

GRANT OF CONSERVATION RESTRICTION

THE TOWN OF WAREHAM, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, with a mailing address care of Memorial Town Hall, 54 Marion Road, Wareham, Plymouth County, Massachusetts 02571, being the sole owner, for its successors and assigns (collectively, the “Grantor”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, but for no monetary consideration, does hereby grants with Quitclaim Covenants to the **COMMONWEALTH OF MASSACHUSETTS ACTING THROUGH ITS DEPARTMENT OF FISH AND GAME**, having an address of 251 Causeway Street, Suite 400, Boston, Suffolk County, Massachusetts 02114, its permitted successors and assigns (collectively, the “Grantee”), in perpetuity and for the purposes set forth in Article 97 of the Amendments to the Massachusetts Constitution, a Conservation Restriction (hereinafter “this Conservation Restriction”), in accordance with Massachusetts General Laws (hereinafter “G.L.”) Chapter 184, Sections 31 and 32, and in accordance with the Special Fall 2003 Town Meeting Warrant, Article 1, October 27, 2003, and the Annual Fall 2007 Town Meeting Warrant Article, October 30, 2007, on those certain parcels of land located in the Town of Wareham, Massachusetts constituting approximately 5.35 acres (“Premises”), and is more particularly described in Exhibit A attached hereto and incorporated herein by reference and shown as “Lot B1” on Assessor’s Map No. 50B-2, a copy of which is attached hereto as Exhibit B and incorporated herein by reference. For Grantor’s title see Plymouth County Registry of Deeds Book 27322, Page 115 and Document No. 556587 filed for registration with the Plymouth County Registry District of the Land Court and noted on Certificate of Title No. 98018 in Registration Book 490, Page 18.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that, while permitting the permitted acts and uses described in Section II-B herein, the Premises will be subject to the prohibitions described in Section II-A hereof so that

B herein, the Premises will be subject to the prohibitions described in Section II-A hereof so that the Premises will be maintained in its current condition in perpetuity and for conservation purposes, predominantly in a natural, scenic, open and undeveloped condition for fish and wildlife conservation, natural habitat protection, associated passive public recreation and other conservation uses consistent with the spirit and intent of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use or change that would significantly impair or interfere with its conservation values thereof, to allow public access for the enjoyment of the wildlife and open space resources of the Premises as specifically provided for herein, and for historical and archaeological resource preservation. By vote of the Special Fall 2003 Town Meeting under Article 1, the Town approved taking the Premises by eminent domain for open space and recreational purposes and by vote of the Annual Fall 2007 Town Meeting under Article 17, the Town authorized appropriation of Community Preservation Funds and conveyance of a deed restriction to a state-approved conservation entity. Certified copies of said Article 1 and Article 17 are attached hereto as Exhibit C and incorporated herein by reference.

The conservation values and the public benefits protected by this Conservation Restriction include the following, without limitation:

A. The Premises in its present natural and open condition provides significant scenic, scientific, outdoor educational and recreational values and has not been subjected to development incompatible with said uses;

B. The Grantor and Grantee recognize the uniqueness of the Premises as a distinctive Massachusetts landscape embodying the special character of the region in which the property is located and have the common purpose of conserving the natural values of the Premises for this generation and future generations;

C. The Premises is a state designated barrier beach, where the Commonwealth of Massachusetts discourages development because of its sensitive nature, importance for flood damage abatement, and value as wildlife habitat;

D. The Premises are a shellfish suitability area identified as desirable habitat areas for soft-shell clams, quahogs, bay scallops and American oysters. These areas are identified based on the expertise of the Division of Marine Fisheries and local Shellfish Constables, input from commercial fishermen, and information contained in maps and studies of shellfish in Massachusetts (November 2008). The protection of the Premises will enhance the ecological value and integrity of adjacent, similarly protected lands, creating a biological corridor. The conservation of the Premises will contribute to the protection of the immediate area as a biologically diverse landscape and seascape.

E. The protection of the Premises, being a coastal resource of Buzzards Bay, furthers Wareham's Open Space Plan goal to protect as much of the remaining undeveloped coastline as possible;

F. The Premises is in the 100-Year Flood Zone as determined by the Federal Emergency Management Agency (FEMA) and is also designated a velocity zone where the most

damage occurs during coastal storm event; protection of this zone helps to mitigate wider damage;

G. The Premises is adjacent to other town-owned land that has approximately 1460 feet of frontage on the Wareham River, connects the previously disconnected town-owned land, and has 500 feet of additional frontage on the Wareham River and as such is an important resource area requiring protection under the Wetlands Protection Act and the Rivers Protection Act, G.L. c.131, §40;

H. The Premises enables enhanced public access to the beach;

I. The Premises permits passive conservation and recreation uses by the public, such as swimming, hiking, walking, and nature observation; and

J. This Conservation Restriction is in compliance with and required by G.L. c. 44B, the Community Preservation Act.

Therefore, in order to preserve the Premises in perpetuity in its present natural, scenic, open and undeveloped condition, the Grantor conveys to the Grantee a perpetual Conservation Restriction within the meaning of G.L. c.184, §31 et. seq., as amended.

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

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited on, above, or below the Premises:

- (1) Constructing, placing, or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line, or other temporary or permanent structure or facility on, above or, under the Premises;
- (2) Mining, excavating, dredging, or removing from the Premises of sediment, soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit or otherwise make topographical changes to 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 hazardous substance or hazardous material whatsoever or the installation of underground storage tanks;
- (4) Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, marshes, potential or certified vernal pools, subsurface water, or any other water bodies;

- (5) Cutting, removing, or otherwise destroying trees, grasses, or other vegetation or introducing invasive plants or animal species;
- (6) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, archaeological conservation, historic preservation, and protection of wildlife habitat and shellfish and aquatic habitats and communities;
- (7) No snowmobiles, motorcycles, mopeds, all-terrain vehicles, bicycles, trail bikes, or any other motorized or non-motorized vehicles, or bicycles of any kind shall be used, parked, stored, maintained, operated, or otherwise allowed on the Premises except for motorized wheelchairs or other disabled assistance devices of individuals with disabilities and vehicles necessary for public safety (i.e., fire, police, ambulance, and other government officials) in carrying out their lawful duties;
- (8) Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (9) The use of the Premises for commercial, business, or industrial purposes; and
- (10) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction or which are prohibited by federal, state or local law, statutes, regulations, ordinances or codes.

B. Reserved Rights and Exceptions to Otherwise Prohibited Acts and Uses

Notwithstanding Section II-A above, the Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the purpose of this Conservation Restriction or other significant conservation interests:

- (1) Recreational Activities. Non-commercial fishing and harvesting of shell fish (as permitted by the Grantor), swimming, hiking, cross-country skiing, bird-watching, nature study or research and other lawful non-motorized and passive outdoor recreational activities that do not materially alter the landscape or adversely affect wildlife and shellfish habitats and communities, and do not degrade environmental quality;
- (2) Coastal Zone Management. In accordance with generally accepted coastal zone management practices (commonly utilized in the conservation of coastal and beach areas) or as may be otherwise required by any governmental authority or agency, the dredging, removal, relocation and deposit of certain sediment, soil, loam, peat, gravel, sand, concrete, rock, or other mineral resource or natural deposit on the Premises or other topographical changes to the Premises, the pruning, cutting, removal, relocation and re-planting of trees, bushes, grasses, or other vegetation on the Premises for the following purposes: to improve wildlife and shellfish habitats and communities; to mark boundaries; to prevent, control or remove hazards, disease, or

damage from insects, storm, or fire; to control or remove invasive or exotic species; or to preserve and stabilize the present condition of the Premises, including vistas, fence lines, trails, salt marshes, meadows and dunes and barrier and bathing beach areas; and piling and composting of brush, grass and similar biodegradable materials originating on the Premises in locations where they will not materially impair the purposes (including scenic values) of this Conservation Restriction at least fifty feet from watercourses and wetlands;

- (3) Non-native Flora. The removal of non-native plants or invasive flora and interplanting of indigenous species, measures designed to restore native biotic communities, or to maintain, enhance, or restore wildlife, wildlife habitat, or rare or endangered species, including the control of noxious, nuisance or non-native plant or animal species, in a manner that minimizes damage to surrounding vegetation, non-target species, and water quality;
- (4) Wildlife Habitat Improvement. Measures designed to restore native biotic communities or to maintain, enhance, or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs, and plant species;
- (5) Shellfish Habitat and Ecosystem Improvement. Measures designed to maintain, enhance, or restore shellfish habitats and ecosystems;
- (6) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official);
- (7) Trails, Fences, Stone Walls. The maintenance and use of those existing ways, trails, fences, bridges, gates, stone walls on the Premises, which have been previously established, installed or constructed by the Grantor, substantially in their present condition, or as hereinafter permitted, and if necessary, the creation of new ways, trails, fences, bridges, gates, and stone walls by the Grantor, so long as any such use is not significantly detrimental to water quality, wildlife and shellfish habitats and communities conservation, and/or coastal zone management practices of which is otherwise wasteful of the natural resources of the Premises, including, but not limited to, the salt marshes, meadows and dunes and barrier and bathing beach areas;
- (8) Signs. Subject to any applicable regional or local approvals, the erection, maintenance, and replacement of signs with respect to the Grantee's interest in the Premises, the Premises status as a conservation reservation; the restrictions on the use of the Premises; notices of local and state ordinances relating to the use of the Premises; educational information; the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, to mark property boundaries, hunting, trespass, educational information and for providing other like information;
- (9) Permits. The exercise of any right reserved by the Grantor under this Section II-B shall be in compliance with the then-current Zoning, the Wetlands Protection Act, and all other applicable federal, state, and local laws, statutes, regulations, ordinances, codes and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position of whether such permit should be issued;

(10) Historic Restoration and Maintenance of the Premises. Any work required to restore and maintain the coastal marshes, meadows, dunes and barrier and bathing beach areas in substantially the same condition the Premises were in prior to 1938 and as recommended in that certain Ecological Evaluation of Natural Resources Swift Beach, Wareham, MA dated June 2009 prepared by BSC Group, 349 Main Street, W. Yarmouth, MA 02673 (a copy of which is filed with the Grantor's Town Clerk's office), including, but not limited to, the dredging, removal, relocation and deposit of certain sediment soil, loam, peat, gravel, sand, concrete, rock, or other mineral resource or natural deposit on the Premises or other topographical changes to the Premises, the pruning, cutting, removal, relocation and re-planting of trees, bushes, grasses, or other vegetation on the Premises, and the removal of the existing concrete pad and certain other man-made structures, materials, equipment and debris located within the coastal marsh, meadow, and dune area of the Premises.

(11) Restoration. Except as otherwise set forth herein, any work undertaken in conjunction with the reserved rights mentioned above shall seek to minimize disturbance on the Premises and shall be done in accordance with any and all applicable federal, state and local laws, statutes, regulations, ordinances, codes and permits. Upon completion of any site work performed, any disturbed areas shall be restored as is necessary to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work (except with respect to any disturbance of the Premises as a result of the historic restoration thereof) or as may be required by any applicable federal, state or local law, statute, regulation, ordinance or code intended for the conservation of natural resources;

(12) Motorized Vehicles. The use and parking of motorized vehicles only as necessary by the police, firefighters or other governmental agents in carrying out their lawful duties and to conduct the activities permitted under this Section II-B, but not including recreational activities, and provided such use is not detrimental to water quality, wetland integrity, fragile habitat, and soil, wildlife, shellfish and plant conservation; and the use of a motorized wheelchair or other disabled assistance devices by an individual with disability(ies) in order to facilitate such individual's participation in the activities permitted under this Section II-B;

(13) Temporary Comfort Stations. The use of a portion of the Premises from May 1 through October 1 each year, to install and maintain up to four (4) temporary portable comfort stations, which shall be sited as inconspicuously as possible; and

(14) General. With the Grantee's written approval, other acts and uses that are consistent with the purposes of this Conservation Restriction, do not materially impair the conservation values of the Premises, and are not explicitly prohibited or in violation of any federal, state or local law, statute, regulation, ordinance or code, are permissible.

C. Notice and Approval

Whenever notice to or approval by the Grantee is required under the provisions of Sections II-A or II-B above, the Grantor shall notify the Grantee accordance with Section XIII of this Conservation Restriction in writing not less than 60 days prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this

Conservation Restriction. Where the Grantee's approval is required, the Grantee shall grant or withhold approval in writing within 60 days of receipt of the Grantor's request. The Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of the Grantee to respond in writing within 60 days shall be deemed to constitute approval by the Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. The Grantee shall attempt to resolve issues concerning violations through good faith negotiations with the Grantor prior to resorting to legal means.

The Grantor covenants and agrees to the extent permitted by law to reimburse to the Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate, or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by the Grantor or determined by a court of competent jurisdiction to have occurred.

B. Non-Waiver

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

C. Disclaimer of Liability

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts which are not caused by the Grantee or anyone acting under the direction of the Grantee.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency

conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. The parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

IV. ACCESS

This Conservation Restriction does not grant to the Grantee, to the public, or to any other person or entity any right to enter upon the Premises, except as follows:

A. Inspection

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance herewith and enforcing this Conservation Restriction. The Grantor also grants to the Grantee, after 30 days notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to have a survey of boundary lines conducted at the Grantee's expense.

B. Public

The public is hereby granted the right to enter upon the Premises for educational and nature study and research, and other passive outdoor recreational uses, subject to compliance with any and all federal, state, and local laws, statutes, regulations, ordinances and codes, and such rules and regulations promulgated, as may be amended from time to time, by the Grantor or the Grantee, as are reasonable and necessary to protect public safety and the natural values of the Premises.

Pursuant to G.L. c.21, §17c, neither the Grantor nor the Grantee is liable to any member of the public for injuries to person or property sustained by such person while on the Premises in the absence of willful, wanton, or reckless conduct by the Grantor or the Grantee.

V. EXTINGUISHMENT

A. Termination/Extinguishment

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any occurrence gives rise to an extinguishment or other release of the Conservation Restriction under applicable law, the Grantor and the Grantee shall be reimbursed from the proceeds, once recovered, for their respective share of reasonable legal expenses, if any, associated with the recovery of said proceeds. The Grantor and the Grantee agree that notwithstanding the property interests of either party, the remaining balance of the proceeds shall be deposited into Grantor's Community Preservation Fund in accordance with G.L. c.44B. Should the Grantor's Community Preservation Fund no longer exist for any reason, such as the Grantor having opted out of G.L.

c.44B, the funds shall be used in a manner consistent with the conservation purpose set forth herein as a continuing trust.

B. Grantor/Grantee Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed in accordance with Section V-A above.

VI. ASSIGNABILITY

A. Running of the Burden

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge, and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances:

- (1) As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out;
- (2) The Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under G.L. c.184 §32, or its functional legal equivalent, as the case may be; and
- (3) The Grantee complies with the provisions required by Article 97 of the Amendments to the Massachusetts Constitution.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to 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 to notify the Grantee within thirty (30) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction.

The Grantor shall be liable only for violations occurring during its ownership, or for any transfer, if in violation. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without the Grantee having first assigned this Conservation Restriction to ensure that merger does not occur. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction may be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or G.L. c.184, §§31-33. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Holder shall consider amendments only to correct an error or oversight, to clarify an ambiguity, and in circumstances where in granting an amendment there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Commonwealth of Massachusetts Department of Fish and Game, or functional equivalent authority in the event the office of such Department no longer exists and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the Plymouth County Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, and it has been recorded in the Plymouth County Registry of Deeds.

XII. RECORDATION

The Grantee shall record this instrument in timely fashion in the Plymouth County Registry of Deeds.

XIII. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall be deemed to have been duly given when delivered, if sent by registered or certified United States mail (return receipt requested, if delivered personally, or if sent by overnight mail via commercially recognized overnight mail courier to the parties at the respective addresses set forth below:

To Grantor: Town Administrator
Memorial Town Hall
54 Marion Road
Wareham, MA 02571

To Grantee: _____

or to such other address as any of the above parties shall designate from time to time by written notice to the other. In the event no current address is known or can be reasonably obtained for the party to which notice is intended to be given, then the party giving notice shall publish such notice in a newspaper of general circulation covering on at least a weekly basis the Town of Wareham, or its modern-day functional equivalent.

XIV. GENERAL PROVISIONS

A. Controlling Law

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of G.L. c.184, §§31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this

Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

If any provision of this Conservation Restriction or the application thereof to any person or circumstance shall to be held invalid to any extent, the remainder of the provisions of this Conservation Restriction shall not be affected thereby. If any Article or provision of this CR shall be susceptible of two constructions, one of which would render such Article or provision invalid, then such Article or provision shall be given the construction that would render it valid. If any Article or provision of this instrument is ambiguous, it shall be interpreted in accordance with the policies and provisions expressed in Article 97 of the Amendments to the Massachusetts Constitution, and G.L. Chapter 184, Sections 31-33.

D. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

E. Excise Stamps

No Massachusetts deed excise tax stamps are required by G.L. Chapter 64D, Section 1, as the Commonwealth and Town of Wareham are parties to this instrument.

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EXECUTED as an instrument under seal this _____ day of _____, 2010.

TOWN OF WAREHAM
Acting by and through its Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss:

On this _____ day of _____, 200_, 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 proceeding or attached document, and acknowledged to me that ___ signed it voluntarily as Member, Town of Wareham Board of Selectmen for its stated purpose.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT OF CONSERVATION RESTRICTION

I, Mary B. Griffin, Commissioner of the Massachusetts Department of Fish and Game, hereby acknowledge that this Conservation Restriction contains 1) certain duties and obligations that the Grantee, the Town of Wareham, as Owner are required to comply with and carry out, and 2) certain rights granted to the Commonwealth such the right to use, monitor and enforce the terms of this Conservation Restriction in order to effectuate the purposes thereof.

As Commissioner of said Department and on behalf of the Commonwealth of Massachusetts and its successors and assigns, I hereby expressly accept the rights granted to the Commonwealth by this Conservation Restriction, agree to the terms of this Conservation Restriction, and further agree to fully and completely comply with and carry out the duties and obligations of the Commonwealth set forth therein.

WITNESS my hand and seal this _____ day of _____, 2010.

THE COMMONWEALTH OF
MASSACHUSETTS
DEPARTMENT OF FISH AND GAME

By: _____
Mary B. Griffin, *Commissioner*

COMMONWEALTH OF MASSACHUSETTS

, ss:

On this _____ day of _____, 2010, before me, the undersigned notary public, personally appeared Mary B. Griffin, Commissioner of the Commonwealth of Massachusetts Department of Fish and Game, proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed above, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

Exhibits

- A. Premises Description
- B. Assessor's Map 50B-2 (portion thereof)
- C. Article 1, Special Fall 2003 Town Meeting and Article 17, Annual Fall 2007 Town Meeting

DRAFT

EXHIBIT A

Premises Description

A certain piece of land situated in Wareham, Massachusetts, commonly called Swifts Beach located at Swifts Beach Road and Wankinco (a/k/a Wankinquoah) Avenue, and being and intending to be the same land acquired by the Town of Wareham by the certain Order of Taking, recorded at Plymouth County Registry of Deeds in Book 27322, Page 115 and filed for registration with the Plymouth County Registry District of the Land Court as Document No. 556587 and noted on Certificate of Title No. 98018, being more particularly described as follows:

Beginning at a stone bound at the northwest corner of described premises, said bound being the corner of Wankinco Avenue and Atwood Avenue;
Thence running southerly in line of Atwood Avenue one hundred and sixty-one (161) feet, more or less, to a stone bound at the edge of the upland;
Thence northeasterly in line of the salt marsh to a stone bound in line of Wankinco Avenue;
Thence southwesterly in line of said Wankinco Avenue to a stone bound, the point of beginning.

The described premises being lots number 12 and 13 on plan of Swifts Beach as recorded in Plymouth County Registry of Deeds except that a few feet from lot number 12 have been taken by the Town of Wareham to help form Atwood Avenue.

Together with two parcels of registered land, more particularly described as follows:

Parcel I

Northwesterly by land now or formerly of Dustin et al., one hundred ten and 86/100 (110.86) feet;
Northeasterly twenty-five and 36/100 (25.36) feet; and
Southeasterly one hundred two and 98/100 (102.98) feet by Lot B on the plan hereinafter mentioned.

All of said boundaries are determined by the Court to be located as shown on plan #12124A, which is filed with Certificate of Title No. 4235, the same being compiled from a plan drawn by R. Loring Hayward, C.E., dated August 16, 1926, and additional data on file in the Land Registration Office, all as modified and approved by the Court and the above-described land is shown as Lot E on sheet 2 of said plan.

There is appurtenant to said land rights and easements over Lot C9 as set forth in a deed from Louise S. Barrett to Bessie M. Dustin et al., dated May 5, 1931, filed and registered as document #9351.

Parcel II

Also another certain parcel of land situated in said Wareham, bounded and described as follows:

Northeasterly by land now or formerly of Louise S. Barrett about six hundred eighteen (618) feet to low water line or so far as private ownership may extend;

Southerly by low water line in Wankinco River or so far as private ownership may extend;

Westerly by lot B3 on the plan hereinafter mentioned about one hundred seventy (170) feet;

Southerly by lots B3 and B2 on said plan one hundred (100) feet;

Easterly by said lot B2 about one hundred seventy-two (172) feet; again

Southerly by low water line in Wankinco River or so far as private ownership may extend;

Westerly by lot C9 on said plan and by the middle line of Swifts Beach Road, about two hundred three (203) feet;

Northwesterly by Swifts Beach Road, land now or formerly of George F. Dustin, et al., and by lot E on said plan by two lines measuring together one hundred fifty-nine and 40/100 (159.40) feet;

Southwesterly by said lot E twenty-five and 36/100 (25.36) feet;

Northwesterly by Wankinco Avenue thirty-seven and 72/100 (37.72) feet; and again

Northwesterly by lot D on said plan and by land now or formerly of Martha E. Ruggles by three lines measuring together three hundred fifty-two and 53/100 (352.53) feet.

Said parcel is shown as Lot B1 on sheet 1 of subdivision plan #12124D, drawn by Allan S. Beale, C.E., dated June 30, 1938 and filed with Certificate of Title No. 6806.

Said lot B1 does not include certain buildings standing on said land, which are owned by tenants of Annie S. Handy, et al., and this lot is subject to the rights of said respective tenants to remove said buildings.

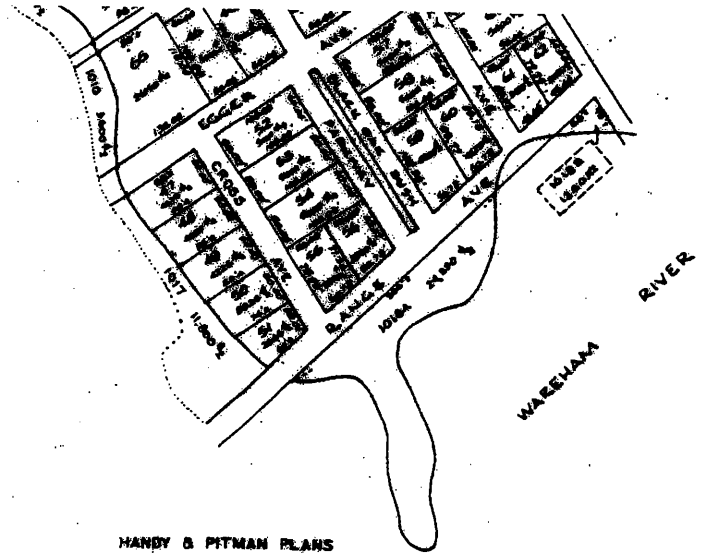
Said lot B1 has the benefit of and is subject to the rights in the beach and also rights over a Way thirty (30) feet wide, as shown on said plan, and over a portion of Wankinco Avenue, as set forth in the partition filed and registered November 25, 1939, as document #16182.

EXHIBIT B

Assessors -Map 50B-2 (see attached)

DRAFT

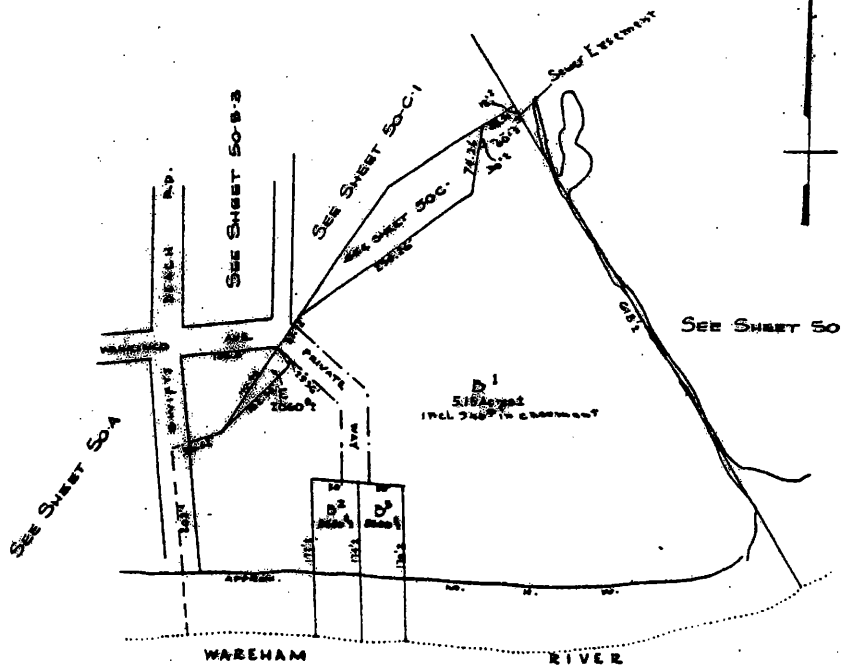
COVE.



HANDY & PITMAN PLANS
 COMPILED FROM
 L.C. PLANS 12124F & 12124H



1



WILLIAMS PLAN
 COMPILED FROM
 L.C. PLANS 12124A & 12124D



2

EXHIBIT C

Article 1, Special Fall 2003 Town Meeting (attached)
Article 17, Annual Fall 2007 Town Meeting (attached)

DRAFT



**TOWN OF WAREHAM
54 MARION ROAD
WAREHAM, MASSACHUSETTS 02571**

TOWN CLERK

OCTOBER 27, 2003

I hereby certify the following to be the vote on **ARTICLE ONE** of the **Special Town Meeting** convening and voted on October 27, 2003:

ARTICLE 1

To see if the Town will vote to authorize and direct the Board of Selectmen to acquire by gift, purchase, eminent domain or otherwise, for municipal purposes, certain parcels of land in Wareham, Massachusetts, described as follows:

A certain piece of land situated in that part of Wareham, Massachusetts, called Swifts Beach and described as follows:

Beginning at a stone bound at the northwest corner of described premises, said bound being the corner of Wankinco Avenue and Atwood Avenue; thence running southerly in line of Atwood Avenue one hundred and sixty-one (161) feet, more or less, to a stone bound at the edge of the upland; thence northeasterly in line of the salt marsh to a stone bound in line of Wankinco Avenue; thence southwesterly in line of said Wankinco Avenue to a stone bound, the point of beginning. The described premises being lots number 12 and 13 on plan of Swifts Beach as recorded in Plymouth County Registry of Deeds except that a few feet from lot number 12 have been taken by the Town of Wareham to help form Atwood Avenue.

Together with three parcels of registered land, more particularly described as follows:

PARCEL I

Northwesterly by land now or formerly of Dustin et al, one hundred ten and 86/100 (110.86) feet;

Northeasterly twenty-five and 36/100 (25.36) feet, and
Southeasterly one hundred two and 98/100 (102.98) feet by Lot ^EB on the plan hereinafter mentioned.

All of said boundaries are determined by the Court to be located as shown on plan #12124A, which is filed with Certificate of Title No. 4235, the same being compiled from a plan drawn by R. Loring Hayward, C.E., dated August 16, 1926, and additional data on file in the Land Registration Office, all as modified and approved by the Court and the above described land

is shown as Lot E on sheet 2 of said plan.

There is appurtenant to said land rights and easements over Lot C9 as set forth in a deed from Louise S. Barrett to Bessie M. Dustin et al, dated May 5, 1931, filed and registered as document #9351.

PARCEL II

Also another certain parcel of land situated in said Wareham, bounded and described as follows:

Northeasterly by land now or formerly of Louise S. Barrett about six hundred eighteen (618) feet To low water line or so far as private ownership may extend;
Southerly by low water line in Wankinco River or so far as private ownership may extend;
Westerly by lot B3 on the plan hereinafter mentioned about one hundred seventy (170) feet;
Southerly by lots B3 and B2 on said plan one hundred (100) feet;
Easterly by said lot B2 about one hundred seventy-two (172) feet; again
Southerly by low water line in Wankinco River or so far as private ownership may extend;
Westerly by lot C9 on said plan and by the middle line of Swifts Beach Road, about two hundred Three (203) feet;
Northwesterly by Swifts Beach, land now or formerly of George F. Dustin, et al, and by lot E on said plan by two lines measuring together one hundred fifty-nine and 40/100 (159.40) feet;
Southwesterly by said lot E twenty-five and 36/100 (25.36) feet;
Northwesterly by Wankinco Avenue thirty-seven and 72/100 (37.72) feet; and again
Northwesterly by lot D on said plan and by land now or formerly of Martha E. Ruggles by three lines measuring together three hundred fifty-two and 53/100 (325.53) feet.

Said parcel is shown as Lot B1 on sheet 1 of subdivision plan #12124D, drawn by Allan S. Beale, C.E., dated June 30, 1938 and filed with Certificate of Title No. 6806.

Said lot B1 does not include certain buildings standing on said land, which are owned by tenants Of Annie S. Handy, et al, and this lot is subject to the rights of said respective tenants to remove said buildings.

Said lot B1 has the benefit of and is subject to the rights in the beach and also rights over a Way thirty(30) feet wide, as shown on said plan, and over a portion of Wankinco Avenue, as set forth in the partition filed and registered November 25, 1939, as a document #16182.

PARCEL III

That certain parcel of land situated in Wareham, Massachusetts, bounded and described as Follows:

Northerly fifty (5) feet, and

Easterly about one hundred seventy (170) feet by Lot B1 on the plan hereinafter mentioned;
Southerly by low water line in Wankinco River or so far as private ownership may extend; and
Westerly by Lot B2 on said plan about one hundred seventy-four (174) feet.

All of said boundaries, except the water lines, are determined by the Court to be located as shown on sub-division plan #12124D, drawn by Allan S. Beale C.E., dated June 30, 1938, and filed with Certificate of Title No 6806; and said parcel is shown as Lot B3 on said plan.

Said Lot B3 has the benefit of and is subject to the rights in the Beach and also rights over a Way 30 feet wide, as shown on said plan, and over a portion of Wankinco Avenue, as set forth in the petition filed and registered Nov. 25, 1939, as document #16182.
and further, to see if the Town will raise and appropriate, or transfer from available funds, or borrow, a sum of money for acquisition.

or to do or act in any manner relative thereto.

Inserted by the Board of Selectmen at the request of the Town Administrator

The Board of Selectmen Voted: Favorable Action (4-0-1)

The Finance Committee Voted: Favorable Action (8-0-0)

MOTION: I move the Town vote to waive the reading of the motion and to move favorable action as written in the warrant.

AMENDED MOTION: R. Renee Fernandes-Abbott moves to amend the motion as follows:

1. **To change the description of Parcel 1 from Lot B to Lot E;**
2. **And to add the following to the end of the motion:**

And further, I move to appropriate the sum of \$550,000 for said acquisition, that to meet this appropriation the Treasurer with the approval of the Board of Selectmen is hereby authorized to borrow \$550,000 pursuant to General Laws, Chapter 44, Sections 7 or 8, or any other enabling authority, and to issue bonds and notes therefore, and the Board of Selectmen is hereby authorized to take any other action necessary to carry out this vote.

VOTE ON AMENDMENT: MAJORITY – FAVORABLE ACTION

VOTE ON MAIN MOTION

AS AMENDED: 648 FAVORABLE - 4 OPPOSED – FAVORABLE ACTION

A TRUE COPY, ATTEST:


**MARY ANN SILVA
TOWN CLERK**



**TOWN OF WAREHAM
54 MARION ROAD
WAREHAM, MASSACHUSETTS 02571**

TOWN CLERK

OCTOBER 30, 2007

I hereby certify the following to be the vote on **ARTICLE SEVENTEEN** of the **ANNUAL FALL TOWN MEETING** convened and voted on October 22, 2007; reconvened on October 23, 2007; reconvened and dissolved on October 30, 2007:

ARTICLE: 17

To see if the Town will vote to approve from the Community Preservation Fund estimated annual revenues, or to raise or appropriate transfer of available funds, under the category of historic preservation, open space/ recreation, the sum of \$1,100,000 for the parcel of land known as the "Swifts Beach property" which was taken by eminent domain following approval at the Fall 2003 Town Meeting.

Inserted by the Board of Selectmen at the request of the Community Preservation Committee

MOTION: Mr. St. Pierre

I move to the Town vote to approve from the Community Preservation Fund estimated annual revenues the amounts of \$486,248 and to transfer \$613,752 from the Community Preservation undesignated surplus fund balance for the parcel of land know as the "Swifts Beach Property," which was taken by eminent domain following approval of the Fall 2003 Town Meeting, to be held by the Board of Selectmen for open space and recreational purposes and to authorize the Board of Selectmen to convey a deed restriction to a state approved conservation entity. Second

MOTION: James Newman

I would like to move the question.

VOTE: (2/3) 237 AFFIRMATIVE and 126 NEGATIVE – (needed 242) - MOTION FAILED

MOTION: Irving Russell

Extend the time beyond 10:00 p.m. of town meeting. So moved and second.

VOTE: MAJORITY – FAVORABLE ACTION

AMENDMENT: Robert Brousseau

I would like to amend Article 17, as presented by the Finance Committee, if it requires a motion by substitution, I will so do. I would like to substitute Option B for Article 17, which would allow for long term borrowing in order to satisfy the cost for the Swifts Beach property. Second

PAGE 2

VOTE ON

AMENDMENT: 134 AFFIRMATIVE AND 214 NEGATIVE – MOTION FAILED

VOTE ON

MAIN MOTION: MAJORITY – DECLARED BY MODERATOR – FAVORABLE

POINT OF ORDER:

John Decas rose and challenged the vote. Seven other members of town meeting were in agreement. The Moderator then asked the Tellers to take a hand count.

HAND COUNT

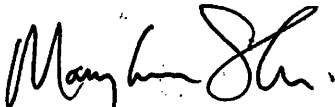
MAIN MOTION: 243 AFFIRMATIVE AND 91 NEGATIVE – FAVORABLE ACTION

MOTION: Brenda Eckstrom

I like to make a motion to reconsider. Second

VOTE: MAJORITY – AS DECLARED BY MODERATOR – MOTION FAILED

A TRUE COPY, ATTEST:



**MARY ANN SILVA
TOWN CLERK**