

Middlesex South Registry of Deeds
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Middlesex South Registry of Deeds
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Cambridge, MA 02141
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**DECLARATION OF TRUST
LEXINGTON AFFORDABLE HOUSING TRUST**

THIS DECLARATION OF TRUST is hereby made as of this 10th day of April, 2023 by the Town of Lexington, acting by and through its Select Board, in accordance with the vote of the 2022 Fall Special Town Meeting and pursuant to the provisions of G.L. c. 44, § 55C.

THEREFORE, in consideration of the agreements contained in this Trust, and the requirements of G.L. c. 44, § 55C, the Trustees hereby acknowledge and agree for themselves and their successors in trust to hold the same, together with such other property and funds as may be added thereto, for the purposes hereof in trust for the benefit of all of the Inhabitants of the Town of Lexington, in the manner and under the terms and conditions set forth herein.

ARTICLE I NAME OF THE TRUST

The Trust shall be called the "Lexington Affordable Housing Trust," herein referred to as the Trust.

ARTICLE II PURPOSE OF TRUST

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Lexington for the benefit of low and moderate income households and for the funding of community housing, as defined in G.L. c. 44B (the "Community Preservation Act").

ARTICLE III POWERS OF TRUSTEES

The powers of the Board, all of which shall be carried out in furtherance of the purposes set forth herein, shall include the following powers, except that the Board shall require prior approval of the Select Board to make purchases of real estate that exceed the average sale price of a single-family home in the Town of Lexington as determined annually by the Assessor's office.

- A. to accept and receive real property, personal property, or money by gift, grant, contribution, devise, or transfer from any person, firm, corporation, or other public or private entity, including but not limited to money, grants of funds or other property tendered to the Trust in connection with any bylaw or any general or special law or any other source, including money appropriated pursuant to G.L. c. 44B, provided, however,

that any such money received from chapter 44B shall be used in accordance with the provisions of G.L. c. 44, § 55C(1);

- B. to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- C. 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 of Trustees deems advisable notwithstanding the length of any such lease or contract;
- D. to execute, acknowledge, and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements, and other instruments sealed or unsealed necessary, proper, or incident to any transaction in which the Board of Trustees engages for the accomplishment of the purposes of the Trust;
- E. to employ advisors and agents, including accountants, appraisers, and attorneys as the Board of Trustees deems necessary;
- F. to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Board of Trustees deems advisable;
- G. to apportion receipts and charges between incomes and principal as the Board of Trustees deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- H. to participate in any reorganization, recapitalization, merger, or similar transaction; 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;
- I. 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 of Trustees may deem proper, and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Board of Trustees may deem necessary and appropriate;
- J. to carry property for accounting purposes other than acquisition date values;
- K. to borrow money on such terms and conditions and from such sources as the Board of Trustees deems advisable, and to mortgage and pledge Trust assets as collateral, but any mortgage or pledge of assets as collateral greater than the extent of the Trust's assets requires approval by a two-thirds vote of any Annual or Special Town Meeting;
- L. to make distributions or divisions of principal in kind;

- M. to compromise, attribute, defend, enforce, release, settle, or otherwise adjust claims in favor of 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 this Trust, to continue to hold the same for such period of time as the Board of Trustees may deem appropriate;
- N. to manage or improve real property; and to abandon any property which the Board of Trustees determines not to be worth retaining;
- O. to hold all or part of the Trust property uninvested for such purposes and for such time as the Board of Trustees may deem appropriate;
- P. to extend the time for payment of any obligation to the Trust;
- Q. to make recommendations on proposals or Town Meeting warrant articles which affect housing;
- R. to develop policy goals and statements to serve as guidelines for the Trust, subject to approval by the Select Board and consistent with the Town's housing goals and plans as may be adopted and amended by the Select Board from time to time;
- S. to exercise such additional powers consistent with the provisions of this bylaw and G.L. c. 44, § 55C, as may be amended from time to time;
- T. to compensate the Town for services provided to the Trust in connection with the Trust's activities, including but not limited to dedicated staff to Trustees, engineering support for project-specific activities, and other Town services, as such services are requested by the Trustees to the Town Manager and authorized by the Town Manager or designee;
- U. to establish criteria and qualifications for recipients and expenditures in accordance with the Trust's stated purposes;
- V. to serve as a lottery and monitoring agent for affordable housing, and to accept compensation for providing such services into the Trust.

ARTICLE IV FUNDS PAID TO THE TRUST

- A. Notwithstanding any general or special law to the contrary, all moneys paid to the Trust, whether a private contribution or in accordance with any Town of Lexington zoning bylaw, regulations, or exaction fee, shall be paid directly into the Trust and need not be appropriated or accepted or approved into the Trust.
- B. General revenues appropriated into the Trust become Trust property and these funds need not be further appropriated to be expended. All money remaining in the Trust at the end of any fiscal year, whether or not expended by the Trust, remain Trust property.

ARTICLE V APPOINTMENT AND TENURE OF TRUSTEES

- A. There shall be a Board of Trustees (the "Trustees") consisting of not less than five and not more than nine Trustees. At least one of the Trustees shall be a member of the Select Board. Each Trustee, to the extent possible, shall have a background or interest in affordable housing, including a resident with a low- or moderate-income, and who, together, shall have a background in finance, law, real estate or real estate development. The initial Trustees of this Trust have signed this document in their capacity noted below.
- B. The Trustees shall be appointed by the Select Board for a two year term, such term to end on April 30 of the expiration year or at such time as a successor is appointed, should said appointment be delayed past April 30. One less than a majority of the initial Trustee appointments shall be for a term of one year. Trustees may be appointed for up to three (3) additional consecutive terms.
- C. All Trustees must be current residents of Lexington upon initial appointment. Any Trustee who ceases to be a resident of the Town of Lexington shall cease to be a Trustee hereunder within three months and shall promptly provide a written notification of the change in residence to the Board of Trustees and to the Town Clerk. If a Trustee fails to give such notice, their participation or vote on a matter shall not void the Board of Trustees' decision with respect to that matter.
- D. A Trustee may be removed by the Select Board for cause. Any Trustee may also resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. Vacancies shall be filled by the Select Board for the remainder of an unexpired term. Upon the appointment of any succeeding Trustee 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.
- E. If any Trustee is absent from five (5) consecutive regularly-scheduled meetings of the Trust or is absent from all meetings over any six (6) month period, except in the case of illness, their position shall be deemed vacant and shall be filled with a new appointment as set forth above.
- F. The Trustees shall annually elect officers, consisting of a Chair, Vice Chair, and Clerk. The Chair shall not be a member of the Select Board. The Trustees may establish sub-committees or ad hoc related committees to carry out the purposes of the Trust. Chairpersons of the sub-committees may be selected by the members of the sub-committees. Subcommittees may have members who are not trustees and who serve in a non-voting, advisory capacity.
- G. Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town of Lexington. The Trust is a public employer and the Trustees are public employees for the purposes of G.L. c. 258. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for purposes of G.L. c. 268A.

ARTICLE VI MEETINGS OF THE TRUSTEES

- A. The Trustees shall meet at least quarterly at such time and such place as the Trustees shall determine. Special meetings may be called by the Chair of the Trust or by any two Trustees.
- B. The Trust is a governmental body for the purposes of G.L. c. 30A, §§ 18–25 (the “Open Meeting Law”). Notice of any meeting of the Trust shall be given in accordance with the provisions of the Open Meeting Law, as may be amended from time to time, including provisions regarding remote participation.
- C. A quorum of the Board of Trustees shall be the majority of the number of Trustees then in office.
- D. The Clerk shall prepare minutes of meetings of the Trust and shall maintain records thereof.

ARTICLE VII ACTS OF TRUSTEES

- A. A majority of Trustees then serving 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.
- B. No Trustee shall be liable for the acts, negligence, or defaults of any other Trustee or any employee, agent, or representative of the Trustees selected with reasonable care, not for errors in judgment, nor mistakes of law or facts made in good faith, nor in reliance in good faith on advice of counsel, nor any other acts or omissions in good faith.

ARTICLE VIII TREASURER AS CUSTODIAN OF FUNDS

- A. The Treasurer of the Town of Lexington shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds.
- B. The Treasurer shall invest the funds in the manner authorized by G.L. c. 44, § 55, § 55A, and § 55B, as such laws may be amended or replaced.
- C. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust.
- D. Expenditures by the Trust shall be processed through the Town's payment warrant but shall be subject to the provisions of G.L. c. 44, § 55C. The Trust's approved annual budget, and any approved budget revisions, shall be submitted to the Select Board and recorded by the Town Treasurer.
- E. The Treasurer, as Custodian of the Trust shall issue checks as directed by the Board of Trustees.
- F. In accordance with G.L. c. 44, § 55C, the books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices

for municipalities. Upon receipt of the audit by the Board of Trustees, a copy shall be promptly provided to the Select Board.

- G. The Board of Trustees shall keep a record of its activities and at the close of every fiscal year, shall make a report thereof to the Select Board. The report shall include a description and source of funds received and expended and the type of affordable housing programs or properties assisted with the funding.

ARTICLE IX TAXES

The Trust is exempt from G.L. c. 59 and c. 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 thereof.

ARTICLE X BOARD OF THE TOWN

- A. The Trust is a Board of the Town of Lexington for purposes of procurement under G. L. c. 30B and G.L. c. 40, § 15A; 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.
- B. The Trust is a public employer and members of the Board of Trustees are public employees for purposes of G.L. c. 258.
- C. Trustees are designated as public agents for purposes of the constitution of the Commonwealth.
- D. The Trust shall be considered a municipal agency and the Trustees shall be considered special municipal employees and shall be subject to the provisions of G.L. c. 268A.

ARTICLE XI COMPENSATION OF TRUSTEES

Trustees shall not receive a salary or other means of compensation for their service as a Trustee, nor shall they be eligible for any benefits from the Town of Lexington, but may, at the discretion of the Select Board receive a stipend for service as Trustees. Trustees may be compensated for reasonable out-of-pocket expenses for travel and other Trust-related expenses. All such out-of-pocket expenses shall be fully documented with receipts for expenses prior to payment by the Trust.

ARTICLE XII DURATION OF THE TRUST

This Trust shall continue so long as authorized under the Laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, the Trust may be terminated by a majority vote of Town Meeting in accordance with G.L. c. 44, § 55C, provided that an instrument of termination together with a certified copy of the Town Meeting vote are duly recorded with the Middlesex South District Registry of Deeds and, if necessary, the Registered Land Division of the Land Court. 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 shall be transferred to the Town of Lexington and held by the Select Board for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Select Board, sell all or any portion of the Trust property and distribute the net proceeds thereof, or they may distribute any of the Trust's assets in kind. The powers of the

Trustees shall continue until the affairs of the Trust are concluded. Once Town Meeting has voted to terminate the Trust, all financial transactions made on behalf of the Trust shall be approved by the Select Board.

ARTICLE XIII RECORDING

- A. This Declaration of Trust and a Certificate of Trustees for the Trust shall be recorded with the Middlesex South District Registry of Deeds and filed with the Land Court.
- B. The Trustees may execute, deliver, and record with the Registry of Deeds or Land Court any documents required for any conveyance authorized hereunder.

ARTICLE XIV AMENDMENTS

The Declaration of Trust may be amended from time to time, except as to those provisions specifically required under G.L. cc. 44, § 55C, by an instrument in writing signed by all of the Trustees then serving and approved at a meeting called for that purpose, and approved by the Select Board. A certificate of amendment shall be recorded with the Middlesex South District Registry of Deeds and, if necessary, the Registered Land Division of the Land Court.

ARTICLE XV RECORD TO BE CONCLUSIVE, CERTIFICATE AS TO FACTS

Every contract, deed, mortgage, lease and other instrument executed by a majority of the Trustees then serving as appears from instruments or certificates recorded with the Registry of Deeds and Land Registration Office to be Trustees hereunder shall be conclusive evidence in favor of any person relying thereon or claiming thereunder, that at the time of the delivery thereof this Trust was in full force and effect and that the execution and delivery of such instrument was duly authorized by the Trustees except that instruments of amendment pursuant to Article XIV and an instrument of termination pursuant to Article XII hereof shall be conclusive only if it appears that the delegations, amendments, or termination have been executed by all of the Trustees then serving and duly recorded. Any person dealing with the Trust property or the Trustees may always rely on a certificate signed by any person appearing from instruments or certificates so recorded to be Trustee hereunder as to the identity of the then-serving Trustees or as to the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the Trustees or in any other manner germane to the affairs of the Trust.

ARTICLE XVI CONSTRUCTION OF TERMS

- A. In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies, trusts, and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. All the powers and provisions of the Trust herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.
- B. Reference to the Trustee shall mean the Trustee or Trustees hereunder.

ARTICLE XVII TITLES

A. 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.

IN WITNESS WHEREOF the said Trustees have hereunto set their hands and seals on the day and year first hereinabove set forth.

SEE SIGNATURES ON FOLLOWING PAGE

EXECUTED AS OF THE DATE SET FORTH ABOVE.

Elaine Tung, Trustee
Elaine Tung, Trustee

Tiffany Payne, Trustee
Tiffany Payne, Trustee

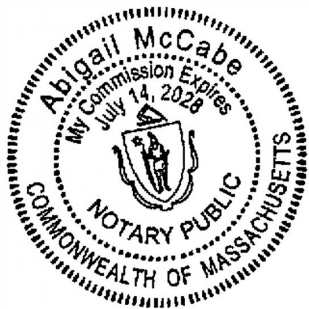
Linda Prosnitz, Trustee
Linda Prosnitz, Trustee

William M. Erickson
William Erickson, Trustee

Mark Sandeen
Mark Sandeen TRUSTEE
SELECT BOARD MEMBER

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF MIDDLESEX)

On this 20 day of April, 2023, before me, the undersigned notary public, personally appeared Elaine Tung, Tiffany Payne, Linda Prosnitz, William Erickson, Mark Sandeen, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose as Trustees for the Lexington Affordable Housing Trust.



Abigail McCabe
Notary Public 4/20/2023
My Commission Expires: 7/14/2028