



## **RESOLUTION**

**AUTHORIZING THE ACCEPTANCE OF A TRAIL EASEMENT DEED FROM  
ROBERT E. AND CATHERINE E. HARTT ON LAND LOCATED NORTH OF  
GROTON ROAD**

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

*In the Year Two Thousand and Fourteen*

***RESOLVED*** by the Board of Aldermen of the City of Nashua to authorize the acceptance of a trail easement deed from Robert E. and Catherine E. Hartt, in substantially the same form as the attached trail easement deed, situated on a certain parcel of land located north of Groton Road, for the purpose of constructing and maintaining a Class A trail for use by the public.

## **LEGISLATIVE YEAR 2014**

**RESOLUTION:** R-14-101

**PURPOSE:** Authorizing the acceptance of a trail easement deed from Robert E. and Catherine E. Hartt on land located north of Groton Road

**SPONSOR(S):** Alderman Michael Soucy

### **COMMITTEE ASSIGNMENT:**

**FISCAL NOTE:** The fiscal impact of this resolution will be the cost of constructing (estimated at approximately \$12,000) and maintaining (estimated at approximately \$1,200 annually) the trail, and the cost of recording the trail easement deed. Source of funding will be Conservation Fund, Fund #4080.

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## **ANALYSIS**

This resolution will authorize acceptance of a trail easement deed from Robert E. and Catherine E. Hartt on land located north of Groton Road, for the purpose of constructing and maintaining a Class A trail for use by the public. Mr. and Mrs. Hartt are donating this easement to the city subject to the conditions set forth in the easement deed. Acceptance of this easement will allow for the construction of a trail connecting existing trails on property and easements purchased from Rita M. Terrell (R-10-65) with trails at Southwest Park-Yudicky Farm.

NRO § 5-118 provides that monies in the Conservation Fund may be expended by the Conservation Commission in accordance with applicable law and ordinances, subject to the approval of the Board of Aldermen. NRO § 12-2 provides that the Conservation Commission has the power to accept on behalf of the City conservation easements, but all other acquisitions shall be authorized by resolution passed by the Mayor and Board of Aldermen.

Charter § 77 provides that the planning board shall review and make recommendations to the Mayor and Board of Aldermen on the purchase and sale of any land by the City.

The Conservation Committee, by vote on June 17, 2014, recommended that funds in the Conservation Fund, Fund #4080, be used to design and construct trails for the Southwest Park Trail Connection.

**RESOLUTION**

**R-14-101**

This board approved R-14-48 on August 12, 2014, authorizing the mayor to expend \$400,000 to design and construct conservation trails through the recently acquired Terrell Homestead Conservation Area, along Lovewell Pond and Buck Meadow Conservation Areas, and connections to Yudicky Park and other trails and walkways in the surrounding neighborhoods. The funding source will be the Conservation Fund, Fund #4080

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**Approved as to account number  
and/or structure, and amount:**

**Financial Services Division**

By:   
\_\_\_\_\_

**Approved as to form:**

**Office of Corporation Counsel**

By:   
\_\_\_\_\_

**Date: December 17, 2014**

## **TRAIL EASEMENT**

**Robert E. and Catherine E. Hartt**, husband and wife, of 19 Groton Road, Nashua, Hillsborough County, New Hampshire 03062 (the "Grantors"), for consideration received, grant to the **City of Nashua**, a municipal corporation, of Hillsborough County, New Hampshire, with a principal place of business at 229 Main Street, Nashua, Hillsborough County, New Hampshire 03061 (the "Grantee"), with WARRANTY COVENANTS, the following:

### **20' Class A Trail Easement**

The perpetual right and easement to construct, maintain, repair and replace a Class A trail (as defined and governed by RSA 231-A:1, et seq.) subject to public trail use restrictions (as defined and governed by RSA 231-A:4 and related statutory provisions), including the right in common with others, to pass and repass, by foot and non-motorized bicycles, over certain land situated on the northerly side of Groton Road in Nashua, Hillsborough County, New Hampshire, defined as the Easement Area below and described on **Exhibit A** attached, all subject to the terms and conditions of this Trail Easement, including, without limitation, the reserved and superior rights and easements in favor of the Grantors, their heirs, successors and assigns, such reserved and superior rights and easements being defined below as the "Reserved Rights".

The Grantee shall have the right and obligation to post and maintain signs prohibiting parking along Grantors' property and trespass upon Grantors' property, excluding the Easement Area. The Grantee shall also have the right to post and maintain signs and fences in the Easement Area, to affect safe passage through the Easement Area and to protect Grantors' property rights; provided, that such installation shall be made from materials and designed in a manner in keeping with the rural setting, customary and usual for a trail easement, and further provided, that fences shall be made only of wood, no such fences shall exceed three (3) feet in height and all of such rights in favor the Grantee are and remain subject to the Reserved Rights (in favor of the Grantors, their heirs, successors and assigns). Grantee's signs and fences designed to protect Grantors' property shall be constructed and installed prior to the public being permitted access and use of the Easement Area.

The Grantors, for their heirs, successors and assigns, reserve the following rights and easements with respect to the Easement Area which are superior in all respects to the rights and easements granted by the Grantors to the Grantee pursuant to this Trail Easement (collectively, the "Reserved Rights"):

1. The perpetual right and easement to install driveways over and through the Easement Area and in connection therewith, to pass and repass, by vehicles and by foot, over the driveways, together with the right to install, construct, maintain, repair, replace and use such driveways, including paving the same;

2. The perpetual right and easement to install, construct, maintain, repair, replace and use (i) below the Easement Area, underground utility lines, equipment and appurtenances for domestic water service, sanitary sewer services, storm drainage (including installation of culverts), natural gas service, electric power, telephone and telecommunications, cable television and other intelligence transmission and (ii) above the Easement Area, utility lines poles, appurtenances for electric power, telephone and telecommunications and other intelligence transmission and storm drainage (including the installation of swales and culverts). In addition, the Grantors reserve the perpetual right and easement to convey easements over, under and through the Easement Area to utility companies and utility providers (including the City of Nashua) to provide utility services to the Grantors' property. Upon the request of the Grantors, the Grantee shall join with the Grantors in the granting of any such easements to utility companies and utility providers if so requested by such utility companies and/or utility providers;

3. The right to keep and install mailboxes, address signs and other signs permitted by the ordinances of the City of Nashua; and

4. Without limitation to items 1, 2 and/or 3 above, the perpetual right to use the Easement Area for any use which a fee simple owner of real estate may make use of real estate; provided that such uses do not unreasonably interfere with the Grantee's use of the Easement Area, with the Grantee recognizing the superior rights and easements (and uses derivative therefrom) in favor of the Grantors, their heirs, successors and assigns.

The Reserved Rights are superior to the rights and easements granted to the Grantee by this Trail Easement, including (and notwithstanding) the provisions of any statute, including, without limitation, RSA Ch. 231-A.

Neither the Grantors nor their heirs, successors and assigns, shall have any liability or responsibility whatsoever for any loss, cost, damage, charge, claim or expense of any kind or nature arising from, out of or incidental to the use of the Easement Area, or the condition, maintenance or state of repair of the Easement Area.

In exercising the Reserved Rights (detailed in paragraphs 1 through 4 above), the Grantors shall (i) keep the Easement Area clear for passage and use at all times and (ii) restore, repair and replace any area or portion of the Easement Area disturbed in

connection with the exercise of the Reserved Rights; provided, that portions of the Easement Area permanently altered (such as in connection with construction and use of driveways) may remain in their new conditions and not restored to their former conditions.

The Grantors shall restore, repair and replace any area or portion of the Easement Area disturbed by the exercise of its rights under this Trail Easement to such area's former condition, as near as practical.

In exercising its rights hereunder, the Grantee shall use good construction practices and act diligently in undertaking any work, maintenance and repairs. The Grantee shall restore forthwith any areas disturbed. All activities undertaken by the Grantee pursuant to this Trail Easement shall be done in a manner so as to minimize disturbance of the natural topography of the Easement Area, to prevent soil erosion thereon, and to prevent the natural pooling of water within the Easement Area and upon Grantors' property. The Grantee shall keep clear for passage and use by the Grantors, their heirs, successors and assigns, the aforesaid driveway(s) at all times.

Grantee shall restore, repair and/or replace any portion of Grantors' driveway(s) damaged by Grantee's construction, maintenance, repair or use of the Easement Area. Grantee shall restore the driveway(s) to the condition it was before the damage was caused by Grantee's construction, maintenance, repair and/or use of the Easement Area.

Nothing contained in this Trail Easement shall be construed to require the Grantee, the Grantors or their respective heirs, successors and assigns to remove snow from the Easement Area.

Grantee shall be responsible for maintaining the Easement Area, including the removal of litter and debris occasioned by the construction, maintenance, repair or use of said Easement Area.

Each party to this Trail Easement may enforce his, her or its rights under this Trail Easement by any proceedings available at law or equity, including by seeking the remedies of specific performance and mandatory injunction.

The easements, rights and conditions established by this Trail Easement are perpetual in nature, run with the land, benefit the Grantee, subject to the duties and obligations imposed upon the Grantee hereby and subject to the Reserved Rights, and burden the Grantors, their heirs, successors and assigns, provided that such burden carries the benefit of the Reserved Rights, and such Reserved Rights are appurtenant to Grantors' property. The recordation of this Trail Easement confirms that this Trail Easement has been delivered to the Grantee and accepted by the Grantee upon the terms and condition thereof, including subject to the Reserved Rights.

The Grantors hereby subordinate their rights of homestead to the Grantee's rights under this Trail Easement.

This Trail Easement is subject to open space (current use) land classification under RSA 79-A. Any land use change tax, assessment or penalty resulting from the activities of the Grantee pursuant to this Trail Easement shall be borne by the Grantee.

For title, reference is made to the deed of \_\_\_\_\_ to the Grantors dated \_\_\_\_\_ and recorded with the Hillsborough County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.

IN WITNESS WHEREOF, the Grantors have caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Robert E. Hartt

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Catherine E. Hartt

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH, SS

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Robert E. Hartt and Catherine E. Hartt.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

A certain parcel of land situated north of Groton Road in the City of Nashua, County of Hillsborough State of New Hampshire, being more particularly described a fifteen foot wide easement as follows:

Point of beginning at a north east corner of the herein described parcel and the easterly line of lot 379, S 18° 45' 00" W and 15.10 feet to a cement bound found; then

Westerly along a curve to the right having a radius of 1909.86 and a length of 476.21 feet to a point; then

N 01° 14' 53" E, a distance of 1.77 feet to a stone bound found; then

N 1° 14' 53" E, a distance of 14.66 to a point; then

Easterly along a curve to the left having a radius of 1894.86 and a length of 481.27 feet to the point of beginning.

Said easement 'A' contains 0.164 acres or 7181 s.f.