



*City of New Bedford*  
IN COMMITTEE

October 14, 2021

The Honorable City Council  
133 William Street  
New Bedford, MA 02740

Dear Honorable Members of the City Council:

The Committee on City Property at a Meeting held on Monday, September 27, 2021, considered a COMMUNICATION, Mayor Mitchell, to City Council, submitting a Quitclaim Deed and Performance Covenants for the donation of Lots 132-27, 132-29 and 132-400 from the New Bedford Youth Soccer Association, Inc. to the City of New Bedford for recreational purposes. (Ref'd 07/20/17) (10/11/17-tabled until 11/27/17) (11/27/17-tabled 60 days)

On motion by Councillor Abreu and seconded by Councillor Carney, the Committee VOTED: To recommend to the City Council to take "No Further Action" on the COMMUNICATION, Mayor Mitchell, to City Council, submitting a Quitclaim Deed and Performance Covenants for the donation of Lots 132-27, 132-29 and 132-400 from the New Bedford Youth Soccer Association, Inc. to the City of New Bedford for recreational purposes. This motion passed on a voice vote of all ayes.

IN COMMITTEE ON CITY PROPERTY

*William Brad Markey*  
Councillor William Brad Markey, Chairman

WBM: dmb

Locus:  
New Bedford Assessor's Plat 132  
Lots 27, 29, and 400  
Morton Avenue, New Bedford

## **QUITCLAIM DEED**

**GRANTOR:** NEW BEDFORD YOUTH SOCCER ASSOCIATION, INC., a not for profit corporation organized and existing under the laws of the Commonwealth of Massachusetts, with a usual place of business in New Bedford, Massachusetts,

For and in consideration of One (\$1.00) Dollar and other good and valuable consideration, receipt of which hereby is acknowledged, and in consideration of the promised compliance of the City of New Bedford, Massachusetts, with the provisions, conditions, obligations and covenants agreed to and undertaken by the Grantee as set forth in the NBYSA SOCCER FIELDS PERFORMANCE COVENANTS, recorded herewith,

**GRANTS to:**

**GRANTEE:** The CITY OF NEW BEDFORD, MASSACHUSETTS, a municipal corporation duly existing under the laws of the Commonwealth of Massachusetts, having its usual place of business at 133 William Street, New Bedford, Bristol County, Massachusetts, acting pursuant to a vote of the New Bedford City Council, attached hereto,

with **Quitclaim Covenants**

the land and buildings thereon, together with any improvements now or hereafter thereon erected, in New Bedford, Bristol County, Massachusetts, and shown as Lots 27, 29, and 400 on City of New Bedford Assessors Plat No. 132, bounded and described as follows:

**PARCEL 1 - Assessor's Plat 132, Lot 400**

Land situated in New Bedford, bounded and described as follows:

NORTHERLY by land now or formerly of Jose S. Vieira, seven hundred fifty (750) feet, more or less;

EASTERLY by the Alfred M. Bessette Memorial Highway, State layout #5417, four hundred fifty-eight (458) feet, more or less;

SOUTHERLY by other land of Mass. General Housing Corporation and Polish National Church of Holy Cross, nine hundred eighty-four (984) feet, more or less; and

WESTERLY by Route 140, State layout #4403, four hundred thirty-two (432) feet.

For title reference, see foreclosure deed to New Bedford Institution for Savings, dated August 15, 1974 and recorded with the Bristol County (S.D.) Registry of Deeds in Book 1698, Page 876.

For title reference, see Quitclaim Deed from Fleet National Bank to New Bedford Youth Soccer Association, Inc. dated September 23, 2003 and recorded in the Bristol County (S.D.) Registry of Deeds in Book 6584, Page 334.

**PARCEL 2 - Assessor's Plat 132, Lot 29**

Land situated in New Bedford, bounded and described as follows:

Beginning at a point in the westerly side of the Alfred Bessette Memorial Highway, at the southeasterly corner of the land to be described;

Thence running westerly 367 feet, more or less, to land now or formerly of Oliver G. Spooner, et al;

Thence running northerly by said last named land 472 feet, more or less, to said Alfred Bessette Memorial Highway; and

Thence running southerly by said highway 347 feet, more or less, to the point of beginning.

The land conveyed is subject to an easement taken over a strip of land 50 feet in width along the easterly side of said premises by the Commonwealth of Massachusetts.

Together with the right-of-way extending easterly from the east line of Morton Avenue across the land of Mass. General Housing Corporation to serve as access to the above-described property.

For title see deed of Robert Wroble dated March 10, 1975 and recorded with the Bristol County (S.D.) Registry of Deeds Book 1699, Page 474.

For title see quitclaim deed of Jerry D. Hale dated December 10, 2004 and recorded with the Bristol County (S.D.) Registry of Deeds in Book 7320, Page 104.

**PARCEL 3 - Assessor's Plat 132, Lot 27**

The land with the buildings thereon located in New Bedford, Bristol County, Commonwealth of Massachusetts, bounded and described as follows:

North by land formerly of Allen Russell, now deceased, and land formerly of Samuel B. Hamlin;

East by land formerly of Lewis G. Spooner;

South by the "Russell Lot" so called; and

West by the State Highway.

CONTAINING 3.075 Acres more or less. Being further identified as Lot 27 on New Bedford Assessors Plat 132.

Being a portion of the property conveyed in a deed dated April 9, 1998 and recorded in Bristol County (S.D.) Registry of Deeds in Book 4084, Page 197.

For title see Quitclaim Deed from Wayland Development Corp. to New Bedford Youth Soccer Association, Inc. dated May 31, 2007 and recorded in Bristol County (S.D.) Registry of Deeds in Book 9104, Page 241. Said grant from Wayland Development Corp. to New Bedford Youth Soccer Association, Inc. is conditioned upon the property described therein being used for non-profit youth sports.

THIS CONVEYANCE is made, meaning and intending to establish a public charitable trust, and upon the condition and subject to a covenant running with the land, that:

- (1) the property be used, forever and in perpetuity for non-profit youth sports in general, and, more particularly, as soccer fields open and reserved for use by youth soccer associations, clubs, and leagues, comprised of at least 70% New Bedford residents.
- (2) the property never be deemed, considered to be, or converted to, park land subject to the operation of Article 97 of the Massachusetts Constitution under any circumstances.

THIS CONVEYANCE is made subject to any and all easements, encumbrances or rights of way and restrictions of record to the extent that the same are now in force and applicable.

THIS CONVEYANCE is made subject to the **NBYSA SOCCER FIELDS PERFORMANCE COVENANTS**, recorded herewith, which shall expire by its own terms no later than 11:59 P.M., \_\_\_\_\_, 2047.

IN WITNESS WHEREOF, the said New Bedford Youth Soccer Association, Inc. has caused its seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by \_\_\_\_\_, its president, and \_\_\_\_\_, its treasurer, hereto duly authorized, this \_\_\_\_ day of \_\_\_\_\_ 2017.

NEW BEDFORD YOUTH SOCCER ASSOCIATION, INC.,

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
((Printed Name) President

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
((Printed Name) Treasurer

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss

On this \_\_\_\_ day of \_\_\_\_\_ 2017, before me, the undersigned notary public personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identity, which was Massachusetts Drivers License, to be the person whose name is signed on the preceding Quitclaim Deed and acknowledged to me that he signed it as Treasurer of New Bedford Youth Soccer Association, Inc. voluntarily and for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss

On this \_\_\_\_ day of \_\_\_\_\_ 2017, before me, the undersigned notary public personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identity, which was Massachusetts Drivers License, to be the person whose name is signed on the preceding Quitclaim Deed and acknowledged to me that he signed it as President of New Bedford Youth Soccer Association, Inc. voluntarily and for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**NBYSA SOCCER FIELDS PERFORMANCE COVENANTS**

**NBYSA SOCCER FIELDS  
LOTS 132-27, 132-29, and 132-400  
NEW BEDFORD, MASSACHUSETTS**

WHEREAS, New Bedford Youth Soccer Association, Inc. (hereinafter referred to as the "NBYSA") has donated for use for non-profit youth sports activities, in general, and as soccer fields open and reserved for use by youth soccer associations, clubs, and leagues, comprised of at least 70% New Bedford residents, in particular, property consisting of the lots shown as Lots 27, 29, and 400 on City of New Bedford Assessors Plat 132 located at the end of Morton Avenue in New Bedford, Bristol County, Massachusetts (hereinafter referred to as the "Property") to City of New Bedford, Massachusetts (hereinafter referred to as "City"); and

WHEREAS, City and NBYSA wish to develop and improve the Property for use as soccer fields (such development and improvement referred to hereinafter as the "Project"); and

WHEREAS, NBYSA has required that the City enter into certain Performance Covenants in connection with the donation of the Property;

NOW THEREFORE, City and its successors and assigns hereby covenant with NBYSA, its successors and assigns, the following:

**I. GENERAL PERFORMANCE COVENANTS**

- a. Upon acceptance of the Property, City shall grant NBYSA a license, in a form satisfactory to City and NBYSA, to use, maintain, and manage the Property as soccer fields as specified within said license. City shall issue said license to NBYSA, for so long as NBYSA adheres to the terms and conditions thereof, for thirty (30) annual terms beginning \_\_\_\_\_ 2017 and ending at 11:59 P.M. \_\_\_\_\_, 2047.
- b. During the period the Property is licensed by NBYSA, City also shall grant a license to NBYSA, or its successors or assigns, to erect and operate a concession stand for sale of

food and beverages, the proceeds therefrom to be retained by the NBYSA, its successors and/or assigns, for support and maintenance of the Property as soccer fields. NBYSA's right to operate the concession stand shall terminate with the termination of its license for use of the Property.

## **II. REVERTER FOR TERMINATION OF OR FAILURE TO ISSUE LICENSE**

Upon conveyance of the Property, City shall grant NBYSA a license, in a form satisfactory to City and NBYSA, to use, maintain, and manage the Property as soccer fields. If, for whatever reason, the City terminates or does not grant NBYSA said license, the Property may revert, in the discretion of the NBYSA and in accordance with the provisions of Section II "DEFAULT/RIGHT OF ENTRY" below, to the New Bedford Youth Soccer Association, Inc., or its successors or assigns, upon its payment of the actual cost of all improvements of the Property effected by the City pursuant to this conveyance, plus actual costs incurred by the City for any maintenance of the Property. This Right of Reverter shall expire of its own accord and without need of recording of any subsequent document at 11:59 P.M., \_\_\_\_\_, 2047, unless otherwise extended by document executed by the City of New Bedford and New Bedford Youth Soccer Association, or its successors or assigns, recorded in the Bristol County Registry of Deeds Southern District.

## **III. DEFAULT/RIGHT OF ENTRY**

If City shall default or violate any of the conditions or covenants set forth in this Performance Covenant, and such default shall not be cured within ninety (90) days after receipt of notice of same in writing from NBYSA or its successors or assigns, NBYSA, after expiration of the cure period, shall have a right of entry for condition or covenant broken. In the event that, by virtue of the nature thereof, such default requires more than ninety (90) days to cure, with the NBYSA's approval, not to be unreasonably withheld, conditioned or delayed, the City shall have an additional sixty (60) days to effect such cure and, with the NBYSA's reasonable approval, such additional time as thereafter may be necessary to effect such cure. In the event of a condition or covenant broken with respect to which NBYSA has elected to exercise its right of entry that has not been cured as provided herein, or with respect to which NBYSA is not forbearing as provided herein, NBYSA shall execute and record at the Bristol County Registry of Deeds Southern District a statement in writing, duly sworn to, containing: (1) a description of the property; (2) the nature of the right of entry; (3) the reasons for the exercise of such right; (4) the recording information relative to the deed or other instrument collating such right of entry; and (5) the name and address of the City(s) fee to which the right of entry is subject. This statement shall be recorded with the Bristol County Registry of Deeds Southern District and Land Court Department thereof, if applicable. Upon the recording of a right of entry statement and payment of the actual cost of all improvements on the Property effected by the City pursuant to this conveyance, plus actual costs incurred by the City for any maintenance of the Property, the estate hereby conveyed shall be forfeited and the title to said estate shall revert to and vest in the said NBYSA or its successors or assigns. NBYSA's reserved right of entry for condition or covenant broken shall be applicable and remain in force and effect for a period of thirty (30) years until 11:59 P.M., \_\_\_\_\_, 2047, and

if not exercised prior to then, said right of entry shall automatically lapse and become void and of no further force and effect.

#### **IV. CERTIFICATE OF COMPLIANCE**

Upon compliance with this Performance Covenant, City may request the issuance of a Certificate of Compliance from NBYSA. The recording of a Certificate of Compliance, executed by NBYSA, or its successors or assigns, shall be conclusive evidence that all conditions subsequent and covenants set forth herein have been fulfilled and that NBYSA no longer retains a right of entry for condition or covenant broken.

#### **V. TOLLING OF TERMINATION DATE**

No period of tolling of any date or deadline set forth herein shall be effective or claimed by any party hereto or their successors or assigns, or serve to toll any date or deadline set forth herein, unless said parties or successors and assigns duly execute and record an instrument in the Bristol County Registry of Deeds Southern District setting forth:

- 1) the effective date and period of such tolling, and
- 2) the date upon which this Performance Covenant will terminate as a result of such tolling.

No such instrument shall be effective to toll the termination date of this Performance Covenant unless a marginal reference sufficient to identify such instrument and the Book and Page of its recordation in the Registry of Deeds is placed on this Performance Covenant at the time such instrument is recorded.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_ 2017.

New Bedford Youth Soccer Association, Inc.

By: \_\_\_\_\_, President

IN WITNESS WHEREOF, the said City of New Bedford, Massachusetts, has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged, and delivered in its name and behalf by Jonathan F. Mitchell, its Mayor, hereto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

City of New Bedford, Massachusetts,

By: \_\_\_\_\_  
Jonathan F. Mitchell, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

BRISTOL, SS. \_\_\_\_\_, 2017

Before me, the undersigned notary public, personally appeared \_\_\_\_\_,  
President and Authorized Signatory of New Bedford Youth Soccer Association, Inc., proved  
to me through satisfactory evidence of identification which was a Massachusetts Drivers  
License, to be the person whose name is signed on the preceding or attached document and  
acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

BRISTOL, SS. \_\_\_\_\_, 2017

Before me, the undersigned notary public, personally appeared Jonathan F. Mitchell, Mayor  
of City of New Bedford, Massachusetts, proved to me through satisfactory evidence of  
identification which was a Massachusetts Drivers License, to be the person whose name is  
signed on the preceding or attached document and acknowledged to me that he signed it  
voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN  
CITY OF NEW BEDFORD AND THE  
NEW BEDFORD YOUTH SOCCER ASSOCIATION**

This Non-Exclusive License Agreement ("License") is made and entered into by and between the CITY OF NEW BEDFORD, MASSACHUSETTS ("City"), acting by and through its MAYOR and PARK BOARD ("Board"), and the NEW BEDFORD YOUTH SOCCER ASSOCIATION, INC. herein referred to as "NBYSA" as follows:

**1. Grant of Non-Exclusive License.** In consideration of and subject to the terms, provisions, and covenants herein contained, City hereby grants to NBYSA a non-exclusive, non-possessory license to use and manage the City fields located at the end of Morton Avenue in the City of New Bedford, Bristol County, Massachusetts ("Licensed Premises"), a map of which is attached hereto and made part of this License as **Exhibit A**.

This Agreement does not constitute a grant of any ownership, leasehold, easement or other property interest or estate in the Licensed Premises to NBYSA. City is acting only in its proprietary capacity in granting the license given to NBYSA under this Agreement.

NBYSA's use shall generally consist of the play and practice of soccer leagues. This period of time that NBYSA uses the Licensed Premises shall be referred to herein as the "active use" and, except as otherwise provided herein, such active use by NBYSA will be exclusive.

**2. Term.** The initial term of this License shall begin July 1, 201\_\_\_ and end June 31, 201\_\_\_, subject to earlier termination as provided herein.

**3. Annual Extensions.** This License shall renew for successive one year periods, commencing on July 1, 201\_\_\_, and each year thereafter for up to thirty (30) successive years to include the first year. Such renewal shall be automatic and without the action of any party unless notice of cancellation is given by either party in writing to the other party as provided herein.

**4. Termination Election.** City and NBYSA each shall have the right, either with or without cause and at any time, to terminate this License upon not less than sixty (60) days prior written notice to the other party. Provided, however, that no such termination by the City shall take place during or less than thirty (30) days prior to the NBYSA primary season. Upon such termination, City and NBYSA shall be relieved of all further obligations hereunder except only for obligations accruing prior to the effective date of termination.

**5. NBYSA Use.** NBYSA's use of the Licensed Premises shall comply with the following:

a. NBYSA shall use the Licensed Premises and all improvements thereon for soccer practice, games, and soccer related activities and for no other purpose.

b. NBYSA shall not use any other property beyond the Licensed Premises. At times and upon request, the City may grant permission to NBYSA for NBYSA to use

additional property.

- c. NBYSa shall institute all reasonable measures as are necessary to ensure that all members, spectators, guests, and invitees remain within the Licensed Premises at all times during the conducting of NBYSa activities.
- d. NBYSa shall inspect the Licensed Premises, in particular the fields, prior to any use to ensure that they are safe for the intended use.
- e. NBYSa shall provide and maintain all goals and nets and shall adopt policies and take other steps to ensure that its members use all appropriate safety equipment during play.
- f. NBYSa shall inspect the goals at least prior to each use and periodically as necessary during games to ensure that they are securely anchored and are safe for use.
- g. NBYSa shall ensure that all persons and activities are adequately supervised by an adult at all times during the active use.
- h. NBYSa shall not permit any smoking, alcohol, or pets on the Licensed Premises.
- i. NBYSa shall take reasonable measures to ensure that its members, spectators, guests, and invitees abide by all traffic and parking signs.
- j. NBYSa shall provide and thereafter maintain in sanitary conditions at least four (4) portable toilets, which shall be placed within t Licensed Premises.
- k. NBYSa shall provide one (1) closable and lockable dumpster and at least one (1) trash can for each field during the active use.
- l. NBYSa shall pick-up trash and empty trash cans within the Licensed Premises at the end of all practices and games. NBYSa shall have the dumpster emptied at least once each week during its active use of the Licensed Premises and thereafter as needed.
- m. NBYSa shall maintain the Licensed Premises in a neat and orderly condition and remove any graffiti within a reasonable amount of time. However, NBYSa shall not be responsible for graffiti, maintenance, or cleaning during periods of time that the Licensed Premises are being used by a party other than NBYSa.
- n. NBYSa shall lock the appropriate gates to the parking areas when leaving the Licensed Premises.
- o. NBYSa shall not install, place, or use any signage without the prior consent of the City. City's consent shall be subject to the City's sign regulations, if applicable.

p. NBYSa shall maintain the grass fields in a healthy, growing condition, which includes the periodic application of fertilizer, weeding, and treatment for insects. NBYSa shall inform City of the types of fertilizers and other chemicals that it intends to use prior to any such use and will use licensed applicators for applications.

q. NBYSa shall not permit any use of the artificial turf field, if any, that is not consistent with its intended use and the manufacturer's instructions and specifications. Maintenance of the turf fields, including cleaning and raking with proper equipment, shall be the responsibility of NBYSa.

r. NBYSa shall not cause any Hazardous Material (defined as follows) to be brought upon, kept, used, stored, released, generated or disposed of in, on or about the Licensed Premises, or transported to or from the Licensed Premises; provided, however, that NBYSa may bring gasoline and petroleum products on the Licensed Premises within vehicles to be parked on the Licensed Premises or in containers no larger than two (2) gallons for use in vehicles used to maintain the Licensed Premises, and may bring in fertilizer and products for weeding, and treatment for insects as provided in paragraph (p) above.

(1) Licensee shall immediately notify the City of any release or suspected release of Hazardous Material. NBYSa shall comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event of a release of Hazardous Material, NBYSa shall, without cost to City and in accordance with all laws and regulations, return the Licensed Premises to the condition immediately prior to the release. NBYSa shall allow City to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material.

(2) For purposes of this Agreement, "Hazardous Material" includes, without limitation, the following: any material defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), any asbestos and asbestos containing materials; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Licensed Premises.

s. NBYSa shall perform CORI checks on all staff and coaches who will be interacting with the youth soccer players and submit the results to the Director of Parks, Recreation, and Beaches who will have final say as to whether the CORI record of any person constitutes sufficient grounds to disqualify the person from participation in the youth soccer programs.

**6. City Use of Fields.** At all times when the Licensed Premises are not in active use by NBYSA in accordance with the schedule provided to the Board, NBYSA shall give priority access, when said access is requested at least thirty (30) days in advance, for free use of the Licensed Premises to New Bedford Department of Parks, Recreation, and Beaches. Said use is reserved for New Bedford Department of Parks, Recreation, and Beaches and shall not be granted to third parties. City shall be responsible for any damage to the Licensed Premises resulting from said use. Third parties that contact the City for use of the Licensed Premises shall be referred by the City to NBYSA for permission to use the Licensed Premises.

**6A. Third Party Use of Fields.** NBYSA may allow use of the Licensed Premises by third-parties and may charge a fee for said use or for admission to the Licensed Premises for events. NBYSA shall be responsible for use by a third-party, and said use shall be in accordance with the terms and conditions contained herein. Any fees for use of or admission to the Licensed Premises must be approved by the Board in advance and shall be exclusively used to offset the cost to NBYSA for the maintenance and operation of the Licensed Premises. All third party events must be sanctioned at least ninety (90) days prior to the date of the event by the Park Board pursuant to a current Special Events Application issued by the Department of Parks, Recreation, and Beaches. Soccer tournaments, club soccer, and soccer events in general hosted by NBYSA or otherwise permitted on the Licensed Premises by NBYSA are not to be considered "third-party events" subject to the above thirty-day notice requirement.

**Utilities.** If applicable, NBYSA agree to furnish and promptly pay for their own separately metered utilities, including, but not limited to, telephone, alarm monitoring service, telecommunication service, heat, electricity, sewer and water, rubbish disposal and janitorial service.

**7. Repairs.** NBYSA shall be responsible for all field repairs that the City is required to perform on the Licensed Premises that result from NBYSA use of the premises. Following the submission of an itemized billing statement from the City, NBYSA shall remit full payment to the City within 30 days. City shall be responsible for repair and maintenance work to the parking areas, fences, and gates located at the Licensed Premises.

**8. Insurance.** NBYSA shall purchase public liability and casualty insurance from an insurance company licensed to do business in the Commonwealth of Massachusetts. The Board must approve the policy prior to the NBYSA's use of the Licensed Premises. The policy shall be in the amount of \$1,000,000.00 per person and \$3,000,000.00 per occurrence for personal injury or death and \$100,000.00 for property damage, and shall cover the Licensed Premises for the duration of NBYSA's use of the Licensed Premises. Upon execution of this License, NBYSA shall provide the City Department of Parks Recreation & Beaches or its designee with a copy of the insurance policies required hereby, showing premium prepaid for the each term year. In the event of failure by NBYSA to keep such insurance in effect, the License shall terminate without notice from City to NBYSA. The public liability and casualty insurance policies shall name City as an "additional insured". All policies shall include a waiver of subrogation provision in favor of City. The policy and any renewal certificate shall provide that the City be notified ninety (90) days prior to cancellation or modification of any coverage. Language to the effect that the insurance company will "endeavor" or "attempt" to so notify the City is not sufficient. NBYSA

shall provide renewal certificates to the City at least ten (10) days prior to expiration date. Policies shall be in effect for the entire term of this License and any renewals.

**9. Alterations and Improvements.** NBYSA shall not make any alterations, additions, or improvements to the Licensed Premises, which includes the construction of buildings, placement of bleachers and benches or the planting of trees or other plant life, without the prior written approval of the Board. NBYSA must also obtain permits from all other municipal and/or governmental authorities and departments having jurisdiction over such work, if applicable. If authorized, all permanent improvements shall become the property of the City. A "permanent improvement" shall not include goals, bleachers, benches, portable buildings, or portable toilets. Such non-permanent improvements shall not be insured by the City from damage and thus, NBYSA may desire to purchase property insurance for any such improvements.

**10. Access.** City shall maintain its access to the Licensed Premises at all times for any purpose. NBYSA shall provide the City with keys, combinations or other means of access to any permanent or temporary structure on the licensed premises. To the extent practicable, the City shall provide NBYSA with prior notice should it require access to said structures.

**12. Termination for Safety Violation or Unlawful Use.** NBYSA shall not use or occupy nor permit the Licensed Premises or any part thereof to be used or occupied for any unlawful purpose, or for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. NBYSA shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having any jurisdiction thereof relating to the use, condition, or occupancy of the Licensed Premises. Notwithstanding any other provision of this License, any violation of this provision, or a gross violation of any safety-related provision herein, shall entitle the City to terminate this License immediately.

**13. Waiver.** NBYSA shall require each participant or their parent or legal guardian to sign a Waiver of Liability prior to use of Licensed Premises. Said Waiver of Liability shall include the City as a released party.

**14. Waiver of Claims/Indemnity.**

a. Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Licensee, its officers, agents, employees, invitees, Licensees or sub-licensees, or their employees, or for any bodily injury or death to such persons, or for any other loss, resulting or arising from the condition of the City Property or its use by Licensee.

b. Licensee fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, (i) for any claim or event relating to the condition of the City Property or Licensee's use thereof, and/or (ii) in the event that City exercises its right to suspend, revoke or terminate this Agreement.

c. Licensee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee realizes and acknowledges that it has agreed upon this Agreement in light of this realization. The releases contained herein shall survive any cancellation or termination of this Agreement.

d. NBYSa shall indemnify, defend, reimburse and hold harmless City, its officers, agents, employees and Licensees from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"), arising in any manner out of: (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Licensed Premises, or any part thereof, whether the person or property of NBYSa, any of its Agents and Invitees, or third persons, relating in any manner to any use or activity under this Agreement; (b) any failure by NBYSa, or any of its Agents or Invitees, to faithfully observe or perform any of the terms, covenants or conditions of this Agreement; (c) the use of the Licensed Premises or any activities conducted thereon by NBYSa, its Agents or Invitees; (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by NBYSa, its Agents or Invitees, on, in, under or about the Licensed Premises, any improvements permitted thereon, or into the environment; or (e) any and all Losses arising in connection with this Agreement as a result of the activities conducted hereunder, including but not limited to, any such Losses relating to any alleged infringement of the patent rights, trademark, copyright, trade secret, privacy or other personal or other proprietary right of any person or persons.

This provision applies except solely to the extent of Losses resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the City Property and claims for damages or decreases in the value of adjoining property.

Reasonable attorneys' fees and legal costs of City shall be based on fees regularly charged by private attorneys in the City with an equivalent level of expertise and practicing in law firms with approximately the same number of attorneys as the City Solicitor's Office. NBYSa shall have an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to NBYSa by City and continues at all times thereafter. NBYSa's obligations under this Section shall survive the expiration or termination of this Agreement.

**15. Assignment or Sublicense.** NBYSa shall not assign or sublicense the Licensed Premises or any of its rights hereunder, in whole or in part, without the express prior written consent of the City, specifically consent of both its Mayor and Park Board, or a person jointly designated by the Mayor and Park Board. This provision applies only to assignment or sublicense of the license granted herein, and shall not apply to temporary or occasional events covered by Special Events Applications under paragraph 6 above, herein.

**16. Casualty.** In the event of property damage caused by NBYSA or its members or participants, NBYSA shall restore all damaged improvements within thirty (30) days thereafter. Insurance proceeds received by NBYSA will be made available for such repairs.

**17. Performance by City.** If NBYSA fails to perform any of its obligations, City may, at its option, perform any such obligation and NBYSA shall pay City upon demand all costs and expenses incurred by City in the performance of said obligations..

**18. No Other Relationship.** This License constitutes the entire agreement between City and NBYSA. Nothing contained herein shall be construed to create any principal/agent, employer/employee, joint venture, partnership, or other arrangement between City and NBYSA.

**19. Default.** If either party hereto shall fail to perform any obligation of such party as herein set forth, and such failure shall continue for a period of thirty (30) days after written notice of default, except for NBYSA's insurance obligations above provided, for which no notice or opportunity to cure shall be given, or for safety-related reasons, the party not in default shall have the right, at such party's option, and in addition to any other remedies available at law or in equity, to terminate this License by notice to the party in default. The failure of either party to declare any default immediately upon the occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but such party shall have the right to declare any such default at any time and take such action as might be authorized hereunder or that may be available at laws or in equity.

**20. Notice.** Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, or certified mail, return receipt requested, addressed to the parties hereto at their respective addresses as set forth below or at such other address as they have heretofore specified by written notice delivered in accordance with the terms hereof:

Licensors:

with a copy to:

City of New Bedford  
Director of Parks/Recreation  
181 Hillman St Bldg. 3  
New Bedford, MA 02740

City Solicitor  
Municipal Building  
133 William Street  
New Bedford, MA 02740

Licensee:

New Bedford Youth Soccer Association, Inc.  
P.O. Box 5620  
New Bedford, MA 02740

**21. Schedules and Board Members.** NBYSA shall provide its practice and play schedules for each season to the Board at least 30 days in advance of the opening day of each season; thereafter, NBYSA shall immediately send replacement schedules to the Board upon any permanent changes. In addition, prior to the September-November soccer season, NBYSA shall provide the names of its current board members and thereafter, shall provide the Board with

written notice of any changes thereto. On or before November 15th of each year the NBYSA shall submit a written report to the Board which shall include the following information:

- a. A description of maintenance completed at the licensed premises during the current year, including the amount of money spent for such maintenance;
- b. A list of the teams that used the field during the past year;
- c. An accounting for any money received for the use of the field during the past year, including a description of how the money was used;
- d. A plan for maintenance and improvements over the next year. After receiving the written report, the Board may request the Licensee to appear before the Board to present a summary of the written report and to answer any questions from the Board.

**22. Fees and Payments.** NBYSA shall pay City a monthly fee of \$00.00 (No Fee) for its use of the Licensed Premises. NBYSA shall pay such fee to the Department of Parks, Recreation, and Beaches either on or before the day of each month or as a lump sum payment on or before the beginning day of each yearly term.

**23. Warrant of Capacity.** Each individual and entity executing this Agreement hereby represents and warrants that he, she, or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she, or it is executing this License to the terms hereof.

**24. Surrender.** Upon the cancellation, expiration, or termination of this Agreement, NBYSA shall surrender the Licensed Premises in the same condition as received, reasonable wear and tear excepted, free from hazards and clear of all debris and of all property of Licensee or its Agents or Invitees. Licensee's obligations under this Section shall survive the cancellation, expiration, or termination of this Agreement.

**22. Approval Authority.** In this License, wherever an act, other than the granting of a sublicense or assignment of the License herein granted, requires approval by or consent of the City, such approval or consent may be obtained from the Board, Mayor, or designee, as the circumstances dictate.

**25. Governing; Law and Enforcement.** This License shall be governed by the laws of the Commonwealth of Massachusetts. Venue for any dispute arising between the parties to this License shall be in Bristol County, Massachusetts.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals the day and year first above written.

APPROVED as to form and legality:

CITY OF NEW BEDFORD

\_\_\_\_\_  
Assistant City Solicitor

By: \_\_\_\_\_  
Jonathan F. Mitchell, Mayor

By: \_\_\_\_\_  
Chairman, Park Board

By: \_\_\_\_\_  
Mary S. Rapoza, Director of Parks, Recreation  
and Beaches

New Bedford Youth Soccer Association, Inc.

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

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**CITY OF NEW BEDFORD**  
**JONATHAN F. MITCHELL, MAYOR**

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2017 JUL 13 A 11:46  
CITY CLERK

July 13, 2017

City Council President Joseph Lopes &  
Honorable Members of the City Council  
City Hall, 133 William Street  
New Bedford, MA 02740

Re: Donation of Lots 132-27, 132-29, and 132-400 from New Bedford Youth Soccer Association, Inc. to  
City of New Bedford for Recreational Purposes

Dear Council President Lopes and Honorable Members:

New Bedford Youth Soccer Association, Inc. (NBYSA) is offering the City of New Bedford, for recreational purposes and specifically for use as soccer fields, the above-referenced three (3) lots numbered Lot 132-27, 132-29, and 132-400 situated at the end of Morton Avenue in the north end of the city. The lots contain 3.075, 3.266, and 8.547 acres (14.888 acres total) of land, respectively, and surround a 6.627 acre lot (Lot 132-28) owned by the city. Together, the donated lots and the city lot will comprise a 21.515 acre complex perfectly suited for use as soccer fields.

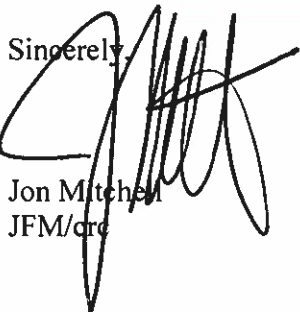
As you know, NBYSA has championed youth soccer for many years and has offered the youth of New Bedford an excellent program to develop their soccer skills, while instilling values of hard work, sportsmanship, and teamwork. With this offer, NBYSA is looking forward to developing a youth soccer complex that will benefit New Bedford children for many years to come.

To this end, I respectfully request that the City of New Bedford accept the deed to the above lots. The acceptance of the deed is contingent upon the Park Board issuing a non-exclusive license to the NBYSA, granting it priority use of the fields for NBYSA programs and teams.

I enclose for your acceptance a deed transferring the properties to the City of New Bedford and the Performance Covenant setting forth the terms and conditions of the transaction. I also enclose for your review the form of License to be issued to NBYSA by the Park Board.

Thank you for your consideration of this proposal.

Sincerely,



Jon Mitchell  
JFM/crc