



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

August 31, 2020

Council President Joseph P. Lopes and
Members of the City Council
City Hall
New Bedford, MA

RE: Grant of Conservation Restriction

Dear Council President Lopes and Members of the City Council:

Enclosed for your review and approval please find an Order approving and accepting a Conservation Restriction from the Buzzards Bay Coalition to the New Bedford Conservation Commission, which places conservation restrictions on approximately 1.6 acres of land purchased with Community Preservation Act ("CPA") funds by the Buzzards Bay Coalition directly across Mill Road from Grantor's 21-acre Acushnet Sawmill Reserve with its 283 feet of frontage on Mill Road and 228 feet of frontage on Jireh Street. The subject property is located within the City of New Bedford and shown on the enclosed plan entitled, "Revised A.N.R. Plan of Land for Richard G. Hawes Revocable Trust" by Fitzgerald Engineering, Inc. dated February 23, 2005, recorded in Plan Book 159 at Page 61 in the Bristol County (Southern District) Registry of Deeds. The enclosed Conservation Restriction is a draft, pending final Executive Office of Energy and Environmental Affairs (EEA) legal review.

Sincerely yours,

Jonathan F. Mitchell
Mayor

JFM/mcb

Encs.

cc: New Bedford Conservation Commission (w/out enclosures)



CITY OF NEW BEDFORD

CITY COUNCIL

September 10, 2020

ORDERED, that the City of New Bedford hereby approves and accepts the enclosed Conservation Restriction granted by the Buzzards Bay Coalition to the New Bedford Conservation Commission, for approximately 1.6 acres of land owned by the Buzzards Bay Coalition. The subject property is located within the City of New Bedford and shown as on the enclosed plan entitled, "Revised A.N.R. Plan of Land for Richard G. Hawes Revocable Trust" by Fitzgerald Engineering, Inc. dated February 23, 2005, recorded in Plan Book 159 at Page 61 in the Bristol County (Southern District) Registry of Deeds.

Grantor: BUZZARDS BAY COALITION, INC.
Grantee: CITY OF NEW BEDFORD
Address of Premises: West Side of Mill Road
New Bedford, Massachusetts
Title Reference: Deed Book 12679 at Page 20 and
Deed Book 13187 at Page 144
Bristol County (Southern District) Registry of Deeds

CONSERVATION RESTRICTION
to
New Bedford Conservation Commission

Acushnet Sawmill Gateway, Mill Road, New Bedford

New Bedford CR # 8

BUZZARDS BAY COALITION, INC., a Massachusetts nonprofit corporation with an address of 114 Front Street, New Bedford, Massachusetts 02740, being the sole owner and for its successors and assigns ("Grantor"), acting pursuant to Sections 31-33 of Chapter 184 of the Massachusetts General Laws, grants with QUITCLAIM COVENANTS to the **CITY OF NEW BEDFORD**, a political subdivision of the Commonwealth of Massachusetts, acting by and through its Conservation Commission, a duly constituted and empowered board of the City of New Bedford by the authority of Section 8C of Chapter 40 of the Massachusetts General Laws with an address of 133 William Street, Room 304, New Bedford, Massachusetts 02740, its permitted successors and assigns, ("Grantee"), for nominal consideration as this conveyance is to be considered and characterized as a gift, IN PERPETUITY AND EXCLUSIVELY FOR LAND CONSERVATION PURPOSES, the following Conservation Restriction ("Conservation Restriction") on land located in New Bedford, Bristol County, containing the entirety of an approximately 1.6 -acre, more or less, parcel of land ("Premises"), which Premises is more particularly described in Exhibit A and depicted in Exhibit B, both of which exhibits are attached hereto and incorporated herein by reference.

I. PURPOSES.

This Conservation Restriction is defined in, and authorized by, Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation

Restrictions are to ensure that the Premises will be retained in perpetuity for conservation purposes as a scenic urban park, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values ("Conservation Values").

The acquisition of the Premises by the Grantor was accomplished through the use of Community Preservation Act funds as authorized by Chapter 44B of the Massachusetts General Laws ("CPA") and the use of which, by Section 12 of Chapter 44B of the Massachusetts General Laws, requires the imposition of this Conservation Restriction. The use of such CPA funds was authorized and approved by orders dated August 16, 2018 and December 18, 2018, respectively, by New Bedford City Council. Certified copies of said orders are attached hereto as Exhibit C and incorporated by reference.

The public benefits, or Conservation Values, resulting from conservation of the Premises include, without limitation, the following:

- (1) Open Space Protection. The protection of the Premises contributes to the overall protection of the natural character and feel of the immediate area along the Acushnet River. In particular, the protection of the Premises will enhance the ecological value and integrity of existing conservation land. The Premises is directly across Mill Road from Grantor's 21-acre Acushnet Sawmill Reserve and will prevent land use conversion and the resulting associated impacts. Protection of the Premises adds to a growing network of conserved open space on both sides of the Acushnet River thereby preserving the existing habitats and natural resources.
- (2) Scenic Protection. While being across the street from the Acushnet Sawmill Reserve, the Premises is in a densely developed area of New Bedford. With its 283 feet of frontage on Mill Road and 228 feet of frontage on Jireh Street, the Premises operates as the visual gateway for the Acushnet Sawmill offering scenic open space views that complement the immediate area. Given the resulting protected land, protection of the Premises will result in the conservation of open space views from/to public roads and publicly-accessible lands.
- (3) Protection of Water Quality. Conservation of the Premises will contribute to the protection of water quality in the Acushnet River by removing the possibility of six potential residential dwellings and other impervious surfaces, thereby reducing runoff pollution as well as erosion, sedimentation, flooding and other nonpoint source pollution commonly associated with land conversion and use. Such reduction will benefit the critical habitats of the Acushnet River and provide protection to the water quality downgradient in New Bedford Harbor and, ultimately, Buzzards Bay.
- (4) Expansion of Public Access. Protection of the Premises will enable public access and use of the Premises for passive recreational activities as well as providing safe access to the Acushnet River Reserve.

- (5) Furtherance of Government Policy, New Bedford. Protection of the Premises is consistent with, and furthers, New Bedford's current Master Plan which includes the following goals:

- Expansion of outdoor recreational and open space opportunities,
- Protection of natural resources and creation of new greenways,
- Enhancement of the quality and appeal of New Bedford's streetscapes, and
- Implementation of funding mechanisms to support open space.

Protection of the Premises is also consistent with, and furthers, New Bedford's current Open Space and Recreation Plan, specifically the following objectives:

- Enhance the public's access to the waterfront (Goal 1, Objective 3),
- Restore threatened and degraded natural resources (Goal 4, Objective 2),
- Support preservation of private open space (Goal 4, Objective 3), and
- Create community gardens and natural wildlife refuges within the City (Goal 4, Objective 4).

Lastly, protection of the Premises is also consistent with, and furthers, New Bedford's Community Preservation Plan which seeks to protect open space for parks, community gardens, recreational use and environmental education.

- (6) Furtherance of Government Policy, Massachusetts. Conservation of the Premises is in furtherance of the clearly defined governmental policy of the Commonwealth of Massachusetts to encourage land conservation as exhibited by the enactment of the Community Preservation Act (Chapter 44B of the Massachusetts General Laws). Conservation of the Premises is also consistent with, and will further the goals of, the South Coast Rail Economic Development and Land Use Corridor Plan Update (2013) which identifies regionally significant Priority Protection Areas where land should be conserved and protected. The Premises is just north of Priority Protection Area 201-36 (River's End Park) and immediately across Mill Road from the Town of Acushnet Priority Protection Area 3-10 (Greenbelt and Aquifer Protection Area).
- (7) Community Preservation Act. This Conservation Restriction is required by Chapter 44B of the Massachusetts General Laws, the Community Preservation Act statute, and is intended to be in compliance therewith.
- (8) Article 97. This Conservation Restriction will preserve and protect the Conservation Values of the Premises consistent with the spirit and intent of, and subject to, the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

These and other Conservation Values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report further defined in Paragraph XIV(H) below.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility-impaired;
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted) and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use;
- (9) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
- (10) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its Conservation Values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the Conservation Values or purposes of this Conservation Restriction:

- (1) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II(B) shall be in compliance with the then current zoning of the City of New Bedford, the Wetlands Protection Act (Section 40 of Chapter 131 of the Massachusetts General Laws) and all other applicable federal, state and local laws, rules, regulations and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth of Massachusetts takes any position whether such permit should be issued.
- (2) Outdoor Passive Recreational Activities. Walking, bicycling, picnicking, birdwatching, general flora and fauna observation and other non-motorized outdoor passive recreational activities and the use of power-driven mobility devices by persons who have mobility impairments as long as all such uses do not materially alter the landscape, do not degrade environmental quality, do not materially impact the Conservation Values and do not involve more than minimal use for commercial recreational activities.
- (3) Reservation Management; Improvements. The construction and/or expansion of small-scale structures and utilities accessory to the use of the Premises as part of an urban park open space reservation and community garden by visitors, such as, and including but not limited to, picnic tables, raised garden beds, benches, fences, gates, signs, informational kiosks and/or bulletin boards, safety lighting, irrigation, but, expressly, not permanent buildings, except a small storage shed in support of land management/stewardship activities, community gardening, and/or environmental education/research, as long as the total square footage of said shed does not exceed five hundred (500) square feet.
- (4) Environmental Education and Research. Activities associated with environmental education and research, including study, survey, monitoring and research of natural resources provided such activities do not materially alter the landscape, and do not degrade environmental quality.
- (5) Gardening. Activities associated with installing, maintaining and operating a community garden and/or orchard, carried on in accordance with sound agricultural practices that are consistent with the purposes and Conservation Values of this Conservation Restriction and are designed to avoid or minimize adverse impacts on soil and water quality. Allowed activities under this Paragraph II(B)(5) include the storage and composting of organic materials, from on and off the Premises, for the purpose of amending soil conditions on the Premises.
- (6) Utilities. The installation, use, maintenance, repair and replacement of water service, electric, lighting and other utilities associated with supporting the urban park and

community gardening amenities on the Premises provided that care is taken to minimize the impact of any such utilities on the Conservation Values of the Premises.

- (7) Trails/Paths. The construction and maintenance of new pervious-surfaced trails and paths, not to exceed sixteen (16) feet in width, on the Premises. With prior written notice to the Grantee, the installation of paved pathways to facilitate access for all or to connect sidewalk/urban recreation pathway networks.
- (8) Parking Area. The use, maintenance, repair and marking of a pervious-surfaced parking area (unless the permit-granting authority requires otherwise, in which case adequate measures will be taken to minimize the impacts of stormwater runoff from the parking lot) immediately adjacent to Mill Road designed to accommodate a maximum of twenty (20) vehicles.
- (9) Stone Walls. The maintenance and repair of existing stone walls and the installation of new stone walls. Use of field stone, boulders and ledge found on the Premises to repair stone walls shall be permitted, provided such use minimizes the impact on the purposes or Conservation Values of this Conservation Restriction;
- (10) Vegetation Management. In accordance with generally accepted urban park management practices, selective pruning, cutting and removal of trees, brush and vegetation to: (i) prevent, control or remove hazards or damage from disease, insects, invasive/noxious/nuisance plant or animal species or fire; (ii) promote and manage natural communities; (iii) construct, maintain, use and repair the small-scale structures and conduct surface alterations permitted under Paragraph II.B. and (iv) maintain and preserve the present condition of the Premises, including views, trails and stone walls, if any, all as documented in the Baseline Documentation Report (see Paragraph XIV(H) below). This can include mowing, mechanical removal of woody vegetation, prescribed burning, animal grazing, and chemical use but only if said use is designed and applied to affect the target species and not nearby non-target species and does not materially impair water quality or the Conservation Values, and is done as needed, in accordance with all required approvals and permits.
- (11) Motorized Vehicles. The use of motorized vehicles and equipment as necessary in support of the Reserved Rights herein shall be allowed, provided that no use of motorized vehicles or equipment may create impacts that are detrimental to the purposes of this Conservation Restriction. The exercising of this Reserved Right does not permit the outdoor storage of motorized vehicles.
- (12) Composting. The stockpiling and occasional burning, during non-nesting seasons (generally October 1 through March 31), of stumps, trees, brush, slab wood, limbs or similar biodegradable materials originating on the Premises, provided that such activities are conducted in locations where they will not have deleterious impacts on the Conservation Values or purposes of this Conservation Restriction. No such activities shall allow for the creation of "stump dumps" nor take place closer than fifty (50) feet

from the Premises boundary or any wetland, waterbody or stream. All exercising of this Reserved Right shall take into account sensitive areas.

- (13) Habitat Restoration and Improvement. With prior written approval of the Grantee, activities or measures designed to restore native terrestrial, wetland, and aquatic biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat and rare/endangered species. This could include, but is not limited to: 1) shrubland and grassland restoration and management, 2) removal of man-made rock and earthen piles and berms, and 4) establishing indigenous/native species.
- (14) Archaeological Investigations. The conduct of archaeological activities, including without limitation, survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
- (15) Signs. The erection, maintenance and replacement of signs with respect to public access rules, interpretation, regulations, hunting, trespass, parking, trail access, identity of the Grantor, Grantee and other conservation partners, and the protected Conservation Values.
- (16) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II(B) shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II.B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Documentation Report further defined in Paragraph XIV(H) below, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Documentation Report.
- (17) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph II(B) shall follow established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval

Whenever notice to, or approval by, Grantee is required, Grantor shall notify Grantee in writing, by a method demonstrating proof of receipt, not less than sixty (60) calendar days prior to the date Grantor intends to undertake the activity in question. 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 Grantee to make an informed judgment as to its consistency with the Conservation Values or purposes of this Conservation Restriction. Routine maintenance,

such as walking trail upkeep, shall not require notification. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) calendar days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity complies with this Conservation Restriction and shall not materially impair the purposes or Conservation Values of this Conservation Restriction and shall, in all cases, be final and controlling.

Failure of Grantee to act within said sixty (60) calendar days shall be deemed to constitute approval of Grantor's request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after sixty (60) calendar days' notice to Grantee, the requested activity is not prohibited herein and the activity will not materially impair the Conservation Values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the Conservation Values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

B. Non-Waiver

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Conservation Restriction hereby conveyed does not grant to Grantee, to the public generally, or to any other person any right to enter upon the Premises except as follows:

- A. There is hereby granted to the public the right to enter upon the Premises at its own risk in a reasonable manner year-round from dawn to dusk for passive outdoor recreational uses such as those described in Paragraph II (but not motorized uses, including motorbiking or the use of off-road all-terrain vehicles, but allowing motorized wheelchairs and other power-driven mobility devices for persons with mobility impairments in accordance with and subject to the limitations of law) subject to Grantor's reasonable rules and regulations governing use of the Premises and provided that such activities are consistent with the Conservation Values and purposes of this Conservation Restriction.
- B. The Grantor hereby grants to the Grantee, or their duly authorized agents or representatives, the right to enter the Premises, upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with, or to enforce, this Conservation Restriction. The Grantor also grants to the Grantee, after notice or a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including, but not limited to, the right to perform a survey of boundary lines.
- C. There is hereby granted to Grantee the right to erect and from time to time replace, at appropriate locations near the boundaries of the Premises mutually agreed upon, suitable signs identifying Grantee as the holder of this Conservation Restriction.

V. EXTINGUISHMENT

- A. If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use their share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- B. Proceeds. Grantor and Grantee agree that the granting of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the grant, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant. If any occurrence gives rise to an extinguishment or other release of the Conservation Restriction under applicable law, the Grantor and Grantee shall be reimbursed from the proceeds, once recovered, for their respective share of reasonable legal or other expenses, if any, associated with the recovery of said proceeds. The remaining proceeds, once recovered, shall first be used to satisfy the terms of any gift, grant or funding requirements, including the Community Preservation Act (Chapter 44B of the Massachusetts General Laws) with the balance then being distributed as directed above to be used in a manner consistent with the Conservation Values or purposes of this Conservation Restriction.
- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all, or any part, of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the purposes of this Conservation Restriction.

VI. DURATION & ASSIGNABILITY

- A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.
- B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Premises, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) calendar days prior to the effective date of any such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations. Any new owner shall familiarize themselves with the information contained in the Baseline Documentation Report (see Paragraph XIV(H) below).

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within forty-five (45) calendar days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the

Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs, and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Bristol County (Southern District) Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner in the Bristol County (Southern District) Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Buzzards Bay Coalition, Inc.
114 Front Street
New Bedford, Massachusetts 02740

To Grantee: City of New Bedford Conservation Commission
133 William Street, Room 304
New Bedford, Massachusetts 02740

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

- A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31-33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.
- E. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

XIV. MISCELLANEOUS

- A. Pre-existing Rights of the Public. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. Indemnification; Hold Harmless. Grantor shall hold harmless, indemnify and defend Grantee and their members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively

- "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Premises, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; and (2) the obligations specified in Paragraphs XIV(C) and XIV(D), below.
- C. Maintenance and Upkeep Costs. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep and maintenance of the Premises, including maintenance of adequate comprehensive general liability insurance coverage or such like liability insurance coverage as may be appropriate from time to time. Upon request, Grantor will supply a certificate of such insurance to Grantee. Grantor shall keep the Premises free of any liens arising out of work performed for, materials furnished to, or obligations incurred by Grantor.
- D. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on, or assessed against, the Premises by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Restriction and shall furnish Grantee with satisfactory evidence of payment upon request.
- E. Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under § 170(h) of the IRS Code, as amended, or to be authorized to acquire and hold conservation easements under the statutes of the Commonwealth of Massachusetts, and a prior assignment is not made pursuant to Paragraph VI, then Grantee's rights and obligations under this Conservation Restriction shall vest in such conservation organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law (i.e., in accordance with the *cy pres*, or other appropriate, doctrine) and with due regard to the requirements for an assignment pursuant to Paragraph VI.
- F. Title Warranty. Grantor warrants that Grantor has good title to the Premises, that the Grantor has the right to convey this Conservation Restriction and that the Premises is free and clear of any encumbrances. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Premises.
- G. Subordination of Liens. Any mortgage or lien arising after the recording of this Conservation Restriction must be subordinated to the terms of this Conservation Restriction. Any liens, mortgages, easements or other clouds on title existing prior to the recording of the Conservation Restriction must be subordinated to the Conservation Restriction or otherwise appropriately dealt with prior to recording the Conservation Restriction.
- H. Baseline Documentation Report. In order to: (a) establish the present condition of the Premises and the Conservation Values thereon which are protected by this Conservation

Restriction, (b) to enable the Grantee to monitor future uses of the Premises and (c) to assure compliance with the terms hereof, the Grantor and Grantee agree and acknowledge that the natural characteristics, ecological features and physical and man-made conditions of the Premises as of the recording of this Conservation Restriction will be documented in an inventory (including reports, maps, photographs and other documentation) of the relevant features and conditions of the Premises (the "Baseline Documentation Report") and that said inventory is an accurate representation of the present condition of the Premises. Grantor and Grantee agree that the conditions of the Premises could change as a result of natural processes or through Grantor's exercising of rights reserved in Paragraph II.B. of this Conservation Restriction. Grantee may use the Baseline Documentation Report in enforcing provisions of this Conservation Restriction, but is not limited to the use of the Baseline Documentation Report to show a change of conditions. Verified originals of the Baseline Documentation Report will be deposited with the Grantor and in the permanent records of the Grantee. If the originals of said Baseline Documentation Report are subsequently destroyed by casualty or other circumstance, other evidence may be offered by the parties to establish the condition of the property as of the date this Conservation Restriction is recorded. The Baseline Documentation Report is incorporated into this Conservation Restriction by reference as if stated herein.

I. No Deed Excise Stamps. This instrument is not a deed. It does not purport to transfer a fee interest to the Grantee. No Massachusetts deed excise stamps are affixed hereto as none are required by Section 1 of Chapter 64D of the Massachusetts General Laws.

J. Attachments.

Attached hereto and incorporated herein by reference are the following:

Grantor Buzzards Bay Coalition, Inc. signature page
Grantee City of New Bedford Conservation Commission signature page
Approval of City of New Bedford City Council
Approval of City of New Bedford Mayor
Approval of the Massachusetts Secretary of Energy and Environmental Affairs.

Exhibit A: Legal Description of Premises
Exhibit B: Reduced Copy of Plan of the Premises
Exhibit C: New Bedford City Council CPA Votes

WITNESS my hand and seal this ____ day of _____, 2020.

BUZZARDS BAY COALITION, INC.

Mark Rasmussen, President, duly authorized

Russell Keeler, Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF BRISTOL

On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared Mark Rasmussen and Russell Keeler, proved to me through satisfactory evidence of identification, which was _____, to be the people whose names are signed on the preceding or attached document, and acknowledged to me that they were duly authorized and signed it voluntarily for its stated purpose as President and Treasurer, respectively, of Buzzards Bay Coalition, Inc.

Notary Public for Massachusetts

My Commission Expires: _____

**ACCEPTANCE OF GRANT BY CITY OF NEW BEDFORD
CONSERVATION COMMISSION**

The undersigned, Chair of the City of New Bedford Conservation Commission, hereby certifies that at a public meeting held on _____, 2020, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Buzzards Bay Coalition, Inc. pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and by authority of Section 8C of Chapter 40 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

Dennis Audette, Chair
City of New Bedford Conservation Commission, duly authorized

**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF BRISTOL**

On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared Dennis Audette, Chair of the City of New Bedford Conservation Commission, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he was duly authorized and signed it voluntarily for its stated purpose as Chair of the Conservation Commission of the City of New Bedford, Massachusetts.

Notary Public for Massachusetts
My Commission Expires: _____

**APPROVAL OF CITY OF NEW BEDFORD
CITY COUNCIL**

We, the undersigned, being a majority of the City Council of the City of New Bedford, hereby certify that at a public meeting duly held on _____, 2020, the City Council voted to approve the foregoing Conservation Restriction from Buzzards Bay Coalition, Inc. to the City of New Bedford, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

CITY COUNCIL:

Joseph P. Lopes, President

William Brad Markey, Ward 1

Linda M. Morad, First Vice-President

Maria E. Giesta, Ward 2

Brian K. Gomes, Second Vice-President

Hugh Dunn, Ward 3

Ian Abreu, at Large

Derek Baptiste, Ward 4

Naomi R. A. Carney, at Large

Scott J. Lima, Ward 5

Debra Coelho, at Large

NOTARY CLAUSE ON NEXT PAGE

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF BRISTOL

On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared the above named members of the City of New Bedford City Council, proved to me through satisfactory evidence of identification, which was _____, to be the people whose names are signed on the preceding or attached document, and acknowledged to me that they were duly authorized and signed it voluntarily for its stated purpose as the City Council of the City of New Bedford, Massachusetts.

Notary Public for Massachusetts
My Commission Expires: _____

APPROVAL OF THE MAYOR OF NEW BEDFORD

The undersigned, Mayor of the City of New Bedford, Massachusetts, hereby approves the foregoing Conservation Restriction from Buzzards Bay Coalition, Inc., to the City of New Bedford, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Mayor:

Mayor Jonathan F. Mitchell

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss:

On this day of _____, 2020, before me, the undersigned notary public, personally appeared Jonathan F. Mitchell, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public for Massachusetts

My Commission Expires: _____

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Buzzards Bay Coalition, Inc. to the City of New Bedford, acting by and through its Conservation Commission, has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2020

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this _____ day of _____, 2020, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public: John Gioia
My Commission Expires: January 23rd, 2026

EXHIBIT A

Legal Description of Premises

The land subject to this Conservation Restriction, referred to herein as the Premises, is located in New Bedford, Bristol County, Commonwealth of Massachusetts and is described as follows:

Parcels A, B, C, D, E and F shown on a plan entitled "Revised A.N.R. Plan of Land for Richard G. Hawes Revocable Trust" by Fitzgerald Engineering, Inc. dated February 23, 2005 and recorded in Plan Book 159 at Page 61 in the Bristol County (Southern District) Registry of Deeds.

Being the same property conveyed to Buzzards Bay Coalition, Inc. by deed of Peter J. Hawes, Mary Ellen Hawes Lees and Cynthia H. Ritter as individuals and as the residuary beneficiaries of The Richard G. Hawes Revocable Trust u/d/t February 17, 1958 and Peter J. Hawes, LLC, M. E. Hawes, LLC and Cynthia H. Ritter, LLC dated December 20, 2018 and recorded January 3, 2019 in Deed Book 12679 at Page 20 in the Registry aforesaid and by confirmatory deed of the same grantors dated April 17, 2020 and recorded April 21, 2020 in Deed Book 13187 at Page 144 in the Registry aforesaid.

Reduced Copy of Plan of the Premises



EXHIBIT C

New Bedford City Council CPA Votes



CITY OF NEW BEDFORD CITY COUNCIL

August 16, 2018

ORDER

ORDERED, that the following Community Preservation Act FY18 projects and funding amounts be approved:

PROJECT	AMOUNT
Acushnet Sawmill New Bedford Expansion & Community Garden (as amended)	\$202,500
Schooner Iroquoia - Morrissey Rehabilitation	\$100,000
Veterans Transitional Housing Expansion (1060 Pleasant Street)	\$200,000
Seamen's Hotel Continued Restoration	\$176,296
First Baptist Community Theatre	\$275,500
Sgt. William H. Carney House Restoration	\$53,800
Notch Jones Duff Restoration	\$75,000
305-307 Pleasant Street Foreclosure Restoration	\$105,000
Strand Theatre Restoration as Cape Verdean Cultural Center	\$50,000
Zeitler Theatre Marquee Project	\$50,000
James Arnold Mansion Restoration	\$48,000
Hazelwood Park Rehabilitation	\$374,400
Abolition Row Park	\$125,000
Burtonwood Diamond 1 Field Lighting	\$244,000
Dias Field Rehabilitation	\$295,000
Brooklawn Basketball Court Upgrades	\$121,127
Hunterswood Brook Trail & Bridges Project	\$26,000
TOTAL (17 Projects)	\$2,451,723.00

IN CITY COUNCIL, August 16, 2018

Adopted - Yeas 8, Nays 0.

Presented to the Mayor for approval August 20, 2018.

Approved August 28, 2018.

a true copy, attest:

Dennis W. Fajias, City Clerk

Dennis W. Fajias, City Clerk

Jonathan K. Mitchell, Mayor

City Clerk



CITY OF NEW BEDFORD

CITY COUNCIL

December 13, 2018

ORDERED, that the Community Preservation Committee allocate an additional \$167,500 into the Acushnet Sawmill Expansion & Community Garden Project, that was previously reduced by the City Council on August 16, 2018, which would bring the funding to the original requested amount of \$370,000.00.

IN CITY COUNCIL, December 13, 2018

Adopted - Yeas 7, Nays 3.

Presented to the Mayor for Approval December 17, 2018.

Approved December 18, 2018.

Dennis W. Farias, City Clerk

Dennis W. Farias, City Clerk

Jonathan F. Mitchell, Mayor

A true copy/attest

[Signature]