City of Nashua has been duly authorized to sign this instrument pursuant to such resolution.

IN WITNESS WHEREOF, the Successor Grantor and Grantee have caused this instrument to be duly executed this _____ day of _____, 2012.

North Concord Street Properties, LLC

By: _____
Kevin Slattery, Manager

City of Nashua

By: _____
Donnalee Lozeau, Mayor

Witness

Witness

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

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Notary Public
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**AMENDED
R-12-062**



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“B. Easterly Fence. No later than April 1, 2013, Grantee shall obtain all governmental approvals necessary for the installation of a chain link or other security fence (at least six (6) feet in height) on a line commencing at a point on the easterly line of Grantor’s Property, said point being approximately three hundred ninety-five (395) feet from the southeast corner of Grantor’s Property; thence running southwesterly on a line perpendicular to said easterly side of Grantor’s Property for approximately one hundred ten (110) feet to the easterly side of the Limit of Wetlands as shown on the Consolidation/Subdivision Plan (defined below). Within ninety (90) days after Grantee has obtained the last of such governmental permits and approvals, Grantor shall (at its cost) install such fence. Grantor or the Association (defined below), as the case may be, shall keep and maintain such fence in good condition and repair.

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IN WITNESS WHEREOF, the Successor Grantor and Grantee have caused this instrument to be duly executed this _____ day of _____, 2012.

North Concord Street Properties, LLC

Witness

By: _____
Kevin Slattery, Manager

City of Nashua

Witness

By: _____
Donnalee Lozeau, Mayor

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:

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

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on its behalf.

Notary Public
My Commission Expires:

RESOLUTION R-12-062

Authorizing the acceptance of a First Amendment to Access and Recreational Easement for the athletic field adjacent to the Pennichuck Middle School from North Concord Street Properties, LLC, successors in interest to Pennichuck Corporation

IN THE BOARD OF ALDERMEN

1st READING AUGUST 14, 2012

Referred to:

COMMITTEE ON INFRASTRUCTURE

2nd Reading SEPT. 12, 2012

3rd Reading RE-REFER TO INFRASTRUCTURE
NOVEMBER 27, 2012

4th 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] VITALE
[Signature] SHEEHAN
[Signature] DEANE
[Signature] DOWD
[Signature] MELIZZI-GOLJA

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President