

DECLARATION OF TRUST  
STOCKBRIDGE AFFORDABLE HOUSING TRUST FUND

This DECLARATION OF TRUST is hereby made as of this 28 day of July, 2022, by the Town of Stockbridge, acting by and through its Board of Selectmen, in accordance with the vote of the June 12, 2021 Annual Town Meeting and pursuant to the provisions of G.L. c. 44, §55C.

Section 1: Name of Trust

The Trust shall be called the "Stockbridge Affordable Housing Trust Fund."

Section 2: Purpose of Trust

The purpose of the Trust shall be to provide for the creation and preservation of affordable housing in the Town of Stockbridge for the benefit of low- and moderate-income households and for the funding of community housing, as defined in and in accordance with the provisions of chapter 44B of the Massachusetts General Laws. In furtherance of this purpose the Trust shall be authorized 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 Board of Trustees shall deem most appropriate to carry out such purpose consistent with the policies adopted from time to time by the Board of Selectmen regarding affordable housing and this Declaration of Trust.

Section 3: Board of Trustees

There shall be a Board of Trustees of the Stockbridge Affordable Housing Trust Fund, composed of seven members, as appointed by the Board of Selectmen. The Board of Selectmen shall appoint the members of the Board of Trustees for rotating terms not to exceed three (3) years, except that two (2) of the initial Trustee appointments shall be for a term of one (1) year, two (2) will be for two (2) years, and the remaining three (3) of the initial Trustee appointments shall be for a term of three (3) years, in order to allow staggered terms. At least five of the Trustees must be residents of the Town of Stockbridge, one of whom must be a member of the Board of Selectmen. Any Trustee who served as a resident Trustee and who ceases to be a resident of the Town of Stockbridge shall automatically cease to be a member of the Board of Trustees. Upon the Board of Selectmen learning that a resident Trustee is no longer a Stockbridge resident, whether by written notice provided by the Trustee or otherwise, the Board of Selectmen shall immediately to fill such vacancy. Notice of such resignation and appointment shall be filed with the Town Clerk, recorded with the Registry of Deeds or filed with the Registry District of the Land Court, if applicable.

If a Trustee shall die, resign, or for any other reason cease to be a Trustee hereunder before his/her term of office expires, a successor shall be appointed by the Board of Selectmen to fill such vacancy for the remainder of the unexpired term, provided that in each case the appointment and acceptance in writing by the Trustee so appointed shall be filed with the Town

Clerk, recorded with the Registry of Deeds or filed with the Registry District of the Land Court, if applicable. No such appointment shall be required so long as there are at least five Trustees in office. Upon the appointment of any succeeding Trustee and the filing of such appointment or a certificate of such election 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.

The Trustees shall annually elect a Trustee to serve as Chair. The Chair may establish subcommittees or *ad hoc* task-related committees to carry out the purposes of the Trust. Chairs of the sub-committees may be selected by the members of the sub-committees.

#### Section 4: Powers of Trustees

The powers of the Trustees, all of which shall be carried on in furtherance of the purposes set forth in G.L. c. 44, §55C, and pursuant to the provisions of this Declaration of Trust, shall include the following:

(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 provisions of any by-law or any general or special law of the commonwealth, or any other source, including money from G.L. c. 44B; provided, however, that any such money received from 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 from 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 department of revenue;

(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 Trustees deem 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, 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;

(e) to employ advisors and agents, including but not limited to, accountants, appraisers, and lawyers as the Trustees deem necessary;

- (f) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;
- (g) to apportion receipts and charges between income 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;
- (h) 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, person, or entity;
- (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 Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the 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 Trustees deem advisable, to mortgage and pledge Trust assets as collateral;
- (l) to make distributions or divisions of principal in kind;
- (m) to compromise, 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 Trustees may deem appropriate;
- (n) to manage or improve real property; and to abandon any interest in property which the Trustees determine 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 Trustees may deem appropriate;
- (p) to extend the time for payment of any obligation to the Trust;
- (q) to issue policy goals and statements to serve as guidelines for the Trust; and
- (r) to exercise such additional powers, if any, as may be set forth in G.L. c. 44, §55C, as same may be amended from time to time.

## Section 5: Limitations on Powers of Trustees

- (a) Any purchase, sale, lease, exchange, transfer, or conveyance of any interest in real property must be approved by five of the seven members.
- (b) The Trustees may incur debt, borrow money, grant mortgages, and pledge Trust assets only in an amount not to exceed 80% of the Trust's total assets.
- (c) Any debt incurred by the Trustees shall not constitute a pledge of the full faith and credit of the Town of Stockbridge and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Stockbridge with an acknowledgement of said statement by the holder.

## Section 6: Audit Requirement

The Board of Trustees shall provide for an annual audit of the books and records of the Trust. Such audit shall be performed by an independent auditor in accordance with accepted accounting practices. Upon receipt of the audit by the Board of Trustees, the Trustees will provide a copy to the Board of Selectmen.

## Section 7: Meetings of the Trustees

The Trust shall meet at least quarterly at such time and such place as the Trustees shall determine. Special meetings may be called by the Chair or by any two (2) Trustees. Notice of any meeting of the Trust shall be filed with the Town Clerk and posted in accordance with the Open Meeting Law, G.L. c. 30A, §§18-25. The Board of Trustees shall be subject to all provisions of the Open Meeting Law and regulations. While a majority of the full Board of Trustees shall constitute a quorum for the transaction of any business of the Board of Trustees, less than a quorum may, subject to the requirements of the Open Meeting Law, continue a meeting to a time, date and place certain.

## Section 8: Acts of Trustees

Any action of the Board of Trustees shall be approved by a majority of those present and voting at a duly called meeting, provided that a quorum is present, and any and all instruments executed by such majority shall be binding upon the Trust, and shall be conclusive evidence that such action has been duly authorized. The Trustees may, by instrument executed by all the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including power to execute and deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust. The Trustees shall not delegate the authority to amend or terminate the Trust and no such delegation shall be effective. 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. No one dealing with the Trustees need inquire concerning the validity of any act of the Trustees or see to the application of anything paid to or upon the order of the Trustees. No Trustee shall be liable for the act, negligence or default of any other Trustee or any employee,

agent, or representative of the Trustees selected with reasonable care, nor for errors in judgment, nor mistakes of law or fact made in good faith nor in reliance in good faith on advice of counsel nor for other acts or omissions in good faith.

#### Section 9: Liability; Conflict of Interest

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. In accordance with the provisions of G.L. c.44, §55C, 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 the purposes of G.L. c. 268A.

#### Section 10: Town Treasurer as Custodian of Trust Funds

The Town Treasurer shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds. The Treasurer shall invest the Trust's funds in the manner authorized by G.L. c. 44, §55B. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust. The yearly approved budget, and any approved budget revisions, will be filed with the Town Treasurer. As custodian, the Treasurer shall issue checks or transfer monies as directed by the Trustees.

#### Section 11: 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 by-law, exaction fee, private contribution, or Community Preservation Act funds from Stockbridge's Community Preservation Committee shall 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.

#### Section 12: Duration of the Trust

This Trust shall continue so long as authorized under the Laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, this Trust may be terminated in accordance with G.L. c. 4, §4B, provided that an instrument of termination together with a certified copy of the Town Meeting vote are duly recorded with the Registry of Deeds and the Registry District of the Land Court, if applicable. 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 and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees shall, subject to the approval of the Board of Selectmen, sell all or any portion of the Trust property and distribute

the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

#### Section 13: Taxes

The Trust is exempt from G.L. 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.

#### Section 14: Status of Trust

The Trust is a board of the Town for purposes of G.L. Chapter 30B and G.L. Chapter 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 G.L. Chapter 30B.

#### Section 15: Construction of Terms

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.

#### Section 16: Recording

This Declaration of Trust shall be recorded with the Berkshire Middle Registry of Deeds and the Registry District of the Land Court.

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#### Section 17: Amendments

This Declaration of Trust may be amended from time to time except as to those provisions specifically required under G.L. c.44, §55C, by an instrument in writing signed by a majority of the Trustees and approved at a meeting called for that purpose, and approved by the Board of Selectmen, provided that in each case, a certificate of amendment shall be recorded with the Registry of Deeds and the Registry District of the Land Court.

#### Section 18: Record to be Conclusive; Certificate as to Facts

Every contract, deed, mortgage, lease and other instrument executed in compliance with Section 8, as appears from instruments or certificates recorded with the Registry of Deeds and Registry District of the Land Court to be Trustees hereunder shall be conclusive evidence in favor of any

person relying thereon or claiming hereunder, 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 delegations of authority pursuant to Section 8 hereof and instruments of amendment pursuant to Section 17 and an instrument of termination pursuant to Section 12 hereof shall be conclusive only if it appears that the delegations, amendments or termination have been executed by a majority of the Trustees. Any person dealing with the Trust property or the Trustees may rely on a certificate signed by any person appearing from instruments or certificates so recorded to be a Trustee hereunder as to the identity of the then current 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.

Section 19: Titles

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

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

TOWN OF STOCKBRIDGE,

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