

FIRST AMENDED DECLARATION OF TRUST

AFFORDABLE HOUSING/GROWTH AND DEVELOPMENT TRUST FUND

This First Amended Declaration of Trust is made as of September 25, 2020, and amends the Declaration of Trust made on January 28, 2013, (Bk 27082/Pg 125) pursuant to the provisions of Town Council Order 2007-158 and Section 241-47.1(u) of the Code of the Town of Barnstable.

ARTICLE FIRST: Name of the Trust

The Trust shall be called the "Affordable Housing/Growth and Development Trust Fund".

ARTICLE SECOND: Purpose

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Barnstable for the benefit of those low- and moderate-income households and for the funding of community housing, as defined in and in accordance with the provisions of G.L. chapter 44B. In addition to and in furtherance of the above purposes, the Trust shall promote sound and prudent economic development. To achieve these purposes, the Trustees are hereby authorized, in accordance with the procedures set forth herein, to acquire by gift, purchase or otherwise real estate and personal property, both tangible and intangible, of every sort and description; to use such property, both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose, provided however, that the Trustees shall segregate the funds and property received for and dedicated to the preservation and creation of affordable housing from the funds and property received for and dedicated to the promotion of sound and prudent economic development, and all property and funds so segregated and held by the Trust and the net earnings thereof shall be used for the respective purposes for which this Trust was formed and for which the funds were so segregated. Should funds or property be received without a designated purpose, they shall be held by the Trust and used for either affordable housing or economic development purposes at the discretion of the Board.

ARTICLE THIRD: Role of Town Manager in Administering the Trust Trustees

Under Town Council Order 2007-158, the Town Manager is assigned the duty "to administer the provisions of MGL c. 44, § 55C, in a manner which is not inconsistent therewith. In so doing, the Town Manager shall be aided, in his/her discretion, by a Board of Trustees appointed by him/her in a manner consistent with Paragraph (b) of said § 55C."

ARTICLE FOURTH: Trustees

The Town Manager has determined that there shall be a Board of Trustees composed of five (5) Trustees, The Town Manager shall serve as a Trustee. The composition of the remaining Trustees may be as follows: town employees, including but not limited to the Assistant Town Manager and the Finance Director, an individual with expertise in the development of affordable housing and an individual with expertise in sound and prudent economic development issues, as determined by the Town Manager in his/her sole discretion. The Town Manager

shall appoint the remaining four Trustees, every two years, subject to confirmation by the Town Council. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall die, resign or for any other reason cease to be a Trustee hereunder before his/her term expires, a successor Trustee shall be appointed by the Town Manager, subject to confirmation by the Town Council. Upon the appointment of any succeeding Trustee and the filing of such appointment, the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

ARTICLE FIFTH : Meetings of the Trust

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, G.L. Chapter 30A, sections 18-25. A quorum at any meeting shall be three members.

ARTICLE SIXTH: Powers of the Trustees

The Board of Trustees shall have the following powers which shall be carried out in accordance with and in furtherance of the provisions of G.L. Chapter 44, Section 55C:

- (1) to accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation or other public or private entity, including without limitation grants of funds or other property tendered to the Trust in connection with provisions of any zoning ordinance or by-law or any other ordinance or by-law or any general or special law or any other source, including monies distributed in accordance with G.L. Chapter 44B; provided, however, that any such monies received pursuant to chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the Trust, and such funds shall be accounted for separately by the Trust; and provided further, that at the end of each fiscal year, the Trust shall ensure that all expenditures of funds received pursuant to said chapter 44B are reported to the community preservation committee of the town for inclusion in the community preservation initiatives report, form CP-3, to the Massachusetts Department of Revenue;
- (2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- (3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Board deems advisable notwithstanding the length of any such lease or contract;
- (4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the Trust;
- (5) to employ advisors and agents, such as accountants, appraisers and lawyers as the Board deems necessary;

- (6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Board deems advisable;
- (7) to apportion receipts and charges between incomes and principal as the Board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- (8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- (9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Board may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Board may deem necessary and appropriate;
- (10) to carry property for accounting purposes other than acquisition date values;
- (11) to borrow money on such terms and conditions and from such sources as the Board deems advisable, to mortgage and pledge Trust assets as collateral;
- (12) to make distributions or divisions of principal in kind;
- (13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of, G.L. c. 44, § 55C, to continue to hold the same for such period of time as the Board may deem appropriate;
- (14) to manage or improve real property; and to abandon any property which the Board determined not to be worth retaining;
- (15) to hold all or part of the Trust property uninvested for such purposes and for such time as the Board may deem appropriate; and
- (16) to extend the time for payment of any obligation to the Trust.

ARTICLE SEVENTH; Funds Paid to the Trust

Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any zoning ordinance, exaction fees, including and not limited to mitigation funds received on behalf of the Town of Barnstable by the Cape Cod Commission or mitigation received under a regulatory agreement pursuant to Chapter 168 of the Code of the Town of Barnstable, or private contribution, may be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. General revenues appropriated into the Trust become Trust property and these funds need not be further appropriated to be expended. All moneys remaining in the Trust at the end of any fiscal year, whether or not expended by the Board within one year of the date they were appropriated into the Trust, remain Trust property. The monies so paid to the Trust shall be segregated in accordance with the purpose for which the funds were deposited. Should funds be received without a designated purpose, affordable housing or economic development, the funds may be used for either purpose at the discretion of the Board.

ARTICLE EIGHTH: Acts of Trustees

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to

confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.

ARTICLE NINTH: Liability

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town except in the manner specifically authorized herein. The Trust is a public employer and the trustees are public employees for the purposes of G.L. Chapter 268A. Under G.L. Chapter 44, Section 55C, and Town Council Order 2007-158, the Trustees are special municipal employees for the purposes of G.L. Chapter 268A.

ARTICLE TENTH: Taxes

The Trust is exempt from Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.

ARTICLE ELEVENTH: Custodian of Funds

The Town Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities.

ARTICLE TWELTH: Governmental Body

Pursuant to the provisions of G.L. Chapter 44, Section 55C, the Trust is a governmental body for purposes of Sections 18-25, Chapter 30A.

ARTICLE THIRTEENTH: Board of the Town

Pursuant to G.L. Chapter 44, Section 55C and Town Council Order 2007-158, the Trust is a board of the Town for purposes of G.L. Chapter 30B and Section 15A of Chapter 40; but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the Town shall be exempt from said Chapter 30B.

ARTICLE FOURTEENTH: Duration of the Trust

This Trust shall be of indefinite duration, until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust contained in the two segregated accounts, one for the preservation and creation of affordable housing and the other for the promotion of sound and prudent economic development, shall be transferred to the Town and shall be thereafter so held by the Town for affordable housing purposes and economic development. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

ARTICLE FIFTEENTH: Authorization

The Trustees are authorized to execute, deliver, and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

ARTICLE-SIXTEENTH: Rules and Regulations

The Board of Trustees may adopt such rules and regulations as required to conduct its affairs, and in keeping with the provisions and intent of G.L. Chapter 44, Section 55C.

ARTICLE SEVENTEENTH: Titles

The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.


ARTICLE EIGHTEENTH: Validity

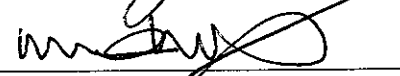
If any provision of this Trust shall be deemed illegal or unenforceable by final Judgment, order or decree by a Court of competent jurisdiction, the remaining provisions of this Trust shall not be affected thereby.


The Trustees named hereunder, hereby acknowledge and agree for themselves and their successors to hold the Trust property for the purposes hereof in Trust for the benefit of all of the inhabitants of the Town of Barnstable, Massachusetts, in the manner and under the terms and conditions set forth herein.

Witness the execution under seal this 26th day of October, 2020.


Trustee, Mark Ellis


Trustee, Michael A. Clyburn


Trustee, Mark Milne


Trustee, Laura Shufelt


Trustee, Wendy Northcross

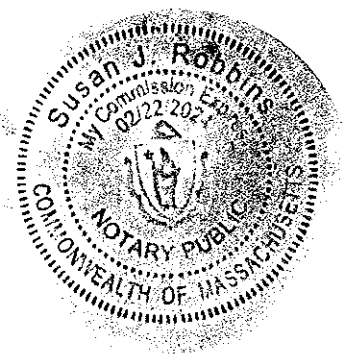
Commonwealth of Massachusetts

County of Barnstable, ss.

On this 26th day of October, 2020 before me, the undersigned Notary Public, personally appeared, Mark S. Ells, Michael A. Clyburn, Mark Milne, Laura Shufelt and Wendy Northcross, Trustees, who proved to me through satisfactory evidence of identification, which was Massachusetts driver's License, to be the person whose name is signed above, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Trustee on behalf of the Affordable Housing/Growth and Development Trust Fund.

Susan J. Robbins
Notary Public

My commission expires: 2/22/24



BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register