

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.:

RECEIVED

FEB 20 2024

SUPERIOR COURT - CIVIL  
JOHN E. POWERS, III  
ACTING CLERK MAGISTRATE

EMERALD NECKLACE CONSERVANCY, INC. )  
JON BALL, BOB BARNEY, CARLA-LISA )  
CALIGUA, ELEANOR CHU, JEFF COOK, )  
LOUIS ELISA, DERRICK EVANS, MARJORIE )  
GREVILLE, MELISSA HAMEL, ARLENE )  
MATTISON, KAREN MAUNEY-BRODEK, )  
JEAN MCGUIRE, BEVERLY MERZ, BEN )  
TAYLOR, and RENEE WELCH, )

Plaintiffs, )

v. )

THE CITY OF BOSTON, and the TRUSTEES OF )  
THE GEORGE ROBERT WHITE FUND, )  
MICHELLE WU, Mayor of the City of Boston and )  
Chairperson and Trustee of the George Robert )  
White Fund, RUTHZEE LOUIJEUNE, Boston City )  
Council President and Trustee of the George Robert )  
White Fund, MAUREEN JOYCE, Boston City )  
Auditor and Trustee of the George Robert White )  
Fund; JAMES E. ROONEY, President and CEO of )  
the Boston Chamber of Commerce and Trustee of )  
the George Robert White Fund, and HANNAH L. )  
KILSON, President of the Boston Bar Association )  
and Trustee of the George Robert White Fund; and )  
BOSTON UNITY SOCCER PARTNERS, LLC, )

Defendants. )

VERIFIED COMPLAINT

Emerald Necklace Conservancy, Inc., a Massachusetts non-profit dedicated to the maintenance, restoration, protection, and improvement for public use of Franklin Park and the other public parks in the Emerald Necklace park system designed by Frederick Law Olmsted, and 15 individuals, including Boston residents and taxpayers (collectively, the "Plaintiffs") bring

this action against the City of Boston, the Trustees of the George Robert White Fund, a permanent public charitable trust, and Boston Unity Soccer Partners, LLC, a Delaware limited liability company and for-profit professional sports organization (collectively, the “Defendants”), to halt the pending privatization of The George Robert White Fund Stadium (“White Fund Stadium”) and approximately 3.0 acres of lands to the south and west of White Fund Stadium owned by the White Fund within Franklin Park (together with the White Fund Stadium, the “Project Site”).

Plaintiffs ask the Court to declare and protect the rights of the Plaintiffs, and all other residents of Boston, as: (1) beneficiaries under the permanent public charitable trust created by the acceptance by the City of Boston of Article Fourteenth of the Will of George Robert White (“White Fund Trust”) to the continued public use and enjoyment of the Project Site in Franklin Park, and (2) holders of constitutional rights to public parkland and public active recreation land and facilities under Article 97 of the Massachusetts Constitution.

The Project Site, a portion of Franklin Park, has been held in trust for over 74 years for the beneficiaries of the White Fund Trust—the residents of Boston. In that time, the Project Site has been used as an open space for public recreation, public school sporting events, and numerous music and cultural festivals. In 2023, the City began discussions with Boston Unity Soccer Partners, LLC to undertake a joint venture to redevelop the Project Site as the home for a professional sports team (the “Project”). The Project, if permitted to go forward, would illegally transfer the public trust lands constituting the Project Site to private parties, ensuring extensive, exclusive use of public trust lands by a private party for the operation of a professional sports team and associated uses. Although White Fund Stadium has fallen into disrepair and is in need of substantial renovations, the City has failed to consider any alternatives to the Project, all while

rapidly pushing forward the Project and ignoring the terms of the White Fund Trust and the requirements of Article 97.

The Project as proposed would not only violate the White Fund Trust and Article 97 by transferring public trust land to private use and excluding members of the public from the Project Site, including some Boston Public School sports teams who currently use White Fund Stadium, it would fundamentally alter the nature and feel of a significant portion of Franklin Park during the majority of fair weather weekends each year. Boston Unity Soccer Partners, LLC proposes to host at least 20 home games on Saturdays between April and November, causing a rapid influx of over 10,000 people on those days, and radically changing the public open space of Franklin Park, well beyond the boundaries of the Project Site, for a huge portion of summer weekend days. This does not even factor in the additional exclusive use of the Project Site during practice sessions for the professional soccer team on at least 20 additional Friday evenings, and the continuous, exclusive use of the West Grandstand buildings and the “Grove” portion of the Site by Boston Unity Soccer Partners, LLC.

The Project is progressing at an alarming speed, without many of the required elements of oversight and review expected for a development of this size and scale. The Project has failed thus far to engage in any *cy pres* review to amend the terms of the White Fund Trust; any Article 97 review before the Legislature; and any Article 80 review, for the City’s half of the Project, before the Boston Redevelopment Authority, d/b/a the Boston Planning & Development Agency (the “BPDA”), despite the City already issuing a request for qualifications to award a \$46,000,000 contract to manage the demolition and construction of its half of the Project. If allowed to continue apace, without intervention by this Court, the unlawful Project will cause irreparable harm to Franklin Park, to the White Fund Trust, and its beneficiaries, the people of

Boston, including the residents of the Environmental Justice Communities in Roxbury, Dorchester, Mattapan and Jamaica Plain surrounding Franklin Park.

### **PARTIES**

1. Plaintiff Emerald Necklace Conservancy is a Massachusetts Chapter 180 Charitable Corporation with an place of business at 350 Jamaicaway, Boston, Massachusetts.

2. Plaintiff Jon Ball resides at 319 Forest Hill Street, #3, Boston, Massachusetts 02130.

3. Plaintiff Bob Barney resides at 463 Massachusetts Avenue, Apt. 1, Boston, MA 02118.

4. Plaintiff Carla-Lisa Caliga resides at 32 Burnett Street, #1, Jamaica Plain, Massachusetts 02130.

5. Plaintiff Eleanor Chu resides at 303 Columbus Avenue, Unit 606, Boston, Massachusetts 02116.

6. Plaintiff Jeff Cook resides at 44 Allerton Street, Brookline, Massachusetts 02445.

7. Plaintiff Louis Elisa resides at 68 Seaver Street, #2, Dorchester, Massachusetts 02121.

8. Plaintiff Derrick Evans resides at 77 Dale Street, Roxbury, Massachusetts 02119.

9. Plaintiff Marjorie Greville resides at 61 Mount Vernon Street, Boston, Massachusetts 02108.

10. Plaintiff Melissa Hamel resides at 311 Lamartine Street, Jamaica Plain, Massachusetts 02130.

11. Plaintiff Arleen Mattison resides at 209 Pond Ave, Brookline, Massachusetts 02445-7708.

12. Plaintiff Karen Mauney-Brodek resides at 531 Massachusetts Avenue #2, Boston, Massachusetts 02118.

13. Plaintiff Jean McGuire resides at 35 Dennison Street, Roxbury, Massachusetts 02119.

14. Plaintiff Beverly Merz resides at 524 Columbus Avenue, Apartment 5, Boston, Massachusetts 02118.

15. Plaintiff Ben Taylor resides at 61 Walnut Place, Brookline, Massachusetts 02445.

16. Plaintiff Renee Welch resides at 11 Beethoven Street, Roxbury, Massachusetts 02119.

17. Defendant City of Boston has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

18. Defendant Michelle Wu, Mayor of the City of Boston and Trustee of the George Robert White Fund, has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

19. Defendant Ruthzee Louijeune, President of the Boston City Council and Trustee of the White Fund Trust, has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

20. Defendant Maureen Joyce, Boston City Auditor and Trustee of the White Fund Trust, has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

21. Defendant James E. Rooney, President and CEO of the Boston Chamber of Commerce and Trustee of the White Fund Trust, has a place of business at the Boston Chamber of Commerce, 265 Franklin Street, Suite 1701, Boston, MA 02110.

22. Defendant Hannah L. Kilson, President of the Boston Bar Association and Trustee of the White Fund Trust, has a place of business at Nolan Sheehan Patten LLP, 84 State Street, Suite 940, Boston, MA 02109.

23. Defendant Boston Unity Soccer Partners, LLC (“BUSP LLC”) is a Delaware limited liability company with an address c/o Bill Keravuori, Able Company, 2235 Washington St., 2nd Floor, Boston, MA 02119.

### **JURISDICTION AND VENUE**

24. The Court may exercise personal jurisdiction over the Defendants pursuant to G.L. c. 223A, § 2 and § 3(a).

25. Venue is appropriate in this Court pursuant to G.L. c. 214, § 5, G.L. c. 214, § 7A and G.L. c. 223, § 1.

26. This action is within the general subject matter jurisdiction of this Court pursuant to G.L. c. 214, § 5, G.L. c. 214, § 7A and G.L. c. 223, § 1.

### **FACTS**

#### **Public Ownership of the Project Site, including White Fund Stadium, by the White Fund Trust And 74-Year Use By the Public**

27. Article Fourteenth of the Will of George Robert White (the “Will”) directs that “I do now give all the rest and residue of my property of every nature to the City of Boston, to be held as a permanent charitable trust fund known as the George Robert White Fund.” A copy of the Will is attached hereto as **Exhibit A**. Under the Will, Defendants Wu, Louijeune, Joyce, Rooney, and Kilson (collectively, “Trustees of the White Fund Trust”) are each a Trustee of the White Fund Trust *ex officio* due to their positions as Mayor, City Council President, City Auditor, President of the Boston Chamber of Commerce, and President of the Boston Bar Association.

28. The Will further directs, in pertinent part, that the net income from the White Fund Trust is “only to be used for creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston” (emphasis added). Additionally, while the Will provides that any “work or works established from the Fund may be improved, extended, enlarged or added to from time to time” it also provides that “the current expense of their care and maintenance shall be borne by the City” and that “*no part of said income shall be mingled with other funds or applied in joint undertakings*; but that each work established under this gift shall be separate and distinct, and shall always bear in a conspicuous place a suitable inscription identifying it as erected or established from said George Robert White Fund” (emphasis added). Finally, the donor specifically noted his vision for public works including “a forum of substantial proportions for public gatherings, etc.” when he established the Trust (emphasis added). The terms of the Will were accepted by the City of Boston.

29. By instrument dated November 14, 1947 and recorded with the Suffolk Registry of Deeds in Book 6386 at Page 582 (the “Transfer Instrument”), the City transferred approximately fourteen (14) acres of land within Franklin Park to “the City of Boston – George Robert White Fund, a municipal corporation in the Commonwealth of Massachusetts, in its capacity as a public charitable trustee and for the purpose of the establishment of a stadium on said land.” The Transfer Instrument states that the White Fund Trust paid \$20,000 for the 14-acre parcel. A copy is attached hereto as **Exhibit B**.

30. Shortly after the transfer of the 14-acre parcel in 1947 to the White Fund Trust, the City, using funds from the White Fund Trust in the amount of approximately \$1.24 Million, constructed White Fund Stadium, a sports stadium with about 10,000 seats. White Fund Stadium was completed in 1949. Since 1949, as required by the terms of the Will and as directed by the

City of Boston, the operating costs of White Fund Stadium have been the responsibility of the Boston Public Schools.

31. The City of Boston Assessor's records show that the White Fund Trust is still the current record owner of the same 14-acre parcel, within which the Project Site including White Fund Stadium is located. A title search through the close of business on Friday, February 16, 2024, does not reveal any transfer of any portion of the 14-acre parcel out of the White Fund Trust, including the Project Site.

32. White Fund Stadium has been designated as a historic Landmark by the City Landmarks Commission pursuant to Chapter 772 of the Acts of 1975. Additionally, all of Franklin Park, which includes the Project Site, is listed on the National Park Services' National Register of Historic Places.

33. Since its completion, the 14-acre parcel including the Project Site and White Fund Stadium, has been used by the City for public recreational and public athletics use, including a) Boston Public School athletics, including football, cheerleading, track and field, cross-country, and soccer practices, matches, and games, b) in mid-June for graduation and moving-on ceremonies; c) an annual White Fund Stadium Sports Camp that provides free summer camp for youth aged 7-14, operated by Boston Centers for Youth & Families; d) for other public recreational activities, such as public basketball courts, public tennis courts, and public amateur soccer, and e) for numerous weekend music, cultural and community festivals and gatherings.

#### **Project To Unlawfully Convert Property From Public To Private Use**

34. Notwithstanding the terms of the Will and the ownership of the Project Site by the White Fund Trust, as well as the use of the Project Site for public recreational and athletic uses described above for over 74 years, in 2022 or 2023, the City began discussions with BUSP LLC



to undertake a joint venture to redevelop the Project Site, including the White Fund Stadium, for use by a for-profit professional sports team (the “Project”). The City then issued a “Request for Proposals for Lease of the West Grandstand and Adjacent Areas of White Stadium in Private-Public Partnership to Achieve City’s Comprehensive Stadium Renovation Plan to Serve Boston Public School Athletics” on or about April 25, 2023 (“RFP”) for the Project. A copy of the RFP is attached hereto as **Exhibit C**.

35. In the RFP, the City acknowledged that the Project Site, including the White Fund Stadium, has hosted a range of athletic, music, community, and cultural events throughout its history, including Black Panther rallies and an Elma Lewis School of Fine Arts-organized concert in the 1970s; additionally, the Project Site currently hosts the annual Boston Arts & Music (“BAMS”) Festival every June, and serves as the finish line for the Boston Athletic Association Half Marathon every November. *See* Ex. C, pg. 11.

36. As described in the public filings, presentations, and related documents produced by BUSP LLC and the City, including a Project Notification Form filed by BUSP LLC on December 18, 2023 under Article 80 of the City of Boston Zoning Code for its portion of the Project (the “PNF”), the Project would segment roles between BUSP LLC and the City.<sup>1</sup>

37. Specifically, BUSP LLC’s portion of the Project proposes to redevelop and significantly expand the built conditions of two portions of the Project Site: (1) demolishing and rebuilding the West Grandstand portion of the White Fund Stadium, and (2) constructing at least two new buildings and gaining exclusive use of thousands of feet of what is currently open space public trust land located south and west of the White Fund Stadium. The City’s portion of the

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<sup>1</sup> A copy of the PNF, which is over 300 pages long, can be found on the BPDA’s website for the Article 80 Review of BUSP LLC’s portion of the Project, found here: <https://www.bostonplans.org/projects/development-projects/white-stadium> and specifically the PNF can be found here: <https://bpda.app.box.com/s/qmgi7fbuyxuova9dcsxnh7foifjeywff>

Project focuses on demolishing and substantially expanding the East Grandstand of the White Fund Stadium and renovating the White Fund Stadium playing field. Graphics from a Community Meeting held on February 12, 2024 shows the segmentation of the Project between BUSP LLC and the City, as well as the approximate boundaries of the Project Site, are attached hereto as **Exhibit D.**<sup>2</sup>

38. BUSP LLC's redevelopment of the West Grandstand includes: demolition of the existing West Grandstand, except the exterior clamshell wall; and construction of a new West Grandstand building with bucket seats extending well beyond the existing foot print on both ends; adding a massive roof canopy extending as much as 25 feet above the existing structure in some areas; and building, for its private use, professional team office space, multiple professional athlete locker rooms, a professional athlete interview room, a press support media room, fourteen (14) corporate suites, a corporate suite level midfield Terrace, a large "Tunnel Club Lounge," a main kitchen, a catering kitchen, at least four (4) "Team Facilities" rooms, team storage space, an additional administrative staff room, a press box, and various utility and mechanical equipment rooms (collectively the private use areas within the West Grandstand are the "Private Professional Soccer Team Facilities.")

39. BUSP LLC's other portion of the Project would include development of a substantial leased area in the "Grove" area south and west of the Stadium—an area that is currently open space—including the construction of two new buildings, a beer garden, a bar, retail stores, and storage space; a large, lit scoreboard; the construction of additional mobile seating at the north and south ends of the Stadium; an entry plaza, including pylons, lighting, and

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<sup>2</sup> See also: <https://www.boston.gov/education/white-stadium>

fencing; and the construction of extensive new paved accessways and pathways (collectively, “the Grove”), all primarily if not exclusively for the private use and profit of BUSP LLC.

40. The City has failed thus far to file a Project Notification Form under Article 80 of the Boston Zoning Code for its portion of the Project. However, some information regarding the City’s role in the Project can be gleaned from existing project documents. They reveal that the City’s redevelopment of the Stadium would include the demolition of the existing East Grandstand and the construction of a new Grandstand with new building additions.

41. Various project documents state that the City would contribute approximately \$50,000,000 to the Project, and BUSP LLC would contribute approximately \$30,000,000 to the Project.

42. Despite paying for only 3/8 of the Project costs, BUSP LLC and its affiliated entity, Grove Operating Company LLC, would have exclusive, full-time private use of the interior of the Private Professional Soccer Team Facilities located in the new West Grandstand and the Grove development just south and west of the White Fund Stadium via the proposed leases and accompanying agreements from the City, *i.e.* license agreements and joint-use agreements.

43. Furthermore, BUSP LLC and its affiliates would have extensive, exclusive use of the entire Project Site, including the East Grandstand and playing field that is not leased to BUSP LLC, during at least twenty (20) weekend days, and likely for an additional 20 practice sessions on Friday evenings. These home games would take over the entire Project Site—all of White Fund Stadium and acres of land that surround it—for private use on roughly 77% of Saturdays in the warmer months of April to November, bringing an influx of at least 10,000 people into the otherwise free, local, community-oriented public space of Franklin Park, precisely during peak

season when community demand for recreation in Franklin Park is at its highest. All Boston Public School regular season home football games, historically held in White Fund Stadium, would be evicted. The City’s RFP further states that school and public use of the Stadium is heaviest in the fall, conflicting with the professional soccer season and these other activities. *See* Ex. C, pg. 13.

44. The City has made it clear that BUSP LLC’s privately owned and operated professional soccer games will take priority over many competing public uses. In a response to questions raised during the Article 80: Large Project Review community meeting held on January 11, 2024, the City wrote: “The City will work closely with organizations that host events in the stadium, on the playstead, and on cross country courses to ensure they do not conflict with Boston Unity games.” *See* Article 80 Q&A from January 11, 2024, attached hereto as **Exhibit E**, at p. 2.

**The City Has Pushed The Transfer From Public To Private Use At a Breakneck Pace**

45. The City has coordinated with BUSP LLC to permit and execute the Project at an extraordinarily fast pace, beginning with the RFP issued on or about April 25, 2023. In response, BUSP LLC—the only respondent—submitted its Technical Proposal on June 26, 2023. This coordinated effort then proceeded through the following steps in a little over seven (7) months:

- i) on July 31, 2023, the City selected BUSP LLC as conditional Designee under the RFP process;
- ii) on November 28, 2023, BUSP LLC filed a Letter of Intent to File Project Notification Form for the Project with the BPDA;
- iii) on December 11, 2023, the BPDA published information regarding proposed amendments to Open Space zoning provisions of the Boston Zoning Code and Zoning Map. These amendments would convert the Site from “Open Space – Recreation” zoning use to “Open Space – Stadium” zoning use and include

- provisions which would allow, despite the “Open Space” designation, the construction and use of structures on the Project Site for retail and entertainment facilities, and restaurants serving alcohol and food, all without zoning limits as to the number, size, height, capacity, or location of structures on the Project Site;
- iv) on December 18, 2023, BUSP LLC filed the PNF for Article 80 review of only its portion of the Project, which asserts that BUSP LLC has site control from a private [sic] trust through the City’s conditional designation mentioned above;
  - v) on December 19, 2023, the BPDA held a public meeting regarding “Proposed Amendments to Open Space Zoning to Create a New Open Space Stadium (OS-S) Subdistrict and to Redistrict the 14 acres owned by City of Boston – George Robert White Fund in Public charitable trust from Open Space Park (OS-P)” and to allow as-of-right use of the OS-S subdistrict for retail, restaurant with alcohol and entertainment uses as part of an as-of-right private Stadium use, during which only 15 minutes were allowed for public questions and comments;
  - vi) on January 8, 2024, the BDPA closed the first public comment period on the PNF;
  - vii) on January 11, 2024, the BPDA held a public meeting on BUSP LLC’s PNF for the segmented west half of the Project;
  - viii) on January 23, 2024, the City Landmarks Commission opened a public meeting for design review of the BUSP LLC portion of the Project;
  - ix) on January 25, 2024, the City issued a Request for Statements of Qualifications (“RFQ”) to bid for the City portion of the Project, i.e., to manage demolition, rebuilding, and expansion of the East Grandstand and playing fields of White Fund Stadium, at the cost of \$46,000,000, which stated that applications for the required submission were available on January 22, 2024 and were due on February 7, 2024<sup>3</sup>;
  - x) on January 29, 2024, the City Parks Commission opened a public hearing on the BUSP LLC portion of the Project; and

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<sup>3</sup> See: <https://www.boston.gov/bid-listings/project-7278-0>

- xi) on February 12, 2024 the City opened a public meeting regarding the Project's impact on the Franklin Park Action Plan, which did not envision bringing a professional sports team into Franklin Park.

The City also scheduled a Zoning Commission hearing regarding the amendments to re-zone the Site described in subparagraph (iii) above for February 14, 2024, which it postponed, but could reschedule at any time.

46. The City has further indicated that it will award a contract to manage demolition of the East Grandstand portion of the Project Site on February 20, 2024, as a part of the RFQ described in paragraph 21 (ix), despite the White Fund Stadium's designation as a historic Landmark by the City Landmarks Commission pursuant to Chapter 772 of the Acts of 1975, and the absence of any public review proceedings of the demolition or the City's Project redevelopment plans, whether before the BPDA under Article 80 of the Boston Zoning Code, the City Landmarks Commission, or the City Parks Commission.

47. Upon information and belief, according to the statements by City officials, the City intends to execute a 10-year lease with two 10-year options to extend with BUSP LLC, along with licenses and/or appurtenant rights for similarly long terms to BUSP LLC for the Project Site on or before March 24, 2024.

48. On information and belief, BUSP LLC intends to pay a non-refundable deposit of \$53,000,000 to the national league this spring to secure its right to field a professional sports team at the Project Site.

49. The City and BUSP LLC intend to complete the Project in time for professional team games to start in the new Stadium in the spring of 2026.

**COUNT I**  
**Declaratory Judgment For Violation of Public Charitable Trust**  
**(City of Boston and the Trustees of the White Fund Trust)**

50. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

51. The White Fund Trust is a public charitable trust created in 1922 by the Will, and the City's acceptance, which states that the net income from the White Fund Trust is "only to be used for creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston."

52. The acceptance of the bequest by the City constituted a contract between the estate of George Robert White and the City. *Salem v. Attorney Gen.*, 344 Mass. 626, 631 (1962) (acceptance of grant by city constituted a contract between the donor and the donee which must be observed and enforced).

53. The City transferred the Project Site to the White Fund Trust by Transfer Instrument on November 14, 1947, recorded with the Suffolk Registry of Deeds at Book 6386, Page 582. The City's transfer of the Project Site to the White Fund Trust on November 14, 1947 caused the Site to be irrevocably subject to the terms of the White Fund Trust.

54. The contract between the City and the estate of George Robert White requires the City to devote the Project Site, including White Fund Stadium, to the use and enjoyment of the public, specifically the inhabitants of Boston, not for private benefit.

55. According to the Project documents, the lease and appurtenant agreements would provide BUSP LLC with exclusive, year-round and full-time private use of the interior of the new West Grandstand building to manage and operate its professional sports business. Additionally, BUSP LLC's would be allowed to build two new buildings on what is currently

open space south and west of the White Fund Stadium and gain exclusive, year-round and full-time private use of that portion of the Project Site referred to as the “Grove.”

56. BUSP LLC would have extensive, exclusive, and private use of the entire Project Site, including all of White Fund Stadium and its playing field, on at least 20 game days a year, as well as at least 20 additional practice sessions each year, driving over 10,000 professional sports team fans to the Project Site on game days and radically changing the nature of Franklin Park, as well as continual private use of the adjacent facilities in the Grove for its retail and restaurant activities in conjunction with its for-profit professional sports team.

57. This Court should declare that the Project violates the White Fund Trust, a public charitable trust, because it converts the Project Site to private uses set forth above.

58. This Court should further declare that the City and the Trustees of the White Fund Trust cannot legally transfer any control of the Project Site, being public trust property, to the private, for-profit BUSP LLC and related entities because that would convert the White Fund Stadium and adjoining land to private uses listed above.

59. The City and Trustees of the White Fund Trust’s pursuit of the Project is a breach of the contract with the donor and a breach of their fiduciary duties to the residents of Boston.

**COUNT II**  
**Declaratory Judgment For Violation of Massachusetts Constitution Amendment**  
**Article 97 and The Public Lands Preservation Act, G.L. c. 3, § 5A**  
**(All Defendants)**

60. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

61. Under Article 97 of the Articles of Amendment to the Massachusetts Constitution (Article 97), twice approved by the legislature, and ratified by Massachusetts voters in 1972, lands and easements taken or acquired for conservation purposes shall not be used for other



purposes or disposed of without the approval of two-thirds roll call votes of each branch of the state legislature.

62. Under The Public Lands Preservation Act, G.L. c. 3, § 5A, enacted by the state legislature in furtherance of Article 97, public entities, including municipalities which seek to use public land for another purpose, must submit an alternatives analysis and other analyses, valuations, and documentation to the Secretary of Energy and Environmental Affairs for her consideration, which shall then accompany the petition to the state legislature.

63. In determining whether Article 97 state constitutional protections apply to land held by state and municipal entities for open space and recreational purposes, the court need only consider if the property was designated for those purposes in a manner sufficient to invoke Article 97 protections. Designation can occur through eminent domain taking, recording of a deed restriction, under the prior public use doctrine, or under long-term public use. The prior public use doctrine protects public lands and parks under Article 97 where the intent to dedicate the land as such is manifested by unequivocal declarations or acts of the owner which are accepted by the public. *Smith v. City of Westfield*, 478 Mass 49 (2017) (property used as a little league baseball fields and a playground for sixty years was subject to Article 97 process before it could be used by city as a school); *see also Opinions of the Attorney General*, No. 45, dated June 6, 1973, P.D 12, pp. 142-47 (attached hereto as **Exhibit F**).

64. By the 1947 Transfer Instrument, the City unequivocally dedicated the Project Site for use by the public as a public recreational stadium, and the public accepted the use of the Project Site for public recreational purposes by using the Project Site in this manner for over 74

years. Additionally, the City on page 113 of its 2023-2029 Open Space and Recreation Plan listed White Fund Stadium as protected by Article 97<sup>4</sup>.

65. Any transfer of Article 97 land, such as the lease or grant of similar license and joint-use agreements for the Project Site to private entities like BUSP LLC and its affiliates, would illegally dispose of Article 97 property.

66. By the 2023 conditional designation of BUSP LLC, the City delegated to BUSP LLC compliance with Article 97.

67. As a result, this Court should declare that the Project is subject to the requirements of the Article 97 process, including without limitation the submission of required materials to the Massachusetts Secretary of Energy and Environmental Affairs in accordance with G.L. c. 3, § 5A, and petitioning for the requisite vote in the state legislature, and the City, the Trust and BUSP LLC should be enjoined from proceeding with the Project unless and until those requirements have been satisfied.

**COUNT III**  
**(Equitable/Declaratory Relief pursuant to M.G.L. c. 214, s. 7A)**  
**(All Defendants)**

68. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

69. The Project proposes to demolish the majority of White Fund Stadium, a designated historic space, as well as dispose of or alter the entirety of the Project Site, which is a portion of Franklin Park, and therefore would constitute impairment of open spaces, natural areas, and parks under G.L. c. 214, s. 7A.

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<sup>4</sup> See: <https://www.boston.gov/departments/parks-and-recreation/updating-seven-year-open-space-plan>

70. As a result of Defendants' proposed Project and failure to engage in the Article 97 process, including submission of an alternatives analysis and required materials to the Massachusetts Secretary of Energy and Environmental Affairs in accordance with G.L. c. 3, § 5A, they have failed to fully and properly examine the environmental impacts of the Project.

71. As a result of Defendants' actions, damage to the environment is about to occur, and this Court should restrain Defendants from causing such damage.

**COUNT IV**  
**(Preliminary/Permanent Injunctive Relief)**  
**(All Defendants)**

72. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

73. The City of Boston, the Trustees of the White Fund Trust, and BUSP LLC should be enjoined from proceeding with their Project because it violates the purpose of the White Fund Trust, which requires the Site to be reserved for public use.

74. Specifically, the Defendants should be enjoined from:

a. Entering into any agreement transferring control of any portion of the Project Site to BUSP LLC and its affiliates, including any lease or related rights, licenses or joint-use arrangements, which would grant BUSP LLC and related entities the right to build upon and exclusively control and use the West Grandstand of the White Fund Stadium and the Grove site, as well as the right to control and use the entire Project Site for certain purposes for significant periods of time on Fridays and Saturdays from April - November, all in violation of the White Fund Trust;

b. Failing to comply with the Article 97 process, including without limitation engaging in the required alternatives analysis and legislative votes;

c. Continuing with the Request for Quotations (“RFQ”) for bids for construction management of the City portion of the Project, including management of the demolition, rebuilding, and expansion of the East Grandstand of the White Fund Stadium; and

d. Failing to engage in Article 80 review before the BPDA for the City’s portion of the Project.

75. Plaintiffs have a likelihood of success on the merits and will suffer irreparable harm if the Project is not enjoined, as the City intends to swiftly commence demolition of the East Grandstand—a designated historic landmark—and to enter into a lease and/or agreements with BUSP LLC and its affiliates transferring public trust lands to exclusive private use.

### **REQUESTS FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment in their favor:

1. Entering a declaratory judgment that that the Project violates the White Fund Trust because it converts the Project Site to private uses set forth above;
2. Entering a declaratory judgment that the City and the Trustees of the White Fund Trust cannot legally transfer any possession of, control of, or right to use the Project Site to BUSP LLC and its affiliates, which would violate the White Fund Trust;
3. Entering a declaratory judgment that Project is subject to the requirements of the Article 97 process, including submission of an alternatives analysis and other required materials to the Massachusetts Secretary of Energy and Environmental

Affairs in accordance with G.L. c. 3, § 5A, and petitioning for the required votes in the state legislature;

4. Entering an injunction barring the City and Trustees of the White Fund Trust from transferring any portion of the Project Site to any private entity, including BUSP LLC and its affiliates;
5. Entering an injunction barring Defendants from proceeding with the Project unless and until the requirements of Article 97 have been satisfied; and,
6. Granting such additional relief as is fair and just.

## VERIFICATION

I, Karen Mauney-Brodek, as President of the Emerald Necklace Conservancy, have read the foregoing Verified Complaint, and, knowing the contents thereof, have found that the allegations of fact set forth therein are based on my own personal knowledge and are true, except as to those allegations stated to be based on information and belief, which I believe to be true, and that no material facts have been omitted therefrom.

Signed under the penalties of perjury this 20<sup>th</sup> day of February 2024.

/s/ Karen Mauney-Brodek  
Karen Mauney-Brodek  
President of the Emerald Necklace Conservancy

(Signed with approval)  
/s/ Edward V. Colbert III  
Edward V. Colbert III (BBO # 566187)

EMERALD NECKLACE CONSERVANCY, INC., JON BALL, BOB BARNEY, CARLA-LISA CALIGUA, ELEANOR CHU, JEFF COOK, LOUIS ELISA, DERRICK EVANS, MARJORIE GREVILLE, MELISSA HAMEL, ARLENE MATTISON, KAREN MAUNEY-RODEK, JEAN MCGUIRE, BEVERLY MERZ, BEN TAYLOR, and RENEE WELCH,

By their Attorneys,

/s/ Edward V. Colbert III  
Edward V. Colbert III (BBO # 566187)  
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Date: February 20, 2024