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Austin Mikolaities
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Bernard W. Pelech
1949 - 2021

July 13, 2023

VIA VIEWPOINT and HAND DELIVERY

Rick Chellman, Chair
City of Portsmouth Planning Board
1 Junkins Avenue
Portsmouth, NH 03801

RE: 189 Gates Street CUP – LU-22-30

Dear Mr. Chellman:

On behalf of the Nerbonne Family Revocable Trust, please accept this correspondence as our request for approval of two minor changes to the Planning Board's Notice of Decision dated April 27, 2022 relative to the above matter. A copy of the decision is submitted herewith.

First, stipulation 1.c requires that a fence be "constructed on the property line between 189 Gates St and 199 Gates street[.]" This condition was imposed at the suggestion of the neighbors' prior attorney. I am submitting herewith a copy of a property survey and easement plan that identifies a "fence easement" area of 64 square feet that is less than two feet to the west of the common boundary line. The western edge of this easement area is where the Nerbonnes intend to install the fence, and I can represent to you that this is what the abutting neighbors actually desire. I am also enclosing a copy of the relevant easement deed, which essentially requires the placement of the fence in this location. I am copying their current attorney on this correspondence. As you may be aware, the neighbors have appealed the Planning Board's decision and have agreed to dismiss further appeals if this change is made. Accordingly, we request the stipulation be changed to the following:

"1.c) A fence is constructed on the western edge of the fence easement area on 189 Gates Street that is in accordance with the Zoning Regulations. The fence shall be installed prior to construction of the ADU."

Note that the Historic District Commission administratively approved the applicant's fence application on July 12, 2023.

Rick Chellman, Chair
July 13, 2023
Page Two

Finally, the decision states “[a]ll stipulations of approval must be completed prior to issuance of a building permit unless otherwise indicated above.” Obviously, the stipulations which include constructing and installing improvements, that is, a fence, a gutter system and a drywell, cannot be completed without the issuance of a building permit in the first instance. We respectfully request that this language be modified to provide that all such stipulations of approval be completed prior to the issuance of a certificate of occupancy.

Thank you for your attention and we look forward to having this matter heard at the Board’s August 17, 2023 meeting.

Sincerely,

Christopher P. Mulligan

Christopher P. Mulligan

CPM/

Encls.

cc: Nerbonne Family Revocable Trust (w/ encls.)
Brian Bouchard, Esq. (w/ encls.)
Anne Whitney (w/ encls.)



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

PLANNING BOARD

April 27, 2022

Nerbonne Family Revocable Trust
189 Gates Street
Portsmouth, NH 03801

RE: Conditional use Permit request for property located at 189 Gates Street (LU-22-30)

Dear Owners:

The Planning Board, at its regularly scheduled meeting of Thursday, April 21, 2022, considered your application for Conditional Use Permit under section 10.815 of the Zoning Ordinance and modification of the standards set forth in Section 10.815.30 for the conversion of an existing accessory structure (garage) into a garden cottage with 507 gross square footage of living space. Said property is shown on Assessor Map 103, Lot 6 and lies within the General Residence B (GRB) and Historic Districts. As a result of said consideration, the Board voted 1) to find that the application meets the requirements set forth in Section 10.815.40 of the Zoning ordinance and to **grant** the Conditional Use Permit with **stipulations** (below); and 2) to grant a modification to the requirements set forth in section 10.815.31 to allow for an expansion that includes a 152 SF addition.

1.a) Any change, required as part of the Historic District and approval, that results in a change to the stipulations approved here or any change that is not substantially compliant with the approved Conditional Use Permit, as determined by the Planning Director, shall be resubmitted to the Planning Board for review and approval.

1.b) A gutter system and drywell are installed to catch all drainage and runoff from the garage and garage addition.

1.c) A fence is constructed on the property line between 189 Gates St and 199 Gates street that is in accordance with the Zoning Regulations.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Unless otherwise indicated above, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work. All stipulations of approval must be completed prior to issuance of a building permit unless otherwise indicated above. **Prior to issuance of a building permit, this letter of decision shall be recorded at the Rockingham Registry of Deeds.**

A certificate of use issued by the Planning Department is required to verify compliance with the standards of the approval, including the owner-occupancy and principal residence

requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department and is required to be renewed annually.

This approval shall expire unless a building permit is obtained within a period of one year from the date granted, unless otherwise stated in the conditions of approval. The Planning Board may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

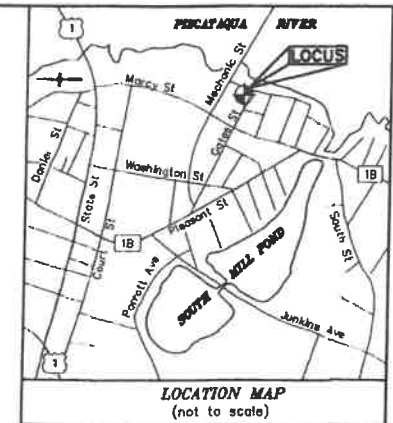
Very truly yours,

A handwritten signature in black ink, appearing to read "Rick Chellman". The signature is stylized with large, sweeping loops and a long horizontal tail.

Rick Chellman, Chairman of the Planning Board

cc: Shanti Wolph, Chief Building Inspector
Rosann Maurice-Lentz, City Assessor

Anne Whitney, AIA



MECHANIC STREET

PLAN REFERENCES:

1. "PLAT OF LAND FOR PETER FISHER IN PORTSMOUTH, N.H." BY PARKER SURVEY ASSOCIATES, Inc. DATED JULY 1983 AND RECORDED AT R.C.R.D. PLAN B-11743.
2. "PLAN OF MECHANIC STREET, LEADING FROM LAIGHTON'S MAST YARD TO GRAVES END STREET, PORTSMOUTH" DATED APRIL 20, 1836, ON RECORD AT PORTSMOUTH PUBLIC WORKS.

NOTES:

1. OWNER OF RECORD:
JOSEPH A. CAPOBIANCO, Jr. REVOCABLE TRUST
c/o JOSEPH A. CAPOBIANCO, Jr., Trustee
R.C.R.D. BOOK 4279 PAGE 156 (1/2 Interest)
DATED APRIL 27, 2004

JUDITH A. CAPOBIANCO REVOCABLE TRUST
c/o JUDITH A. CAPOBIANCO, Trustee
R.C.R.D. BOOK 4279 PAGE 154 (1/2 Interest)
DATED APRIL 27, 2004
2. TOTAL PARCEL AREA:
4,443 Square Feet OR 0.10 Acres
3. BASIS OF BEARING IS MAGNETIC MAY 2004.

REFERENCE PLAN

STANDARD PROPERTY SURVEY & PROPOSED EASEMENT PLAN

FOR PROPERTY AT
199 Gates Street
Portsmouth, Rockingham County, New Hampshire
OWNED BY
Joseph A. Capobianco, Jr. Revocable Trust
Judith A. Capobianco Revocable Trust
c/o Judith A. & Joseph A. Capobianco, Jr.
69 Arthur Avenue
Manchester, New Hampshire 03104

North
W EASTERLY
SURVEYING, Inc.

SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1
(207) 439-6333 KITTERY, MAINE 03904

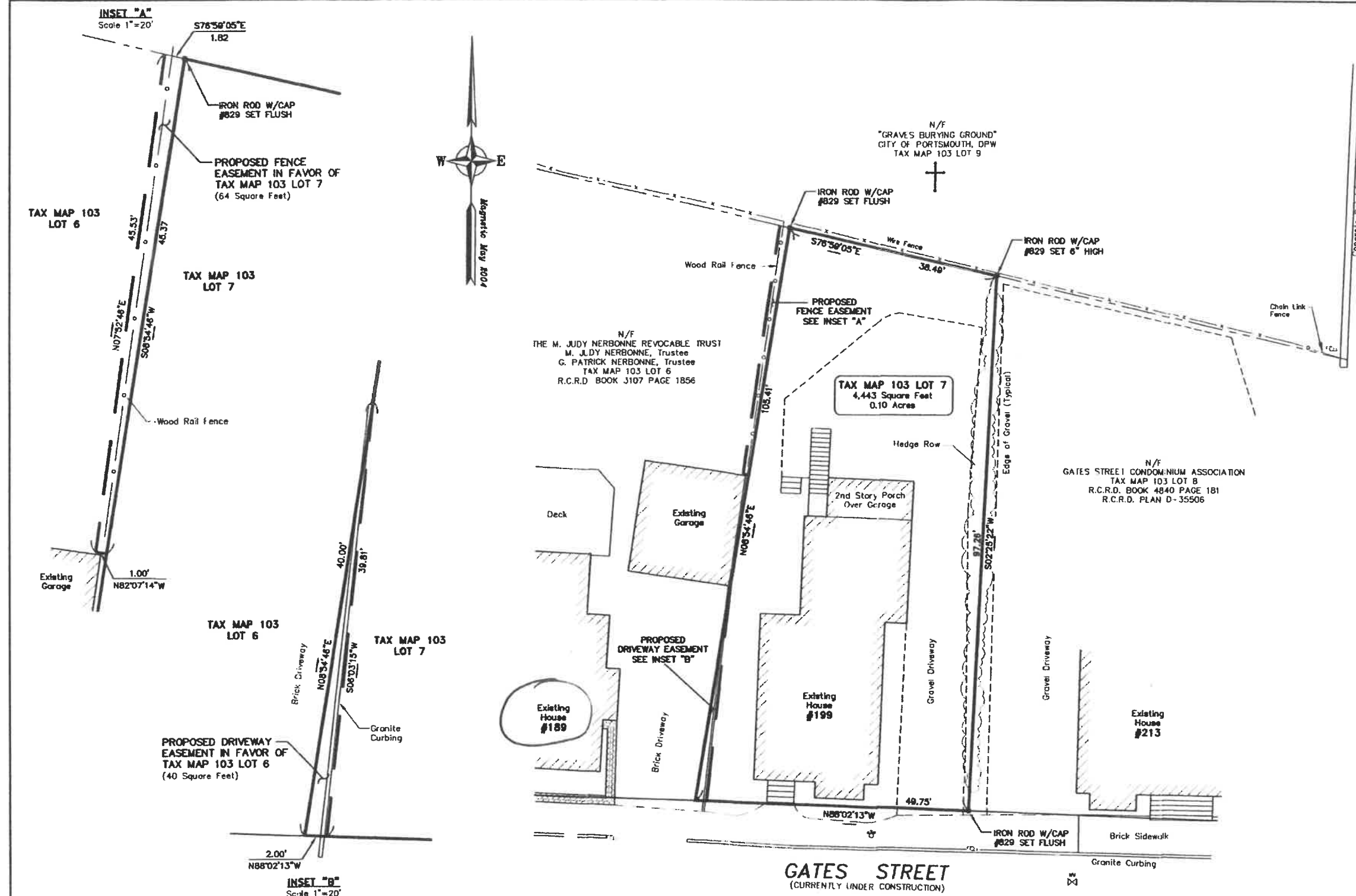
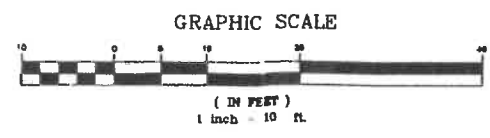
SCALE: 1" = 10'	PROJECT NO. D4650	DATE: 6/10/04	SHEET: 1 OF 1	DRAWN BY: R.A.B.	CHECKED BY: P.L.A.
DRAWING No: D4650 Boundary		FIELD BOOK No: "Portsmouth, NH #7"		Tax Map 103 Lot 7	

CERTIFICATION

"I certify that this survey plat is not a subdivision 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."
I further certify that this survey conforms to the ethics and standards set forth by the New Hampshire Land Surveyors Association for a category 1, condition 1 survey.

Peter L. Agrodnia, C.L.S. #829 Date: _____

REV.	DATE	STATUS	BY	CHKD	APPD.
3	06/16/09	UPDATED DRAWING DETAIL	RAB	RAB	PLA
2	05/27/09	ADDED PROPOSED EASEMENTS	RAB	RAB	PLA
1	06/17/04	ADDED MONUMENT SET ON JUNE 18, 2004	MCS	RAB	PLA



- LEGEND:**
- MONUMENT FOUND ○
 - UTILITY POLE ☉
 - WATER GATE VALVE ⊠
 - FIRE HYDRANT ⊞
 - ROCKINGHAM COUNTY REGISTRY OF DEEDS R.C.R.D.
 - NOW OR FORMERLY N/F
 - WATER SHUT OFF ⊕
 - EDGE OF PAVEMENT - - - - -
 - WOOD RAIL FENCE - - - - -
 - STOCKADE FENCE - - - - -
 - WIRE FENCE - - - - -
 - PROPERTY LINE ————
 - APPROXIMATE ADJACENT PROPERTY LINE - - - - -
 - GRANITE CURBING = = = = =
 - CONCRETE CURBING = = = = =

MAIL TO

STATE OF NEW HAMPSHIRE BK 5040 PG 1906

Return to:
Dwyer, Donovan & Pendleton,
461 Middle Street
Portsmouth, NH 03801

DEPARTMENT
OF
REVENUE
ADMINISTRATION



REAL ESTATE
TRANSFER TAX

XX THOUSAND		XX HUNDRED AND		40 DOLLARS
MO.	DAY	YR.	AMOUNT	
08	06	09	873592 \$ 40.00	
VOID IF ALTERED				

C/H
L-CHIP
ROA044602

* of 199 Gates Street, Portsmouth, NH 03801

EASEMENT DEED

NOW COMES, M. Judy Nerbonne, Trustee and G. Patrick Nerbonne, Trustee of the M. Judy Nerbonne Revocable Trust, hereafter the "Grantors" of 189 Gates Street, Portsmouth, Rockingham County, New Hampshire, do hereby grant unto Joseph A. Capobianco, Jr., as Trustee of the Joseph A. Capobianco, Jr. Revocable Trust, and Judith A. Capobianco, as Trustee of the Judith A. Capobianco Revocable Trust, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the right and privilege to exclusive use of the limited portion of a parcel of land located at 189 Gates Street, Portsmouth, New Hampshire, Tax Map 103, Lot 6, the total lot being further described by deed recorded in the Rockingham County Registry of Deeds at Book 3107, Page 1856, executed on June 29, 1995. The easement area being further defined herein as follows:

A certain tract of land located northerly but not adjacent to Gates Street, Portsmouth, Rockingham County, New Hampshire, depicted as "Proposed Fence Easement in Favor of Tax Map 103 Lot 7" on a plan entitled "Standard Property Survey & Proposed Easement Plan for property at 199 Gates Street, Portsmouth, Rockingham County, New Hampshire owned by Joseph A. Capobianco, Jr. Revocable Trust & Judith A. Capobianco Revocable Trust", prepared by North Easterly Surveying, Inc., dated June 10, 2004, last revised June 18, 2009, which will be recorded in the Rockingham County Registry of Deeds contemporaneously with this easement, as Plan No. D-36016 and being more particularly described as follows:

Beginning at an iron rod at the northwesterly corner of land of said Capobianco Trust (Grantee), also being the northeasterly corner of land of the M. Judy Nerbonne Revocable Trust (Grantor); thence running S 08° 54' 46" W along land of said Grantee a distance of 45.37 feet to a point; thence running N 82° 07' 14" W through land of said Grantor a distance of 1.00 foot to a point; thence running N 07° 52' 46" E through land of said Grantor a distance of 45.53 feet to a point at land of the City of Portsmouth, Graves Burying Ground; thence running S 76° 59' 05" E along land of said City of Portsmouth a distance of 1.82 feet to the point of beginning, containing 64 square feet of land (hereinafter the "Proposed Fence Easement").

The purpose of the Proposed Fence Easement is to allow the Grantee exclusive use of the limited portion of the Grantors' lot for lawn, driveway or garden and to allow the Grantors and Grantees to jointly maintain, upgrade and replace the current wooden fence in its current location on that portion of the Proposed Fence Easement abutting the remainder of the Grantors Premises, with the understanding that the Grantee is contemporaneously granting an exclusive right to

039644

2009 AUG -6 PM 2:01

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Grantor by separate easement deed for the Grantor to have exclusive use of the area shown on the Plan and titled "Proposed Driveway Easement."

Meaning and intending to describe an easement over the within the described land of Grantor for the purposes described above for the benefit of the property of Grantee identified as Portsmouth Tax Map 103, Lot 7 as shown on the above referenced plan. Said Grantee property further described by deed recorded in the Rockingham County Registry of Deeds at Book 3107, Page 1856.

The easements, rights, and privileges granted by this instrument are perpetual and shall run with the land and are for the benefit of the within described Grantee.

The use of this easement shall be limited to the benefited property and may not be expanded.

IN WITNESS WHEREOF, M. Judy Nerbonne, Trustee and G. Patrick Nerbonne, Trustee of the M. Judy Nerbonne Revocable Trust, have caused this Easement Deed to be executed this 28th day of July, 2009.

M. Judy Nerbonne Revocable Trust

By: M. Judy Nerbonne
M. Judy Nerbonne

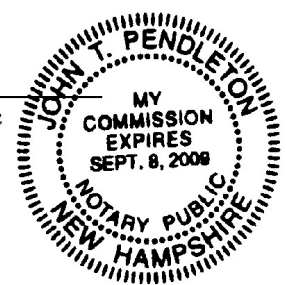
M. Judy Nerbonne Revocable Trust,

By: G. Patrick Nerbonne
G/Patrick Nerbonne

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

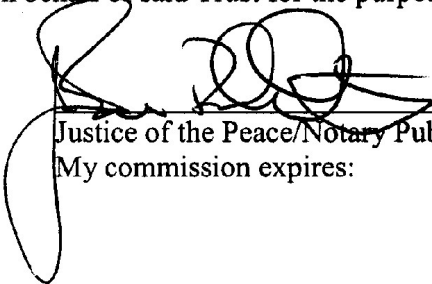
On this the 28th day of July, 2009 before me, the undersigned officer, personally appeared M. Judy Nerbonne, who acknowledged himself to be the Trustee of the M. Judy Nerbonne Revocable Trust, and acknowledged that she, as such officer, being authorized so to do, executed the same on behalf of said Trust for the purposes therein contained.

[Signature]
Justice of the Peace/Notary Public
My commission expires:



STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

On this the 28th day of July, 2009 before me, the undersigned officer, personally appeared G. Patrick Nerbonne, who acknowledged himself to be the Trustee of M. Judy Nerbonne Revocable Trust, and acknowledged that he, as such officer, being authorized so to do, executed the same on behalf of said Trust for the purposes therein contained.


Justice of the Peace/Notary Public
My commission expires:

