

FIRST AMENDED DECLARATION OF TRUST

TOWN OF HARVARD
MUNICIPAL AFFORDABLE HOUSING TRUST FUND

We, Ronald V. Ricci, Lucy B. Wallace, Alice Von Loesecke, Kenneth Swanton and Gregory W. Schmidt of Harvard, Massachusetts (the "Trustees"), Trustees of the Town of Harvard Municipal Affordable Housing Trust, u/d/t dated September 12, 2006 and recorded with the Worcester District Registry of Deeds in Book 39847, Page 220, hereby declare that three hundred thirty two thousand three hundred fifty seven and 89/100 dollars (\$332,357.89) is held in trust hereunder and any and all additional funds, property and interests in property, real and personal, that may be acquired hereunder (the "Trust Estate") shall be held in trust, for the sole benefit of the persons listed in the Schedule of Beneficiaries as set forth in Section 4 below.

SECTION ONE

NAME

1.1 This Trust is created pursuant to Massachusetts General Laws Chapter 44, Section 55C and shall be known as the TOWN OF HARVARD MUNICIPAL AFFORDABLE HOUSING TRUST FUND (the "Trust"), and all of the business of the Trust shall be conducted and transacted under said name.

SECTION TWO

PURPOSE

2.1 The purpose of the Trust is to provide for the creation and preservation of affordable housing in the Town of Harvard for the benefit of low and moderate income households.

SECTION THREE

TRUSTEES

3.1 There shall be a board of trustees, (the "Trustees"), which shall be comprised of five members, including a Selectman. Trustees shall be appointed by the Board of Selectmen. The Trustees shall serve for terms of two years. The terms of the trustees shall be staggered so that as nearly one-half as may be shall be appointed annually. There shall be no limit on the number of terms that a trustee may serve. The Trustees shall receive no compensation for serving as a trustee of the Trust.

3.2 The term "Trustees" shall include, Randall W. Dean, Robert M. Lerner, Mortimer Miller, Victor R. Normand, Caroline D. Ready, Steven Rowse and Lucy B. Wallace, as original trustees, as well as successor trustees, and shall mean the trustees for time being under the Trust.

3.3 The Trustees are designated as public agents for purposes of the Constitution of the Commonwealth.

3.4 The Trust is a public employer and shall be deemed a municipal agency. The Trustees are public employees for purposes of Massachusetts General Laws Chapter 258 and special municipal employees for purposes of Massachusetts General Laws Chapter 268A. The Trustees shall not be deemed to be employees for purposes of Massachusetts General Laws Chapters 32 and 32B.

3.5 The Trust is a public body for purposes of Massachusetts General Laws Chapter 30A, Sections 18 through 25

3.6 The Trust is a board of the Town of Harvard for purposes of Massachusetts General Laws Chapter 30B and Chapter 40, Section 15A. However, agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of Town shall be exempt from the provisions of said Chapter 30B.

3.7 A majority of all members of the Board of Trustees may execute any and all instruments and certificates necessary to carry out the provisions of the Trust, unless the Trustees designate a trustee or trustees constituting less than a majority of said board to do so by an appropriate instrument filed in the Office of the Town Clerk and recorded with the Worcester District Registry of Deeds.

3.8 No Trustee shall be required to furnish a bond. No Trustee hereunder shall be liable for any error of judgment nor for any loss arising out of any act or omission in the execution of the Trust so long as action in good faith and within the scope of the Trustees' powers and authority, but shall be responsible only for his own willful breach of trust. Pursuant to Chapter 258 of the Massachusetts General Laws, the Trustees shall be indemnified by the Town of Harvard for their actions and

omissions, except as aforesaid. No license of court shall be requisite to the validity of any transaction entered into by the Trustee.

3.9 Any person dealing with the Trust Estate or the Trustees may always rely without further inquiry on a certificate signed by the person or persons appearing from the records of said registry of deeds to be Trustees, as required Paragraph 3.2 as to who are the Trustees to act or as to the authority to execute any documents or instruments including, but not limited to, those recited in paragraph 3.6 hereof or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to action by the Trustees or which are in any other manner germane to the affairs to the Trust. Execution, delivery or recording of such certificate shall not be a condition precedent to the validity of any transaction of the Trust.

SECTION FOUR **BENEFICIARIES**

4.1 The beneficiaries of the Trust shall be low and moderate income households in the Town of Harvard. The meaning of the term "low and moderate income household" shall be as defined in the by-laws adopted from time to time by the Trustees.

4.2 Any Trustee may, without impropriety, become a beneficiary hereunder and exercise all rights of a beneficiary with the same effect as though he or she were not a Trustee.

SECTION FIVE **POWERS OF TRUSTEES**

5.1 The Trustees shall hold the principal of this Trust, and receive the income therefrom for the benefit of the Beneficiaries, and shall transfer, convey and pay over the principal and income thereof pursuant to theirs powers and the Trust purpose for the benefit of the Beneficiaries, as the Trustees.

5.2 The Trustees shall have the following powers:

5.2.1 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 the Town's Protective Bylaw or any other by-law;

5.2.2 to provide financial subsidies including, but not limited to low interest or no interest loans and grants for the creation and preservation of affordable housing in the Town of Harvard for the benefit of low and moderate income households, provided that any such subsidies for affordable housing projects comprised of five or more units shall first be approved by the Board of Selectmen.

5.2.3 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 Trustees deem advisable notwithstanding the length of any such lease or contract;

5.2.4 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 Trustees engage for the accomplishment of the purposes of the Trust, except for the purchase of real property by the Trust;

5.2.5 to employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;

5.2.6 to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustee deem advisable;

5.2.7 to apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;

5.2.8 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;

5.2.9 to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust Estate, such portion of expenses and compensation of such committee as the Trustees may deem necessary and appropriate;

5.2.10 to carry property for accounting purposes other than acquisition date values;

5.2.11 to make distributions or divisions of principal in kind;

5.2.12 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 this act, to continue to hold the same for such period of time as the Trustees may deem appropriate;

5.2.13 to abandon any property which the Trustees determined not to be worth retaining;

5.2.14 to hold all or part of the Trust Estate uninvested for such purposes and for such time as the Trustees may deem appropriate;

5.2.15 to extend the time for payment of any obligation to the Trust; and

5.2.16 to adopt and amend policies and by-laws for the conduct of the affairs of the Trust.

5.3 Any persons or entities extending credit to, contracting with or having any claim against the Trustees shall look only to the funds and property of this Trust for payment of any contract, or claim, or for the payment of any debt, damage, judgment, or decree, or for any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the Beneficiaries shall be personally liable therefor. If any Trustee shall at any time for any reason (other than the willful breach of trust) be held to be under any personal liability as such Trustee, then such Trustee shall be held harmless and indemnified by the Town of Harvard, against all loss, costs, damage, or expense by reason of such liability to the greatest extent permitted under the provisions of Massachusetts General Laws Chapter 258.

SECTION SIX
TRUST PROPERTY

6.1 Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any provision of the Town's Protective Bylaw or other by-law, comprehensive permit condition, special permit condition, provision of a decision of a Town board or committee, exaction fee, or private contributions shall be paid directly into the Trust and need not be appropriated or accepted by the Town and approved into the Trust. General revenues of the Town appropriated into the Trust and funds transferred from the Town's Community Preservation Fund into the Trust become Trust property and to be expended these funds need not be further appropriated by the Town. All moneys remaining in the Trust at the end of any fiscal year, whether or not expended by the Trustees within one year of the date they were appropriated into the Trust, shall remain Trust property.

SECTION SEVEN
EXEMPTION FROM TAXES

7.1 The trust is exempt from the provisions of Massachusetts General Laws Chapters 59 and 62, and from any

other provisions of law concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or the Town of Harvard.

SECTION EIGHT
ANNUAL AUDIT

8.1 The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

8.2 A copy of each annual audit report shall be filed with the Town's Board of Selectmen and in the Office of the Town Clerk.

SECTION NINE
TERMINATION

9.1 This Trust may be terminated by the Town's rescission of its acceptance of the provisions of Chapter 461 of the Acts of 2004 by majority vote at an annual meeting of the Town pursuant to Massachusetts General Laws Chapter 4, Section 4B. Upon any such termination of the Trust, a certification of termination, executed by a majority of all members of said board of trustees, shall be recorded with said registry of deeds.

9.2 The common law Rule Against Perpetuities and the provisions of Massachusetts General Laws Chapter 184A shall not apply to the Trust.

9.3 In the case of any termination of the Trust, the Trustees shall transfer and convey the specific assets constituting the Trust Estate, subject to any leases, mortgages, contracts or other encumbrances on the Trust Estate, to the Town of Harvard, provided, however, the Trustees may retain such portion thereof as in their opinion necessary to discharge any expense or liability determined or contingent, of the Trust.

SECTION TEN
AMENDMENTS

10.1 This First Amended Declaration of Trust amends and modifies the terms of the original Declaration of Trust dated September 12, 2006 and recorded with said Registry of Deeds in Book 39847, Page 220. This First Amended

Declaration of Trust may be further amended from time to time by an instrument in writing signed by a majority of all members of said board of trustees, provided in each case that the amendment(s) shall not become effective until the amendment has been approved by a majority vote of the Board of Selectmen and a majority vote of a town meeting and a certificate setting forth the terms of such amendment, signed by the Trustees, is filed in the Office of the Town Clerk recorded with said registry of deeds.

SECTION ELEVEN
RESIGNATION AND SUCCESSOR TRUSTEES

11.1 Any Trustee hereunder may resign at any time by an instrument in writing, signed and acknowledged by such trustee and delivered to the Town's Board of Selectmen, the Office of the Town Clerk and all remaining trustees. Such resignation shall take effect on the later of the date specified therein or the date of the recording of such instrument with said registry of deeds.

11.2 Succeeding or additional Trustees may be appointed or any Trustee may be removed by an instrument in writing signed by a majority of all members of the Board of Selectmen, provided in each case that a certificate signed by any Trustee naming the Trustee or Trustees appointed or removed and, in the case of an appointment, the acceptance in writing by the Trustee or Trustees appointed, shall be recorded in the Office of the Town Clerk and in said registry of deeds. Upon the recording of such instrument, the legal title to the Trust Estate shall, without the necessity of any conveyance, be vested in said succeeding or additional trustee or trustees, with all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

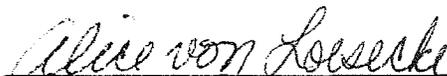
SECTION TWELVE
GOVERNING LAW

12.1 This Declaration of Trust shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

WITNESS our hands and seals this 21st day of March, 2017.



Ronald V. Ricci, Trustee



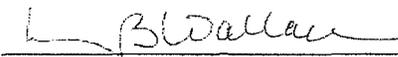
Alice Von Loesecke, Trustee



Kenneth Swanton, Trustee



Gregory W. Schmidt, Trustee



Lucy B. Wallace, Trustee

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

March 21, 2017

On this 21st day of March, 2017, before me, the undersigned notary public, personally appeared Ronald Ricci, Alice von Loesecke, Ken Swanton, Gregory Schmidt and Lucy Wallace. proved to me through satisfactory evidence of identification, which were a Massachusetts driver's license and personal recognition, to be the persons whose names are signed on the preceding document, and acknowledged to me that s/he signed it voluntarily for its stated purpose., as Trustees of the Town of Harvard Municipal Affordable Trust Fund.



, Notary Public
My Commission Expires:

