PRESERVATION RESTRICTION AGREEMENT between the COMMONWEALTH OF MASSACHUSETTS by and through the MASSACHUSETTS HISTORICAL COMMISSION and the CITY OF NEW BEDFORD

The parties to this Agreement are the Commonwealth of Massachusetts, by and through the Massachusetts Historical Commission located at the Massachusetts Archives Building, 220 Morrissey Boulevard, Boston, Massachusetts 02125, hereinafter referred to as the Commission, and the City of New Bedford, 133 William Street, New Bedford, Massachusetts 02740, hereinafter referred to as the Grantor.

WHEREAS, the Grantor is the owner in fee simple of certain real property with improvements known as Rural Cemetery (hereinafter "the Premises") located at 149 Dartmouth Street, New Bedford, and bounded on the south by Weaver and Matthew Streets and by house lots to the north of Weaver Street; on the west by Rockdale Avenue and house lots on the east side of that avenue; on the east by Alec, Dartmouth and Field Streets and house lots to the west of Alec and Field Streets; on the north by Grape Street and house lots on the south side of Grape Street, and on the northeast by Oak Street and house lots along the southwest side of that street; and which is depicted as Parcels 34-41, 35-183, 28-42, and 27-3, and excludes Parcel 28-132 on the MassGIS Level 3 Assessors' Digital Parcel Datalayer Map, a copy of which is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, a portion of the Premises is described in a deed dated February 15, 1848 from Benjamin T. Sanford and Thomas Sanford to City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 15, Page 552; a deed dated March 1, 1848 from Benjamin Sanford to City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 15, Page 553; a deed dated February 15, 1848, from Benjamin T. Sanford to the City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 15, Page 554; a deed dated February 28, 1848, from Gideon Allen to City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 15, Page 555; a deed dated February 29, 1848, from Henry H. Crapo to City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 15, Page 557; a deed dated June 29, 1852, from William C. Taber et al. to the City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 23, Page 92; a deed dated October 17, 1865, from Delano et al. to the City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 56, Page 169; a deed dated June 5, 1900, from Charves et al. to the City of New Bedford, recorded at the Bristol County Registry of Deeds, Book 208, Page 574; a deed dated July 5, 1904, from Borden et al. to the City of New Bedford, recorded with the Bristol County Registry of Deeds, Book 237, Page 569; a deed dated July 29, 1904, from Borden to the City of New Bedford, recorded at

the Bristol County Registry of Deeds, Book 237, Page 570; and a deed dated October 23, 1905, from Tilden to the City of New Bedford, recorded at the Bristol County Registry of Deeds, Book 252, Page 562; and in Exhibit B attached hereto and incorporated by reference; and (hereinafter together "the Restricted Area"); and

WHEREAS, a portion of the Premises is shown on the "Plan of Rural Cemetery 1848" drawn by Henry H. Crapo, recorded at the Bristol County Registry of Deeds, Plan Map 65,058; and in Exhibit C attached hereto and incorporated by reference;

WHEREAS, said portion of the Premises ("the Restricted Area") is situated in the northeast corner of Rural Cemetery and includes the Dartmouth Street and the Oak Street Entrance; a mortared fieldstone wall with a rounded cap along Dartmouth Street; four buildings: an 1896, front gable roof, cobblestone receiving tomb and public chapel with granite buttresses and porte cochere, a 1920 wood framed office building, a 1938 brick maintenance building, and a contemporary three-bay concrete block garage structure; the cemetery's earliest burial markers most of which are made of marble, some of granite, and a few of slate; 3 above ground tombs and 2 burial mound tombs; avenues laid out in a grid within the east and curved paths within the west. The Restricted Area is further represented in a Sketch Plan attached hereto and incorporated herein by reference as Exhibit D.

WHEREAS, the Grantor wishes to impose certain restrictions, obligations and duties upon it as the owner of the Restricted Area and on the successors to its right, title and interest therein, with respect to maintenance, protection, and preservation of the Restricted Area in order to protect the architectural, archaeological and historical integrity thereof; and

WHEREAS, the Premises and the Restricted Area are significant for their architecture, archaeology and/or associations, and were individually listed in the State and National Registers of *Historic Places* on April 28, 2014 and therefore qualify for a preservation restriction under M.G.L., Chapter 184, section 32; and

WHEREAS, the preservation of the Restricted Area is important to the public for the enjoyment and appreciation of its architectural, archaeological and historical heritage and will serve the public interest in a manner consistent with the purposes of M.G.L. Chapter 184, sections 31, 32, and 33 hereinafter referred to as the Act; and

WHEREAS, the Commission is a government body organized under the laws of the Commonwealth of Massachusetts and is authorized to accept these preservation restrictions under the Act;

NOW, THEREFORE, for good and valuable consideration, the Grantor conveys to the Commission the following preservation restrictions, which shall apply in perpetuity to the Restricted Area.

PURPOSE

It is the Purpose of these preservation restrictions to ensure the preservation of those characteristics which contribute to the architectural, archaeological and historical integrity of the Restricted Area which have been listed in the National and/or State Registers of Historic Places, under applicable state and federal legislation. Characteristics which contribute to the architectural, archaeological and historical integrity of the Restricted Area include, but are not limited to, the artifacts, features, materials, appearance, and workmanship of the Restricted Area, including those characteristics which originally qualified the Restricted Area for listing in the National and/or State Registers of Historic Places.

TERMS

The terms of the Agreement are as follows:

- 1. <u>Maintenance of Premises</u>: The Grantor agrees to assume the total cost of continued maintenance, repair and administration of the Restricted Area so as to preserve the characteristics which contribute to the architectural, archaeological and historical integrity of the Restricted Area in a manner satisfactory to the Commission according to the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (36 CFR 67 and 68), as these may be amended from time to time. The Grantor may seek financial assistance from any source available to it. The Commission does not assume any obligation for maintaining, repairing or administering the Restricted Area.
- 2. <u>Inspection</u>: The Grantor agrees that the Commission may inspect the Restricted Area from time to time upon reasonable notice to determine whether the Grantor is in compliance with the terms of this Agreement.
- 3. <u>Alterations</u>: The Grantor agrees that no alterations shall be made to the Premises, including the alteration of any interior, unless (a) clearly of minor nature and not affecting the characteristics which contribute to the architectural, archaeological or historical integrity of the Restricted Area, or (b) the Commission has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by the Grantor, or (c) required by casualty or other emergency promptly reported to the Commission. Ordinary maintenance and repair of the Restricted Area may be made without the written

permission of the Commission. For purposes of this section, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines which are attached to this Agreement and hereby incorporated by reference.

- Notice and Approval: Whenever approval by the Commission is required under this 4. restriction, Grantor shall request specific approval by the Commission not less than (30) days prior to the date Grantor intends to undertake the activity in question. A request for such approval by the grantor shall be reasonably sufficient as a basis for the Commission to approve or disapprove the request. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Commission to make an informed judgment as to its consistency with the purposes of this Preservation Restriction. Within (30) days of receipt of Grantor's reasonably sufficient request for said approval, the Commission shall, in writing, grant or withhold its approval, or request additional information relevant to the request and necessary to provide a basis for its decision. However, should the Commission determine that additional time is necessary in order to make its decision the Commission shall notify the Grantor. The Commission's approval shall not be unreasonably withheld, and shall be granted upon a reasonable showing that the proposed activity shall not materially impair the Purpose of this Agreement. Failure of the Commission to make a decision within sixty (60) days from the date on which the request is accepted by the Commission or notice of a time extension is received by the Grantor shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.
- 5. <u>Assignment</u>: The Commission may assign this Agreement to another governmental body or to any charitable corporation or trust among the purposes of which is the maintenance and preservation of historic properties only in the event that the Commission should cease to function in its present capacity.
- 6. <u>Validity and Severability</u>: The invalidity of M.G.L. c. 184 or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- 7. Recording: The Grantor agrees to record this Agreement with the appropriate Registry of Deeds and file a copy of such recorded instrument with the Commission.
- 8. <u>Archaeological Activities</u>: The conduct of archaeological activities on the Restricted Area, including without limitation, survey, excavation and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the State Archaeologist of the Massachusetts Historical Commission (M.G.L. Ch.9, Section 27C, 950 CMR 70.00).

9. **Enforcement**: The Commission shall have the right to prevent and correct violations of the terms of this preservation restriction. If the Commission, upon inspection of the Restricted Area, finds what appears to be a violation, it may exercise its discretion to seek injunctive relief in a court having jurisdiction. Except where the Commission determines that an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and/ or architectural importance of the Restricted Area, the Commission shall give the Grantor written notice of the violation and allow thirty (30) calendar days to correct the violation before taking any formal action, including, but not limited to, legal action. If a court, having jurisdiction, determines that a violation exists or has occurred, the Commission may seek to obtain an injunction to stop the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantor to restore the Restricted Area to a condition that would be consistent with the preservation purposes of the grant from the Massachusetts Preservation Projects Fund and the Massachusetts Historical Commission. In any case where a court finds that a violation has occurred, the court may require the Grantor to reimburse the Commission and the Commonwealth's Attorney General for all the Commonwealth's expenses incurred in stopping, preventing, and/ or correcting the violation, including, but not limited to, reasonable attorney's feed. The failure of the Commission to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

10. <u>Other Provisions</u>: None applicable.

The burden of these restrictions enumerated in paragraphs 1 through 9, inclusive, shall run with the land and is binding upon future owners of an interest therein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this day o, 20	f
TITLE OF ORGANIZATION	
By: Name: Title:	
COMMONWEALTH OF MASSACHUSETTS,ss.	
On thisday of, 20, before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.	2
Notary Public My Commission Expires	

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION

The undersigned hereby certifies that the foregoing preservation restrictions have been approved pursuant to Massachusetts General Laws, Chapter 184, section 32.

MASSACHUSETTS HISTORICAL COMMISSION

Ву	
Brona Simon	
Executive Director and Clerk	
Massachusetts Historical Commission	
COMMONWEALTH OF MASSACHUSETTS	
Suffolk, ss.	
On this day of, 20, before me, the undersigned notary public, person appeared Brona Simon, proved to me through satisfactory evidence of identification, which driver's license) (a current U.S. passport) (my personal knowledge of the identity of the print the person whose name is signed on the preceding or attached document, and acknowledged she signed it voluntarily for its stated purposes.	cipal), to be
Notary Public	
My Commission Expires	

RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify Paragraph Three of the Terms of the Preservation Restriction Agreement, which deals with alterations to the Restricted Area. Under this Paragraph, prior permission from the Massachusetts Historical Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require the Commission's prior review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the Commission, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by building owners.

PAINT

<u>Minor</u> - Exterior or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

<u>Major</u> - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, wallpaper, ornamental woodwork, stone, decorative or significant original plaster.

WINDOWS AND DOORS

<u>Minor</u> - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

<u>Major</u> - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows as well as any level of stained glass window conservation/restoration. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

<u>Minor</u> - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

<u>Major</u> - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the Restricted Area is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

<u>Minor</u> - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

<u>Major</u> - Moving or subdividing buildings or Restricted Area; altering of Restricted Area; altering or removing significant landscape features such as gardens, vistas, walks, plantings; ground disturbance affecting archaeological resources.

WALLS/PARTITIONS

<u>Minor</u> - Making fully reversible changes (i.e., sealing off doors in situ, leaving doors and door openings fully exposed) to the spatial arrangement of a non-significant portion of the building. <u>Major</u> - Creating new openings in walls or permanently sealing off existing openings; adding permanent partitions which obscure significant original room arrangement; demolishing existing walls; removing or altering stylistic features; altering primary staircases.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

<u>Major</u> - Installing or upgrading systems which will result in major appearance changes (i.e., dropped ceilings, disfigured walls or floors, exposed wiring, ducts, and piping); the removal of substantial quantities of original plaster or other materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the Preservation Restriction, such changes must be reviewed by the Commission and their impact on the historic integrity of the Restricted Area assessed.

It is the responsibility of the owner of the Restricted Area (Grantor) to notify the Commission in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the Preservation Restriction is to enable the Commission to review proposed alterations and assess their impact on the integrity of the Restricted Area, not to preclude future change. Commission staff will attempt to work with Grantors to develop mutually satisfactory solutions, which are in the best interests of the Restricted Area.

EXHIBIT A

Legal Descriptions of the portion of the Cemetery that includes the Restricted Area

...several lots of land situated within part of Dartmouth in the County of Bristol which has recently become a portion of the City of New Bedford, being lots severally numbered (in relation to the Cemeteries owned by the City) on a plan of land laid out by said Benjamin T. Sanford and Thomas Sanford for a burying ground and which lots the undersigned now own (illegible) and whereas the said City of New Bedford have made and are making provisions whereas all the burial grounds in said City shall be under their care and superintendence...

Source: Bristol County Registry of Deeds, Book 15, Page 552

Feb. 15, 1848

Cemetery Agreement - Benjamin J. Sanford and Thomas Sanford to City of New Bedford

...in consideration of the purchase of me made by the City of New Bedford of certain lands for Burial lots in the southwest part of said city and of one dollar paid by the said City the receipt whereof I do hereby acknowledge I do consent and agree with said City that all the owners of Burial lots in said City or in Dartmouth part of it sold by B & T Sanford will sign the foregoing agreement, or if they do not, that I will hold the said City harmless from all loss or damage by (illegible) thereof witnessing hand and seal this first day of March in the year of our Lord One Thousand eight hundred and forty eight...

Source: Bristol County Registry of Deeds, Book 15, Page 553

March 1, 1848

Cemetery Agreement - Sanford to City of New Bedford

... a certain lot of land being south of and adjoining the lot known as the New Bedford Rural Cemetery, beginning at the northeast corner of the lot now conveyed and in the westerly line of Dartmouth Street so called and at the southeasterly corner of the Rural Cemetery aforesaid. Thence westerly in the south line of said cemetery eight hundred, fifteen feet and two inches to a land mark and a corner in the line of other land of said Sanford. Thence at an angle less than a right angle and in the line of other land of said Sanford, three hundred thirty eight feet nine inches to a land mark and corner. Thence six hundred and seventy two feet easterly to said Dartmouth Street. Thence northerly at a right angle and in the line of said street three hundred and eleven feet to the line of said cemetery and place of beginning. Bounded on the north by said Rural Cemetery, on the west by other land of said Sanford, on the south by other land of said Sanford, on the east by said Dartmouth Street and containing in the whole an area of eight hundred forty nine and 32/100 rods...

Source: Bristol County Registry of Deeds, Book 15, Page 554

February 15, 1848

Deed - Benjamin T. Sanford to City of New Bedford

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...lots of land being lots in the Rural Cemetery situated in said City of New Bedford, and each lot containing the quantity of land set against the respective numbers of the burial lots, the same being numbered as follows on the plan of said cemetery drawn by Henry H. Crapo of which is furnished, viz lot...Making in the whole an area of One hundred, three & 25/100 Rods...

Source: Bristol County Registry of Deeds, Book 15, Page 555 February 28, 1848

Deed - Gideon Allen to City of New Bedford

...lots of land in the New Bedford Rural cemetery situated in said City of New Bedford, and numbered as follows on the plan of said cemetery drawn by same Crapo East of nine lots containing two square rods making the "half lots" which contains one square rod viz. No. Forty five (45) No. Forty six (46) No. Forty seven (47) No. Forty Eight (48) No. Two hundred and fifty nine (259) No Two hundred and ninety (290) No. Two hundred and ninety four (294) No. Two hundred and ninety five (295) No. Three hundred and Eleven (311) and the west half of lot No. ninety two (92). Making in the whole an area of nineteen Rods...

Source: Bristol County Registry of Deeds, Book 15, Page 557

February 29, 1848

Deed - Henry H. Crapo to City of New Bedford

...a certain lot of land situated in said New Bedford, bounded and described as follows, viz; Beginning at the North East corner thereof at a point in the west line of Dartmouth Street and South East corner of the Rural Cemetery; thence North Sixty two and a half degrees West in the line of said Cemetery Forty and 68/100 Rods; thence South three and a half degrees West One and 56/100 Rods, thence South three degrees East by lands of Benjamin T. Sanford. Eight and 39/100 Rods; thence South Sixty two and a half degrees East by our own land thirty five and 56/100 Rods to the Westerly line of said Dartmouth Street, thence North twenty eight and a half degrees East in the line of said Street Eight and 53/100 Rods to the place of beginning. Containing two acres and five and 26/100 Rods more or less...

Source: Bristol County Registry of Deeds, Book 23, Page 92

June 29, 1852

Deed - William C. Taber et al to City of New Bedford

...a certain lot or parcel of land, situated in said New Bedford, and bounded and described as follows; viz; Begining at the southwest corner of the Friends Burying Ground; Thence north three degrees west, in the line of said burying ground and line of the Rural Cemetery Thirty Nine and 70/100 Rods to an angle; Thence north Sixty Four degrees west, partly by land of said cemetery, and land formerly of Henry H. Crapo, Nine Rods; Thence south Eighty Six degrees west, by land last named, Thirty Five and 12/100 Rods; Thence south seven degrees west, by land of James Howland 2nd and the heirs of John Howland Twenty Three Rods; Thence south Sixty Five degrees east, by land last named and land formerly owned by Thomas Riddell, Eighty and 50/100 Rods, and Thence north three degrees west One and 25/100 Rods to the place of beginning. Containing nine acres and thirty rods, more or less...

Source: Bristol County Registry of Deeds, Book 56, Page 169

October 17, 1865

Deed - Delano et al to City of New Bedford

...a certain lot of land situated in said New Bedford, bounded and described as follows viz; Beginning at the North East corner of this lot and the South East corner of land formerly of Paul Joseph Chaves now of these grantors and at a point 130 feet South from the South line of Oak Street, measuring in the east line of said grantors land. Thence Southerly, continuing said East line, ninety five feet to the Cemetery, thence Westerly in line of said Cemetery about eight (8) feet, thence North westerly in line of said Cemetery ninety (90) feet; thence Northerly thirty four (34) feet to the South west corner of said grantors land, and thence Easterly in line of said grantors land seventy eight and 3/100 (78 3/100) feet to the place of beginning...

Source: Bristol County Registry of Deeds, Book 208, Page 574

June 5, 1900

Deed - Chaves et al to City of New Bedford

...a certain lot or parcel of land situated in said New Bedford and bounded and described as follows to wit: Beginning at the northeast corner thereof at the intersection of the west line of Dartmouth Street with the south line of Grape Street; thence running southerly in said west line of Dartmouth Street one hundred eleven and 6/10 (111.6) feet to the north line of Rural Cemetery; thence westerly in line of land of said Cemetery one hundred fifty four (154) feet to a stub; thence northeasterly in line of land now or formerly of Thomas Bliss one hundred sixty eight and 5/100 (168.5) feet to a stake in the south line of Grape Street one hundred fifty four (154) feet to the place of beginning. Containing seventy six and 96/100 (76.96) square rods, more or less...

Source: Bristol County Registry of Deeds, Book 237, Page 569

July 5, 1904

Deed - Borden et al to City of New Bedford

...a certain lot or parcel of land situated in said New Bedford and bounded and described as follows to wit: Beginning at a point in the west line of Oak Street Court as now laid out one hundred and twenty one (121) feet southerly from the south line of Oak Street; thence southerly in said west line of Oak Street Court eighty five (85) feet to land of the Rural Cemetery; thence in line of said Cemetery westerly fifty three and 45/100 (53.45) feet; thence northerly one hundred four and 57/100 (104.57) feet; and thence easterly fifty three and 33/100 (53.33) feet to the place of beginning. Containing eighteen and 25/100 (18.25) square rods, more or less...

Source: Bristol County Registry of Deeds, Book 237, Page 570

July 29, 1904

Deed - Borden to City of New Bedford

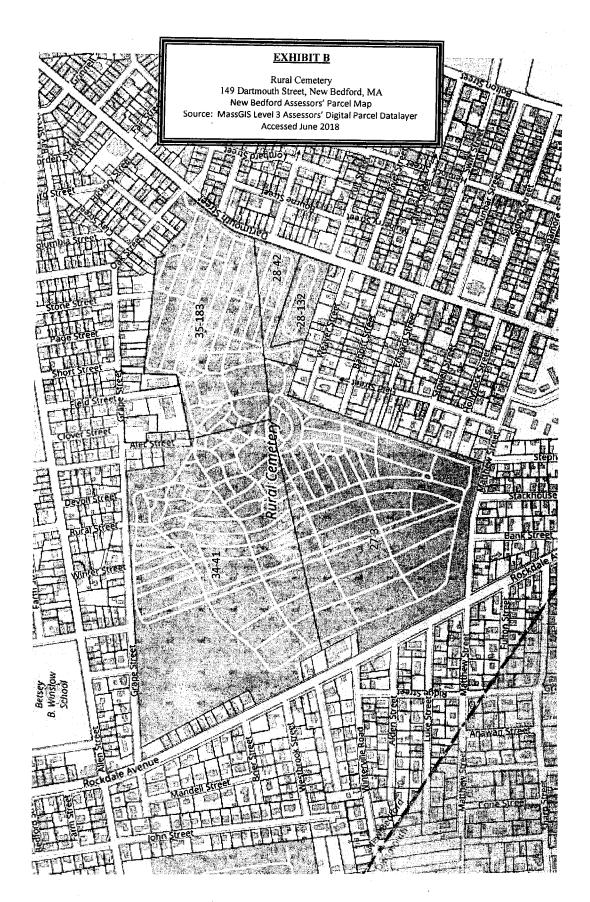
...a certain piece or parcel of land situated in said New Bedford and bounded and described as follows viz; Beginning at the northwest corner of said lot as a point in the easterly line of Oak Street Court, which point is distant southerly from the southerly line of Oak Street, one hundred thirty nine feet, and is at the south westerly corner of other land of this grantor, thence easterly by said other land of grantor sixty nine and one tenth (69.1) feet to other land of this grantee, thence southerly, by last named land, twenty

nine and fifty three one hundredths (29.53) feet to land of said City of New Bedford; thence westerly by the land of said New bedford, seventy six and twenty seven one hundredths (76.27) feet to the easterly line said Oak Street Court fifty seven and three tenths (57.3) feet to the place of beginning., containing eleven and two tenths (11.2) square rods, more or less. It is made an express condition hereof that the granted premises shall never be used as a burial place for human bodies, although the same is to be included in and become a part of the Rural Cemetery...

Source: Bristol County Registry of Deeds, Book 252, Page 562

October 23, 1905

Deed - Tilden to City of New Bedford



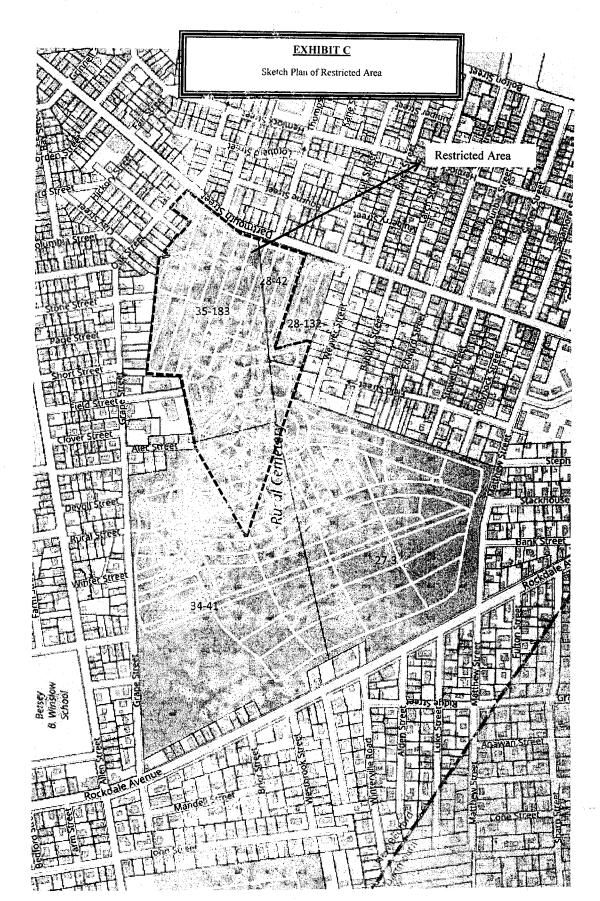


EXHIBIT D

Bristol County Registry of Deeds
Plan Map 65,058
"Plan of Rural Cemetery Copied from a plan by H. H. Crapo"
by George H. Nye, December 19, 1887

