GRANTOR: Massachusetts Land Conservation Trust

GRANTEE: New Bedford Conservation Commission

ADDRESS: 787 Shawmut Avenue New Bedford, MA

FOR TITLE: Bristol County (Southern District) Registry of Deeds ("Registry")
Book 10818, Page 72 and Page 129, recorded June 25, 2013

CONSERVATION RESTRICTION

To the City of New Bedford

Allen C. Haskell Public Gardens~~Urban Park~~, New Bedford, Massachusetts

Massachusetts Land Conservation Trust, Inc., a Massachusetts charitable corporation established under Chapter 180 of the General Laws , having an address at 572 Essex Street, Beverly, Massachusetts 01915, and its permitted successors and assigns as provided herein, being the sole owner of the Premises, as hereinafter defined (collectively referred to herein as "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants for consideration of **Four Hundred Ten Thousand Dollars ($410,000.00)** and other good and valuable consideration, with quitclaim covenants, to the City of New Bedford, a Massachusetts municipal corporation having an address of 133 William Street, New Bedford, Massachusetts, 02740, acting by and through its Conservation Commission, by authority of Massachusetts General Laws Chapter 40, Section 8C, which Commission is qualified to hold Conservation Restrictions in accordance with Chapter 184 of the Massachusetts General Laws, and its permitted successors and assigns as provided herein ("Grantee"), in perpetuity and exclusively for recreation and conservation purposes as provided herein, the following described Conservation Restriction (hereinafter, the "Conservation Restriction" or the "Restriction") on all of two parcels of land totaling 5.41+/- acres and shown on a plan entitled "Conservation Restriction Area Plan of Land in New Bedford, MA Prepared for TTOR Scale: 1" = 30' May ___ 2014 Prepared by SITEC," recorded in Bristol County (Southern District) Registry of Deeds in Plan Book _____ Page _____, a copy of which is attached hereto as Exhibit B, ~~[INSERTED~~

~~WITH COMPLETION OF PLAN,~~ said parcels also described in Exhibit A attached ("Premises").

~~**For Grantor's title to the Premises, see two Deeds each dated June 25, 2013 recorded with the Bristol County (Southern District) Registry of Deeds ("Registry") at Book 10818, Page 72 and Page 129.**~~

1. Purpose. This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity predominantly in their natural, scenic, and open condition and to prevent any use of the Premises that will materially impair or interfere with the recreation and conservation values of the Premises. The Conservation Restriction was purchased in part with funding from the Federal Land and Water Conservation Fund grant (PL 88-578) ~~(notice to be recorded herewith~~. A copy of the Project Agreement is attached hereto as Exhibit D and made a part hereof.

), therefore protecting the Premises as parkland in perpetuity. The public benefits resulting from recreation and conservation of the Premises include, without limitation:

~~1.~~2. Provision of Public Recreation. The Premises include scenic meadows and designed landscapes and will be open to the general public for passive outdoor recreation and enjoyment appropriate to the historical and cultural context of the Premises.

~~2.~~3. Furtherance of Government Policy, City of New Bedford. Preservation of the Premises as public open space for passive recreation is consistent with and will advance the City of New Bedford's most recent Open Space and Recreation Plan, April 2014: Goal 1: Expand Outdoor Recreational and Open Space Opportunities for all New Bedford Residents, Regardless of Age or Ability; Goal 2: Restore & Enhance New Bedford's Park System's Historical and Cultural Characteristics; Goal 3: Enhance the Quality and Appeal of New Bedford's Streetscapes; Goal 4: Protect Natural Resources and Create New Greenways Through Urban New Bedford and Goal 4, Objective 4: Create community gardens and natural wildlife refuges within the city.

~~3.~~4. Urban Agriculture & Horticulture. Premises were historically used as a plant nursery for the past 50 years. Preservation for the future use of growing plants, including fruit and vegetables, to provide fresh, local produce to New Bedford and the surrounding communities.

~~4.~~5. Historic John Hathaway House and Associated Building Landscape~~Residence~~. The Premises contain the historically significant John Hathaway House, a Federal style "half-house" and an excellent example of a vernacular middle-class house built around 1800 in New Bedford. Preservation of the John Hathaway House and its Associated Building Landscape, ~~surrounding landscape~~ (defined in Paragraph A10 and shown on Exhibit B) contributes to the historic fabric of the City of New Bedford.

6. Accommodation of Persons with Disabilities. As a public ~~community~~ park, the Premises provides opportunity for passive recreation for persons with physical disabilities.

7. Gateway Cities Parks Program. The Massachusetts Executive Office of Energy and Environmental Affairs awarded a Gateway Cities Parks Program to support the Grantor's acquisition the Premises. This conservation restriction assists in the Grantor's compliance of the Gateway Cities Grant Award. A copy of the grant ~~award~~contract is attached hereto as Exhibit E and made a part hereof.

The conservation values of the Premises and public benefits of this Conservation Restriction are described in more detail in the Baseline Documentation Report ("Report") to be kept on file at the office of Grantee and incorporated herein by this reference. Grantor and Grantee hereby acknowledge that this Report provides an accurate representation of the condition and the values of the Premises at the time of the granting of this Conservation Restriction and is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein.

The terms of this Restriction are as follows:

A. Prohibited Uses. Except as provided in the reserved rights set forth in Section B below, the Grantor will neither perform nor allow others to perform the following acts and uses, which are expressly prohibited on, above and under 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, conduit, line or other temporary or permanent structure or facility;

(2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit; alteration of the existing natural topography of the Premises; or withdrawal of surface or ground water from the Premises.

(3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other ~~like~~ 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, or archaeological conservation;

(6) The use of, temporary or permanent parking for, or storage of, motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles, except as necessary for the police, firefighters or other governmental agents to carry out their lawful duties;

(7) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;

(8) The use of the Premises for:

a. Subsequent transfer of development rights to any property, whether or not adjacent to the Premises; or

b. Use in any calculations involving development of the Premises (except as provided in this Restriction) or any other property, whether or not adjacent to the Premises, in any manner whatsoever.

(9) Any other use of the Premises or activity thereon that is inconsistent with the purposes of this Restriction or that would materially impair conservation interests, unless the use or activity is necessary for the preservation of the Premises in an emergency and is temporary in duration or is necessary in the interest of public health and safety.

(10) Pertaining to the John Hathaway House, which is defined here as the House (including the patio, any utilities and any feature directly connected to the house, such as stairs, stoops, or cellar doors) and its ~~surrounding building envelope~~ Associated Building Landscape, which is shown on Exhibit B and shall include the stonewall ~~itself~~ and associated gates, and the land, area, access drive and features within the stonewall and gates:

(a) the Building shall not be moved, demolished, removed or razed except as described in Paragraphs B (5);

(b) no barrier shall be constructed, erected or allowed to grow on the Premises which would impair the visibility (which visibility is documented in photographs in the Baseline Documentation Report) from the street of the Premises or the Building without the prior approval of the Grantee;

(11) Subdivision of the Premises and conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises;

B. Reserved Rights. The following acts and uses, which are otherwise prohibited by the provisions of Section A, are permitted, but only if such uses and activities do not materially impair the purpose of this Restriction or other significant conservation interests:

(1) Passive Recreational Activities. Such outdoor activities as walking, hiking, running, picnicking, customary lawn games and other non-motorized outdoor recreational activities that do not materially alter the landscape, or degrade environmental quality.

(2) Other Recreational Activities. Activities such as badminton, volleyball, croquet, and similar games that do not require changes to the natural ground cover, together with temporary, removable equipment for such activities that are installed or erected in open areas and used and managed so as not to damage the natural ground surface on which such equipment is used.

(3) Agricultural and Horticultural Activities. Agricultural and horticultural operations carried out in accordance with generally accepted agricultural and horticultural management practices, including without limitation, the cultivation of existing garden beds and greenhouses, said cultivation to include the planting of gardens, plants, trees and shrubs for horticultural purposes, the mowing of said areas, the installation of fences, and the breeding, keeping and/or raising of farm fowl or other birds (such as, but not limited to, chickens, turkeys and/or peacocks, the latter of which were historically kept on Premises). As permitted in the City of New Bedford, Grantor can breed, raise and/or keep up to 90 head of poultry or other birds and, with approval of Grantee, Grantor may breed, raise and/or keep more than 90 head of poultry and/or other birds. The Grantor and Grantee recognize that hooved animals are not currently permitted on the Premises by the City of New Bedford Comprehensive Zoning Ordinance. If hooved animals become permissible on the Premises in New Bedford and with approval of the Grantee, Grantor may breed, raise, and/or pasture small hooved animals such as, but not limited to goats, sheep and pigs. Refer to Paragraphs B(8) and B(9) for structures permitted on the Premises. Other than the installation of fences, gates, water lines, septic systems and wells expressly for agricultural purposes, which shall be permitted, this Paragraph does not intend to reserve the right to construct, place, use, maintain, repair or replace any temporary or permanent structures, whether or not related to agricultural and horticultural operations.

(4) Vegetation and Landscape Management. In addition to horticulture and agricultural activities as outlined in Paragraph B (3), the management of the landscape and vegetation (including but without limitation to planting~~,~~ pruning, trimming, cutting and removal of dead, diseased, dying and unsafe trees and shrubs or other vegetation) on the Premises for the purposes of ornamental gardens, recreation, wildlife, horticultural education, fire protection, or invasive species management, or for public health and safety, provided that said management is carried out in accordance with generally accepted landscape and park management practices. Any application of herbicides and pesticides shall be done by a licensed technician and shall be done in a manner that does not interfere with public safety. At any time, the Grantee may request the Grantor's annual maintenance plan.

(5) John Hathaway House and its Associated Building Landscape,~~John Hathaway House Envelope~~. Within the Associated Building Landscape, ~~Historic House Envelope~~ as shown on Exhibit B and as allowed or permitted by the City of New Bedford:

a. Maintenance, repair, renovation and replacement of the existing John Hathaway House, together with the access drive from Shawmut Avenue and utilities (including septic system, well, telephone, data, electricity and gas). Subject to the requirements of Section C~~,~~ below, and with prior written approval of Grantee and in consultation with the New Bedford Historical Commission (or such successor committee), changes to the exterior construction materials; moving, improving, altering, reconstructing or changing the facades (including fenestration), roofs, foundations and chimneys of the John Hathaway House; and

the removal of any ell or addition to the House which was not original to the Hathaway House. Any exterior changes shall be consistent with the historical significance of the John Hathaway House and Associated Building Landscape,~~Historic House Envelope~~, as documented in the Baseline Documentation Report, which includes a "Site Visit Report," detailing the historic features of the John Hathaway House and shall adhere to the Secretary of the Interior's Standards for Rehabilitation.

b. Any replacement of the House or part of the House shall be designed to be consistent with the historical significance of the John Hathaway House and Associated Building Landscape,~~Historic House Envelope~~, as documented in the Baseline Documentation Report, which includes a "Site Visit Report," detailing the historic features of the John Hathaway House; shall adhere to the Secretary of the Interior's Standards for Reconstructing; and shall also be subject to Grantee's prior written approval with the consultation with the New Bedford Historical Commission (or such successor committee).

c. Residential use (including but not limited to tenant(s) with caretaking or security responsibilities)~~; institutional use; , and~~ fencing, and gardening and landscaping related to the~~se~~is use~~s~~ and as described in Paragraph B(4); visitor center and associated gift shop; educational programs; meeting space; public and private events and functions; office space in support of these aforementioned uses; service and sale of food and beverages for visitors to the Premises and attendees at events and functions; and other uses as may be compatible with ~~and~~ or contributing to the conservation and historic values of the Premises ~~and~~ or in support of Grantor's activities and mission as an educational non-profit entity. Temporary structures, including but not limited to a farm stand or sign in place for the growing season ~~,~~ or for temporary events. ~~in place for no longer than seven days shall be allowed~~.

Comment [A1]: Melissa said this was okay as written here.

d. Alternative Energy Structures within the John Hathaway House Associated Building Landscape~~Historic Envelope~~. Subject to the requirements of Section C below, and with prior written approval of Grantee and in consultation with the with the New Bedford Historical Commission (or such successor committee), the construction, erection, placement, use, maintenance, repair, removal, and replacement of solar energy panels or geothermal heating and cooling systems; provided that such facilities and structures are for educational purposes or the provision of energy ~~primarily~~ exclusively for ~~to~~ the support of the uses of the Premises, and provided that solar energy panels are affixed to roofs and not installed on the ground. Any such structures shall not impair the historic significance of the Jonathan Hathaway Associated Building Landscape ~~Historic House and Envelope~~ and shall adhere to the Secretary of Interior's Standards for Rehabilitation as it relates to sustainability.

~~(5)~~(6) 20th Century Farmhouse. Residential use, maintenance, repair, removal and/or replacement on the existing footprint, of the existing 20th Century Farmhouse together with the access drive and access paths, gardening and landscaping, and utilities (including without limitation sewer, telephone, data, electricity, and natural gas) appropriate for uses such as a residence for a tenant or tenants with caretaking or security responsibilities, visitor center and associated gift shop, educational programs, meeting space, public and private events and functions, office space in support of these aforementioned uses, service and sale of food and beverages for visitors to the Premises and attendees at events and functions, and other uses as may be compatible with or contributing to the conservation and historic values of the Premises or in support of Grantor's activities and mission as an educational non-profit entity. Should the 20th Century House be removed and not replaced, filling, grading and landscaping of the grounds beneath and surrounding the house and erection of a temporary or permanent structure within the existing footprint to support the foregoing uses shall also be permitted. Any replacement structure shall be designed to be consistent with the scale, style, and/or character of the Premises, as documented in the Baseline Documentation Report.

~~(6)~~(7) Existing Glass Shop, Plant Lab and Plant Workshop. The use, maintenance, repair, renovation, replacement on the existing footprint, and removal of the Existing Glass Shop, Plant Lab and Plant Workshop as shown on Exhibit B and for uses such as storage, art studio, visitor center and associated gift shop, educational programs, meeting space, public and private events and functions, office space in support of these aforementioned uses, service and sale of produce, value-added agricultural products, food, and beverages for visitors to the Premises and attendees at events and functions, and other uses as may be compatible with and contributing to the management of the Premises as a public garden/public park and in support of Grantor's activities and mission as an educational non-profit entity, together with access paths, gardens and landscaping, utilities serving said buildings (including without limitation sewer, septic or grey water system, water line, telephone electricity, data and natural gas), but excluding residential use. Any replacement structure shall be designed to be consistent with the scale, style, and/or character of the Premises, as documented in the Baseline Documentation Report.

~~(7)~~(8) Agricultural & Horticultural Structures.

a.) Sheds, Coops and Animal Run-in Shelters. The maintenance, repair, removal and replacement of existing animal sheds, coops and run-in shelters ~~directly related to the Agricultural and Horticultural activities permitted in Paragraph B(3)~~ and, with Grantee's approval, the construction of new animal sheds, coops and run-in shelters , together with utilities, (including well, water, telephone, electricity, and sewer or septic systems). Any replacement or new structure shall be designed to be consistent with the scale, style, and/or character of the Premises, as documented in the Baseline Documentation Report.

b.) Greenhouses. The maintenance, repair, replacement and removal of the permanent and temporary greenhouses, provided that the footprint shall not exceed the current foot print of 39,000 square feet.

~~(8)~~(9) Minor Educational and Recreational Structures. The construction, maintenance, repair and replacement of interpretive signs and exhibits and benches and, with the prior written notice to ~~approval of~~ Grantee, the construction~~, maintenance, repair and replacement~~ of other minor structures for use by the public for educational and recreational purposes, including but not limited to structures such as ~~to~~ a gazebo and permanent playground structures. Said structures shall be designed and located to minimize any deleterious impact on the conservation purposes of this Restriction.

~~(9)~~(10) Trails and Walkways. The construction, maintenance and marking of trails and walkways for pedestrian use, including trails designed for universal access.

~~(10)~~(11) Signs. The erection, maintenance and replacement of signs with respect to safety, way-finding, trespass, trail access, identity and address of the owners and tenants, the Grantee's interest in the property, governmental and other funders of the Premises and the maintenance/operation thereof, and the protected conservation and cultural values.

~~(11)~~(12) Driveways, Parking Areas and Utilities. The repair, maintenance, and replacement of existing driveways and parking areas as shown on Exhibit B, and with the prior written approval of the Grantee, the creation of new parking areas provided that new parking areas are designed in accordance with the City Wetland Ordinance and shall be built so as not to deteriorate from the environmental, historic, horticultural or agricultural resources on the Premise, and the construction, repair, maintenance and replacement of associated drainage systems, telephone, data, electric, gas, water, and other utilities serving the Premises.

~~(12)~~(13) Wildlife Habitat Improvement. Measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife. In the case of rare or endangered species, such measures, enhancements and restorations, shall be done in consultation with the Massachusetts Natural Heritage and Endangered Species Program or successor program.

~~(13)~~(14) Use by Qualified Non-Profit and/or by City of New Bedford for A Community Park. The right of a qualified non-profit organization and/or the City of New Bedford, acting by and through its Conservation Commission and/or Recreation and Parks Department to use and maintain the Premises as a public park. Said right shall include the right to sell to the general public -products such as plants; seedlings; produce; food; products in support of gardening, preparing and serving food, education, and outdoor recreation as these products relate to the public's use of the Premises; products made on the Premises and/or related to exhibits on the Premises; and general merchandise such as hats, clothing, paper products, -and other memorabilia supporting or relating to the mission of the non-profit, any exhibits or events on the Premises, local or regional events or history, including those of ~~or in support of~~ the City of New Bedford or

other qualified non-profit organization. Said right shall also include the rights to hold both private and public events and to charge admission or rent the Premises or portions thereof for such events and in support of Grantor's activities and mission as an educational non-profit entity, provided that, the Premises are not closed entirely to the general public during such private events, either a portion of the Premises shall remain open to the public throughout the event or the Premises shall be open at least five (5) hours of the day of the event; for such purposes for more than seven (7) days per year; to place and maintain sculptures and to construct and maintain small structures (such as kiosks, benches and program shelters), trails, and landscape improvements in support of public use and enjoyment, providing that such uses, and improvements do not otherwise have a deleterious impact on the conservation values of the Premises. Said right shall also include the right to use motorized vehicles as part of the routine maintenance of the Premises or of tours of the Premises conducted by Grantor or its assigns. In addition, said right includes the right to permit the use of appropriate motorized vehicles by visitors with impaired mobility.

(14)(15) Alternative Energy Facilities and Structures. With prior written approval by Grantee and outside of the John Hathaway Associated Building LandscapeHistoric envelope, the construction, erection, placement, use, maintenance, repair, removal, and replacement of solar energy panels or geothermal heating and cooling systems; provided that such facilities and structures are for educational purposes or the provision of energy primarily exclusively to support the uses of the Premises, and provided that solar energy panels are affixed to roofs or sides of buildings and not installed on the ground. See Paragraph B(5)d for alternative energy structures within the John Hathaway-Associated Building LandscapeHouse Historic envelope.

Comment [A2]: Melissa said this should e exclusively for use on Premises.

(16) Conveyance. Conveyance of a part or portion of the Premises, or division or subdivision of the Premises for conservation purposes, shall only be permitted with the written consent of the Grantee; conveyance of the Premises in its entirety also shall be permitted, provided that any such conveyance, whether in part or in whole, is subject to, and consistent with, the terms of this Conservation Restriction.

(17) Archaeological Investigations. The conduct of archeological activities, including without limitation survey, metal detecting, 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 Commissions (or appropriate successor official). See also Section C.

The exercise of any right reserved by Grantor under this Section B shall be in compliance with the then-current Zoning By-Law of the City of New Bedford, New Bedford Wetland Ordinance, New Bedford Board of Health, the Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40), and all other applicable federal, state and local laws and regulations. The inclusion of any reserved right in this Section B requiring a permit or other approval from a public agency, board or commission does not imply that the Grantee or the Commonwealth of Massachusetts takes any position as to whether such permit or other approval should be issued.

C. Safeguarding Historic and Archaeological Resources. Grantor shall make every reasonable effort to prohibit any person from conducting archaeological field investigations including metal detecting, digging, or artifact collecting, without the approval of the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor agency), and shall promptly report any such prohibited activity to the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor agency). Grantor and Grantee shall include this prohibition against digging, artifact collecting, or metal detecting in any rules and regulations for visitors to the Premises.

D. Notice and Approval. Whenever notice to or approval by Grantee is required under the provisions of Sections A or B, Grantor shall notify Grantee in writing, delivered to the Grantee as provided in Section R herein, by Certified Mail, return receipt requested, not less than sixty (60) days prior to the Grantor's commencement of 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 Grantee to make an informed judgment as to its consistency with the purposes of this Restriction. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of verified delivery of Grantor's written request therefor, provided that the Grantor's request complies in every respect with the requirements of this Section D. Grantee's approval shall not be unreasonably withheld, but shall be granted only upon a showing that the proposed activity will not materially impair the purposes of this Restriction. Failure of Grantee to respond in writing within such sixty (60) days to a request which complies with the requirements of this Section D shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request is not for a prohibited use, will not materially impair the purposes of this Restriction, and sets forth the provisions of this Section D relating to deemed approval after the passage of time. All notices to Grantee pursuant to this Section D shall be sent to the attention of the Chairman of the Conservation Commission through the Office of Environmental Stewardship with a copy to the City Solicitor (or to any successor Grantee at that time) and shall include at the top in large bold type, the following: **"FAILURE TO RESPOND WITHIN 60 DAYS WILL CONSTITUTE DEEMED APPROVAL."**

E. Extinguishment.

(1) Grantee's Receipt of Property Right. The Grantor and the Grantee agree that the grant of this Conservation Restriction gives rise ~~for purposes of this Section E(1)~~ to a real property right immediately vested in the Grantee, with a fair market value that is equal to the ratio between Grantee's monetary investment of Three Hundred and Five Thousand Dollars ($305,000.00) in this Conservation Restriction (as the numerator) and the full value of this Conservation Restriction as determined by a qualified appraisal, which is Four Hundred and Ten Thousand Dollars ($410,000.00) (as the denominator). Said ratio is stipulated by the parties to be 74%, excluding the value added to the Premises by future improvements resulting from Grantor's and/or Grantee's construction or renovation of permitted facilities and structures as permitted herein. Of the Grantee's monetary investment, Two Hundred and Five Thousand Dollars ($205,000.00), or 67% of the Grantee's monetary investment, was awarded through the federal Land and Water

Conservation Fund grant program and One Hundred Thousand Dollars ($100,000.00), or 33% of the Grantee's monetary investment, was awarded through the City of New Bedford's Community Development Block Grant program.

(2) Value of Grantee's Property Right. Such proportionate value of the Grantee's property right, including the proportionate value of the grant programs, shall remain constant.

(3) Right of Grantee to Recover Proportional Value at Disposition. If circumstances arise in the future that render the purpose of this Restriction impossible to accomplish, this Restriction can be terminated or extinguished, whether in whole or in part, only by proceedings consistent with M.G.L. Chapter 184 or by judicial proceedings in a court of competent jurisdiction under applicable law, and approved by the Secretary of Energy and Environmental Affairs. In case of any such extinguishment or other release of the Restriction, on a subsequent sale, exchange or involuntary conversion of the Premises, Grantee shall be entitled to a portion of the proceeds in accordance with Sections E(1), E(2), and E(5) subject, however, to any applicable law that expressly provides for a different disposition of proceeds.

(4) 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. In case of such a taking of all of the Premises, the proceeds thereof shall be allocated in accordance with this Paragraph E~~, below~~. The proceeds of a partial taking, after payment of the Grantor's and Grantee's expenses in responding to the taking action, shall be used to restore the Premises as much as practicable, in furtherance of the purposes of this Restriction. Any proceeds of a partial taking not so used, shall be allocated in accordance with Paragraph E(5).

(5) Allocation of Expenses upon Disposition. All reasonable, out-of-pocket costs and 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 the Grantee in shares proportional to their interests in the Premises, as described in Paragraphs E(1) and E(2). In the event of any disposition or public action, ~~any funds received by the~~ Grantor will use any funds received to comply with the Federal Land and Water Conservation Fund Program and the City of New Bedford Community Development Block Grant program obtained by Grantee in connection with the Premises. Funds shall be used in compliance with M.G.L. Ch. 184, Section 32.

(6) Continuing Trust of Grantee's Share of Proceeds of Conservation Restriction Disposition. In all cases arising under this Paragraph E, the Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this Restriction.

(7) Survival. In the event of the extinguishment of this Restriction, the provisions of this Section E shall survive such extinguishment.

F. Access. Except as specifically provided herein, the 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: Grantor hereby grants to the Grantee and its representatives the right to enter the Premises (a) at reasonable times and in a reasonable manner for the purpose of regularly monitoring and inspecting the same to determine compliance herewith, including the right to access the Premises over roads and rights of way owned by the Grantor and any rights of way or other access ways now or hereafter available to Grantor for access to the Premises, and (b) after 30 days' prior written notice, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or otherwise enforce any violation hereof. The Restriction hereby conveyed does not grant to the public any right to enter upon the Premises except those rights granted by Section B of this Restriction, which grants general public access for passive recreation and nature study, consistent with municipal and state regulations and under the Grantor's rules and regulations. ~~consistent with good property management and stewardship.~~

G. Legal Remedies of Grantee. The rights hereby granted shall include the right to enforce this 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 such violation (it being hereby acknowledged that 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 Grantee. All reasonable costs incurred by Grantee in enforcing the terms of this Conservation Restriction against Grantor, including without limitation costs and expenses of suit and reasonable attorneys' fees and expenses, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Restriction, shall be borne by Grantor; provided, however, that if Grantor is found not to have violated this CR ~~ultimately prevails in a judicial enforcement action~~, each party shall bear its own costs. By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises not caused by Grantee or its agents, including with respect to compliance with hazardous materials or other environmental laws and regulations. The provisions of the immediately preceding sentence shall survive any extinguishment of this Restriction. Any election by the Grantee as to the nature and timing of its actions pursuant to 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.

H. Indemnification. Grantor is responsible to pay and discharge when due all property taxes and assessments lawfully imposed and to avoid the imposition of any liens that may impact Grantee's rights hereunder. Grantor acknowledges that Grantee has no possessory rights in the Premises, or any responsibility or right to control, maintain, or keep up the Premises. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Premises, including without limitation, compliance with all applicable federal, state and local laws and regulations. If the Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Premises, the Grantor shall indemnify and reimburse the Grantee for these payments, as well as for reasonable attorneys' fees and expenses and other expenses of defending itself, unless Grantee or any of its agents is determined by a court to be the sole cause of the injury or damage (and if Grantee is adjudged partially responsible, its indemnification obligations under this Section H

shall be approximately pro-rated). The provisions of this Section H shall survive the extinguishment of this Restriction.

I. Acts Beyond Grantor's Control. Nothing contained in this Restriction shall be construed to entitle Grantee to bring any action against 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 Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of damage to the Premises from acts or events beyond the Grantor's control, if it is determined to be desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible. Nothing herein should be construed to preclude or limit Grantor's and/or Grantee's rights to recover damages from any third party for trespass or other violation of their respective rights in this Conservation Restriction and in the Premises.

J. Insurance. At or before the signing of the Conservation Restriction, Grantor shall provide the Grantee with insurance policies as stated below and name the City of New Bedford and the New Bedford Conservation Commission as additional insured parties. In the future, the Grantor shall give the Grantee at least 30 days of notice of any change in these described insurance policies. Grantor must~~may~~ provide proof of insurance policies described in this paragraph at the request of the Grantee.

The Grantor shall obtain and maintain a Commercial General Liability policy with the following limits:

$1,000,000.00 Per Occurrence (Bodily Injury/Property Damages)

$2,000.000.00 General Aggregate

The Grantor shall also obtain and maintain Property insurance on the John Hathaway House that includes the following:

Replacement Cost Basis

Special Form

80% Co Insurance Clause

No More than $5,000.00 deductible

K. Duration and Assignability. The burdens of this Restriction shall run with the Premises and shall be enforceable against Grantor and its successors and assigns as owners of the Premises (or any portion thereof), in perpetuity (except as otherwise provided herein). Grantee is authorized to record or file any notices or instruments appropriate to assure the perpetual enforceability of this Restriction. The Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor agrees itself to execute any such instruments upon request. The benefits of this Restriction shall run to the Grantee, shall be in gross, and shall not be assignable by

Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the purpose of this Restriction continue to be carried out; (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws, as an eligible donee to receive this Restriction directly; and (iii) Grantee complies with the provisions required by Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

L. Subsequent Transfers. The Grantor shall incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest, and shall notify the Grantee within 20 days of such transfer and provide a true, complete and correct copy of any such transfer instrument. Any such transfer shall be subject in all respects to the provisions of this Conservation Restriction. Failure by the Grantor to provide such notice to the Grantee, or to incorporate the terms of this Restriction in such notice, shall not impair the validity or enforceability of this Conservation Restriction. Any transfer shall comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

M. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding any interest in the Premises shall terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to such transfer, and liability for the transfer itself if the transfer is in violation of this Restriction, shall survive any such transfer. Any new owner shall cooperate in the restoration of the Premises or correction or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations during such owner's term of ownership.

N. Estoppel Certificates. Upon request by Grantor, Grantee shall within forty-five (45) days execute and deliver to Grantor any commercially reasonable document, including an estoppel certificate, that certifies to the best of Grantee's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Restriction, or that otherwise evidences the status of this Restriction, as may reasonably be requested by Grantor.

O. 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 Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendment shall occur only in exceptional circumstances. 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 or as required by applicable statutes in effect at the time of the proposed amendment and, if applicable, shall comply with the provisions of Article 97 of the Massachusetts Constitution. Any such amendment shall be recorded in the Registry.

P. Effective Date. This Conservation Restriction shall be effective when the Grantor and Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in the Registry.

Q. Recordation. The Grantee shall record this instrument in timely fashion in the Registry.

R. Notices. Any notice, 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 nationally-known overnight delivery service, i.e. FedEx or DHL, addressed to the party's address s_et forth below, except as otherwise provided in Section D. If any notice is returned as undeliverable or addressee unknown, the sender shall make a good faith effort to ascertain a correct address and re-send the notice to a current address.

All notices to the Grantee shall be sent to the attention of the:

New Bedford Conservation Commission Chairman c/o Office of Environmental Stewardship
New Bedford City Hall
133 William Street
New Bedford MA 02780

With a copy to:
City Solicitor
New Bedford City Hall
133 William Street
New Bedford MA 02780

All notices to the Grantor shall be sent to the attention:

The Trustees of Reservations
572~~6~~ Essex Street
Beverly MA 01453

With a copy to:

The Trustees of Reservations
787 Shawmut Avenue
New Bedford, MA 02746

S. Miscellaneous.

(1) Controlling Law. The interpretation and performance of this Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

(2) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to affect the purpose of this Restriction and the policy and purposes of Mass. Gen. Laws Chapter

184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

(3) Severability. If any provision of this Restriction shall to any extent be held invalid, the remainder shall not be affected.

(4) Entire Agreement. This instrument sets forth each and every right and obligation of the parties with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Restriction, all of which are merged herein.

~~(5) Joint Obligation. The obligations imposed by this Restriction upon the parties that together comprise "Grantor" shall be joint and several.~~

~~(6)~~(5) Captions. The captions in this instrument have been inserted solely for convenience of reference. They are not a part of this instrument and shall have no effect upon construction or interpretation.

~~(7)~~(6) Pre-existing rights of the Public. Approval of this Restriction pursuant to M.G.L. Chapter 184, Section 32 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. Any such pre-existing rights of the public, if any, are not affected by the granting of this Restriction.

~~(8)~~(7) No 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 will not grant, and the Grantee will not take, title to any part of the premises without having first assigned this Conservation Restriction, in accordance with Section K, above to a non-fee owner ~~(if necessary to avoid merger),~~ to ensure that merger does not occur and to ensure continued enforceability by a non-owner of the fee interest.

~~(9)~~(8) Counterparts. This Restriction may be executed in counterparts which shall constitute a single instrument whether or not all signatures appear on a single copy hereof.

~~(10)~~(9) Baseline Documentation. In order to establish the present condition of the Premises and the conservation values thereon which are protected by this Conservation Restriction, so as to enable the Grantee to monitor future uses of the Property and to assure compliance with the terms hereof, Grantor and Grantee have prepared a Baseline Documentation Report and acknowledge that the same is an accurate representation of the condition of the Premises as of the date of this Conservation Restriction. 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 the Report are subsequently destroyed by casualty or other circumstance or the Baseline Report does not adequately address an issue raised, other evidence may be offered by the parties to establish the condition of the Premises as of the date of this Restriction.

~~(11)~~(10) No Liens. Grantor represents and warrants to Grantee, and Grantee is relying upon such representation and warranty in providing the consideration set forth herein, that as of the date of this grant there are no liens or mortgages or other encumbrances the exercise of which would result in the extinguishment of this Restriction. The terms of this Conservation Restriction, and Grantee's right to enforce them, shall be superior to any mortgage or other monetary lien on the Premises, regardless of date.

~~(12)~~(11) Limited Liability. No officer, trustee, director, official, employee or agent of Grantor or Grantee shall have any personal liability under this Conservation Restriction.

~~(13)~~(12) Compliance with Laws. Grantor shall operate and maintain the Premises in compliance with all applicable federal, state and local laws and regulations.

~~(14)~~(13) Authority. Each party represents and warrants to the other party that such party is duly authorized to execute, deliver and perform this Restriction, and that the person(s) executing this Restriction on behalf of such party is/are duly authorized to do so.

Attached hereto and incorporated herein are the following:

1. Signature of Grantor
2. Signature of Grantee
3. Approval of Grantee Acceptance
4. Secretary of Energy and Environmental Affairs
5. Exhibit A – Legal Description
6. Exhibit B- Copy of Plan of Conservation Restriction Area
7. Exhibit C – New Bedford City Council Vote, related to conservation restriction and LWCF funding
8. Exhibit D – Land and Water Conservation Fund Project Agreement
9. Exhibit- E– Gateway Cities Park Grant program contract

[Signatures begin on next page]

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Executed under seal this as of the_____ day of _____, 2014.

MASSACHUSETTS LAND CONSERVATION TRUST, INC.

By: _____
Name: Robert L. Warren
Its: President

By: _____
Name: R. Angus West
Its: Treasurer

Both Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2014

On this ____ day of _____, 2014, before me, the undersigned notary public, personally appeared Robert Warren, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily as President of Massachusetts Land Conservation Trust, Inc. for its stated purpose.

_____
Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2014

On this ____ day of _____, 2014, before me, the undersigned notary public, personally appeared R. Angus West, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily as Treasurer of Massachusetts Land Conservation Trust, Inc. for its stated purpose.

_____
Notary Public
My commission expires:

ACCEPTANCE OF GRANT BY THE CITY OF NEW BEDFORD CONSERVATION COMMISSION

At a public meeting held on _____, 2014, the City of New Bedford Conservation Commission voted to accept this grant from the Massachusetts Land Conservation Trust.

Members of the Conservation Commission

_____
Chair

_____
Vice Chair

_____

_____

_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2014

On this ____ day of _____, 2014, before me, the undersigned notary public, personally appeared _____

_____

_____ _____ proved to me through satisfactory evidence of identification, which was _____, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose.

_____
Notary Public
My commission expires

APPROVAL AND ACCEPTANCE OF GRANT

We, the undersigned, being a majority of the City Council of the City of New Bedford, Massachusetts, hereby certify that at a public meeting duly held on _____, 2014 the City Council voted to approve pursuant to M.G.L. Chapter 184 Section 32 and accept pursuant to M.G.L. Chapter 40 Section 8C a Conservation Restriction ~~substantially identical to the foregoing Conservation Restriction~~ from Massachusetts Land Conservation Trust, Inc. ~~pursuant to M.G.L. Chapter 184, Section 32,~~ and ~~pursuant to said vote~~ hereby accept the foregoing Conservation Restriction.

_____
Joseph P. Lopes, President

_____
Steven Martins, First Vice-President

_____
Brian K. Gomes, Second Vice-President

_____
David Alves, at Large

_____
Naomi Carney, at Large

_____
Debora Coelho, at Large

_____
Linda Morad, at Large

_____
James D. Oliveira, Ward 1

_____
Henry G. Bosquet, Ward 3

_____
Dana Reibero, Ward 4

_____
Kerry M. Winterson, Ward 5

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2014

On this ____ day of _____, 2014, before me, the undersigned notary public, personally appeared _____

_____

_____

_____

_____, proved to me through satisfactory evidence of identification, which was _____, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose.

_____
Notary Public
My commission expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Massachusetts Land Conservation Trust, Inc. to the City of New Bedford acting by and through its Conservation Commission has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: _____, 2014

_____
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2014

On this ____ day of _____, 2014, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

_____
Notary Public
My commission expires:

Exhibit A

Legal Description of Premises

The Premises consist of certain parcels of land located in New Bedford, Massachusetts –

TO BE INSERTED.

Exhibit B

Plan of land

EXHBIT C

City Council Vote

Exhibit D

LWCF Project Agreement

Exhibit E

Gateway Cities Contract