

**CAMBRIDGE AFFORDABLE HOUSING TRUST**

**AMENDED AND RESTATED DECLARATION OF TRUST**

NOVEMBER 19, 2020

CAMBRIDGE AFFORDABLE HOUSING TRUST

	Page
ARTICLE I. <u>TITLE AND ADDRESS</u> .....	4
ARTICLE II. <u>PURPOSE</u> .....	4
ARTICLE III. <u>BOARD OF TRUSTEES AND STAFF</u> .....	5
Section 3.1 <u>Composition</u> .....	5
Section 3.2. <u>Term of Office</u> .....	5
Section 3.3 <u>Trustee Resignation</u> .....	6
Section 3.4. <u>Managing Trustee</u> .....	6
Section 3.5. <u>Secretary and Staff</u> .....	6
ARTICLE IV. <u>DISTRIBUTIONS AND USE OF PRINCIPAL AND INCOME</u> .....	7
Section 4.1 <u>Distributions and Undistributed Net Income</u> .....	7
Section 4.2. <u>Method of Distribution</u> .....	7
Section 4.3. <u>Use of Distributions</u> .....	7
Section 4.4. <u>Limitation</u> .....	8
ARTICLE V. <u>DUTIES OF THE BOARD OF TRUSTEES</u> .....	8
ARTICLE VI. <u>POWERS OF THE BOARD OF TRUSTEES</u> .....	9
ARTICLE VII. <u>OPERATION OF BOARD OF TRUSTEES</u> .....	11
Section 7.1 <u>Meetings</u> .....	11
Section 7.2 <u>Quorum</u> .....	12
Section 7.3 <u>Votes and Actions Taken by Written Consent</u> .....	12
Section 7.4 <u>Rules and Regulations</u> .....	12
ARTICLE VIII. <u>ACCOUNTS</u> .....	12
ARTICLE IX. <u>AMENDMENT</u> .....	13
ARTICLE X. <u>DISSOLUTION</u> .....	13
ARTICLE XI. <u>MISCELLANEOUS</u> .....	13
Section 11.1 <u>Titles and Subtitles</u> .....	13
Section 11.2 <u>Massachusetts Law</u> .....	14
Section 11.3 <u>Public Records Filing</u> .....	14

## CAMBRIDGE AFFORDABLE HOUSING TRUST

WHEREAS, there is a severe shortage of housing for low and moderate-income residents of Cambridge; and

WHEREAS, the City of Cambridge is committed to creating new affordable home ownership and rental units as well as to the preservation of existing affordable units; and

WHEREAS, the Cambridge City Council on June 29, 1986, accepted certain recommendations contained in the “Report of the City Council Committee on Linkage”; and

WHEREAS, a comprehensive Incentive Zoning Ordinance has been drafted, and enacted as of July 25, 1988; and amended and expanded by, including but not limited to, Ordinance #1197 enacted on March 2, 1998; Ordinance #1229 on September 21, 1999; Ordinance #1371 on September 28, 2015; Ordinance #1392 on April 3, 2017; Ordinance #1421 on March 16, 2020; and Ordinance #2020-8 on October 5, 2020; and

WHEREAS, said Ordinance and Chapter 482 of the Acts of 1991 provides for the creation of an Affordable Housing Trust;

WHEREAS, on January 12, 1989 by a Declaration of Trust duly executed, Robert W. Healy, as City Manager of the City of Cambridge, declared himself to be the original Trustee of the Cambridge Affordable Housing Trust (with all additional and any successor Trustees appointed to the Board of Trustees, “the Board”) to hold all property thereafter transferred to the Board, subject to the following provisions; and

WHEREAS, the Board determined it was in the best interests of the Cambridge Affordable Housing Trust (the “Trust”) for the January 12, 1989 Declaration of Trust to be amended and restated; and on November 16, 2000 an Amended and Restated Declaration of Trust clarified certain provisions thereof; and

WHEREAS, the Board has determined that it is in the best interests of the Cambridge Affordable Housing Trust (the “Trust”) for the November 16, 2000 Amended and Restated Declaration of Trust to be further amended and restated, so as to clarify certain provisions thereof;

NOW, THEREFORE, on this 19<sup>th</sup> day of November, 2020, the Board does hereby set forth this Amended and Restated Declaration of Trust (the “Amended and Restated Declaration”).

ARTICLE I. TITLE AND ADDRESS

The Trust shall be known as the “Cambridge Affordable Housing Trust”. The address for the Trust shall be: Office of the City Manager, City Hall, Cambridge, Massachusetts 02138.

ARTICLE II. PURPOSE

The Trust is intended to be the “Affordable Housing Trust” referred to in Section 11.206 of the Cambridge Zoning Ordinance (the “Zoning Ordinance”), and in Chapter 482 of the Acts of 1991, and the Trustees are hereby authorized to receive and accept Housing Contributions (whether cash, personal or real property, securities, or other items of value) tendered pursuant to Section 11.202 and 11.203.3(i) of the Zoning Ordinance, and other contributions from any source whatsoever.

The purpose of the Trust is to assist in (i) the creation of new affordable rental and owner-occupied affordable housing in Cambridge, and (ii) the preservation and rehabilitation of existing affordable homes (whether single family, multi-family, condominium, or cooperative) and rental units. Affordable housing for low- and moderate-income residents is herein defined as housing which is affordable by a family having an income of no more than 120% of the Housing

Area Median Family Income-for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area, adjusted for family size, the rent for which (including utilities) does not exceed thirty (30) percent of the income of the renting household or the mortgage payment for which (including insurance, utilities and real estate taxes) does not exceed thirty (30) percent of the income of the purchasing household, or such other income or payment standard as may be determined by the Board, or by the appropriate special permit granting authority of the City of Cambridge. All Trust property held hereunder, both principal and income, shall be used solely for the preservation, development, and/or rehabilitation of affordable housing within the City of Cambridge, including reasonable administrative expenses necessary to support Trust activities, including but not limited to consulting services such as legal, appraising or engineering, as well as other project related expenses. No portion of the Trust property shall enure to the benefit of any private individual except as herein provided. The Trust shall not operate for the purpose of carrying on a trade or business for profit, nor shall any Trust property be used in any way in connection with any political campaign on behalf of any candidate for public office, nor be expended in any attempt to influence legislation.

### ARTICLE III. BOARD OF TRUSTEES AND STAFF

#### Section 3.1 Composition

The Board shall consist of nine Trustees, including ex officio, that person who is serving from time to time as the City Manager of the City of Cambridge (the "City Manager"), or in a similar capacity under any future form of city government. The other members of the Board shall be appointed by the City Manager. Such members shall include representatives from different sectors of the community concerned with housing policy, including, without limitation, existing City boards and agencies, non-profit housing organizations, and community

representatives. Each Trustee shall serve without compensation and in a purely fiduciary capacity; provided, however, that each may be reimbursed by the Trust for all out-of-pocket expenses reasonably incurred in the performance of his or her duties hereunder.

Section 3.2. Term of Office

The term of office for each Trustee not serving ex officio shall be three years. Initially two such Trustees shall serve one-year terms, three such Trustees shall serve two-year terms, and three such Trustees shall serve three-year terms, and thereafter all such Trustees shall serve three-year terms.

Section 3.3 Trustee Resignation

Any Trustee may resign by giving at least thirty days' written notice. Such notice shall be sent by registered mail to: Office of the City Manager, City Hall, Cambridge, MA 02138. If any Trustee becomes mentally or physically unable to serve, a certificate so stating from such Trustee's then attending physician shall constitute such Trustee's resignation. If a person shall cease for any reason to serve as Trustee, a substitute Trustee shall be appointed by the City Manager to serve the unexpired portion of such Trustee's term.

Section 3.4. Managing Trustee

The City Manager shall serve as Managing Trustee and shall be responsible for maintaining all financial and other records of the Trust. The Managing Trustee may, from time to time, delegate any portion or all of their duties to any other Trustee; provided, however, that each such delegation shall be in writing, and revocable.

Section 3.5. Secretary and Staff

The Assistant City Manager for Community Development of the City of Cambridge or their designee shall serve as the Secretary of the Trust. The Managing Trustee may also appoint such other staff for the Trust as the Managing Trustee deems necessary. Such staff persons shall work under the supervision of the Managing Trustee and may be paid reasonable compensation.

ARTICLE IV. DISTRIBUTIONS AND USE OF PRINCIPAL AND INCOME

Section 4.1 Distributions and Undistributed Net Income

The Board may from time to time distribute such portion or portions of the net income and principal of the Trust as the Board deems to be appropriate and consistent with the purposes for which the Trust has been established. At the end of each fiscal year of the Trust, the Board may add all undistributed net income to the principal of the Trust or segregate such income in a separate income account for later distribution.

Section 4.2. Method of Distribution

Each distribution of principal and/or income shall require the favorable vote of at least a majority of the Board present at a Board meeting, as set forth in Section 7.3 hereof. Distributions may be made to individuals and private or public, profit or not-for-profit entities, in the form of gifts, grants, loans, loan guarantees, letters of credit or other forms of credit enhancement, or in such other manner as the Board may deem necessary and appropriate to fulfill the purposes of the Trust.

Section 4.3. Use of Distributions

All distributions from the Trust shall be made solely for the purposes set forth in Article II hereof and applied, without limitation toward:

A. Creation of New Affordable Units

The creation of new affordable rental or ownership units by (i) encouraging the development of such units through a variety of means, such as provision of favorable financing terms or direct write-down of costs for public, non-profit, or for-profit developers, and/or (ii) subsidizing the purchase of sites, existing structures, or affordable units within a larger development.

B. Assistance with Multi-Family Rehabilitation Programs

Assistance with multi-family rehabilitation programs through financing rehabilitation of distressed properties requiring substantial rehabilitation, in a manner that preserves the affordability of units through interest rate subsidies, loan guarantees or write-down of project costs (with priority consideration given to multi-family housing owned by non-profit entities which ensure maximum long-term affordability to receive priority funding consideration).

C. Acquisition and Rehabilitation of Potential Limited Equity Housing Cooperatives

Acquisition and rehabilitation of potential limited equity housing cooperatives through low interest blanket loans, share loans, or direct cost write-down.

D. Preservation of Existing Affordable Housing.

Preservation of existing affordable housing through acquisition and/or financing assistance for affordable housing units that are part of a larger development.

Section 4.4. Limitations.

The Board shall engage in no activity nor distribute any funds or other property except in a manner consistent with (i) the requirements of the Internal Revenue Code of 1986, as amended (“the Code”), or any similar provisions of subsequent Revenue Acts which pertain to entities organized and operating exclusively for charitable purposes, (ii) Chapter 68 of the Massachusetts General Laws, and (iii) the provisions hereof.

ARTICLE V. DUTIES OF THE BOARD OF TRUSTEES

The Board shall have, without limitation, the following duties and responsibilities:



A. The Board shall administer the Trust funds and property, review and approve or disapprove proposals for use thereof, and authorize the distribution thereof.

B. The Board shall advise the City Council and City Manager in establishing housing policy for the City, including identification of goals and objectives, and the means to reach them, and assistance with coordination of resources in existing housing programs to advance efforts toward realization of the City's housing goals.

C. The Board shall provide recommendations on policies, standards and procedures to the City regarding the implementation of the provisions of Sections 11.200 to 11.206.

D. The Board shall provide assistance and reports to the City and any special permit granting authority authorized to issue a permit for any development making use of funds from the Trust.

E. The Board shall explore the feasibility and assist in establishing new programs designed to meet the affordable housing needs of the City of Cambridge.

F. The Board shall serve as the Advisory Committee for purposes of the Massachusetts Housing Partnership ("MHP"), including reviewing and making recommendations on housing proposals submitted to the MHP from time to time.

#### ARTICLE VI. POWERS OF THE BOARD OF TRUSTEES

The Board shall have the following powers which may be exercised without order or license of any Court, but which shall be exercised solely in a fiduciary capacity consistent with and in furtherance of the overall purposes of the Trust as set forth in Article II:

A. To receive and accept property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, trust, corporation or other public or private entity, including without limitation, grants of funds or other property tendered in connection with any Housing Contribution pursuant to the Zoning Code, to be held, administered and disposed of in accordance with the provisions hereof;

B. To purchase and retain real or personal property, including without restriction, investments that yield a high rate of income or no income, intending to

authorize the Board to act in such manner as the Board believes to be in the best interests of the Trust in light of the purposes for which the Trust has been established;

C. To sell, lease, exchange, transfer, or convey any personal 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 undertakings relative to the Trust property, as the Board considers advisable, notwithstanding the length of any such lease or contract; without liability upon any person dealing with the Board or any Trustee to see to the application of any money or other property delivered to the Board or to any Trustee;

D. To execute, acknowledge and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases and all 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;

E. To employ advisors and agents and to apportion such as accountants and appraisers, and to delegate to such persons or firms such ministerial or discretionary powers as the Board deems necessary;

F. To pay reasonable compensation (and expenses) to all advisors and agents and to apportion such compensation between income and principal of the Trust as the Board deems advisable;

G. To apportion receipts and charges between income 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;

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 or person;

I. To deposit any security with any protective reorganization committee, and to delegate to such committee such power and authority with relation thereto as the Board may deem proper; and to pay, out of the Trust property, such portion of the expenses and compensation of such committee as the Board may deem necessary and appropriate;

J. To carry property for accounting purposes at other than acquisition date values;

K. To exercise all powers and rights of subscription or otherwise which in any manner arise out of ownership of securities held as part of the Trust property;

L. 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;

M. To hold Trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the Trust property is at all times identified as such in the books of the Trust, and to hold any securities in registered or in bearer form; the Trustees shall keep all of the Trust property or funds (other than real property) in one or more separate accounts maintained for such purpose in the Office of the Cambridge City Treasurer;

N. To make distributions or divisions of principal in kind;

O. To compromise, arbitrate, 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 the Trust, to continue to hold the same for such period of time as the Board may deem appropriate;

P. To manage or improve real property; and to abandon any property which the Board determines not to be worth retaining;

Q. To hold all or part of the Trust property uninvested for such purposes and for such time as the Board may deem appropriate;

R. To extend the time for payment of any obligation to the Trust; and

S. To exercise all powers authorized by common law, statute or other provisions hereof.

The Board's good faith exercise of the foregoing powers shall be final and binding on all concerned. The members of the Board shall be liable only for willful misconduct or gross negligence. No Trustee shall be required to give bond.

## ARTICLE VII. OPERATION OF BOARD OF TRUSTEES

### Section 7.1 Meetings

The Board shall meet at least quarter-annually on dates to be determined by the Managing Trustee on an annual basis. The Board may also meet at such other times as may be designated for Special Meetings by the Managing Trustee.

Section 7.2 Quorum

A quorum shall be constituted at each meeting if at least five (5) of the members of the Board are present either in person, or in a manner compliant with the Commonwealth of Massachusetts Open Meeting Law, M.G.L. Chapter 30A, Sections 18-25 and applicable regulations.

Section 7.3 Votes and Actions Taken by Written Consent

Except as otherwise herein provided, the Board shall act by majority vote of the members of the Board present at a meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board entitled to vote consent in writing, electronically or otherwise, to the taking of such action without a meeting. Such written consents shall be treated for all purposes as a vote at a meeting, and shall become part of the permanent records of the Board.

Section 7.4 Rules and Regulations

The Board shall promptly establish and periodically review written rules and regulations for the operation of the Trust and the Board, including rules and regulations for evaluating all applications for Trust funding, and for ensuring that distributions are used exclusively for the purposes for which the Trust has been created. A copy of such rules and regulations, and all amendments thereto, shall be filed with the Cambridge City Clerk pursuant to Article XI, Section 11.3 herein.

ARTICLE VIII. ACCOUNTS

The Managing Trustee shall submit to the Board annually an account of the Trust as prepared by an independent certified public accountant, and copies thereof shall be filed with the Cambridge City Clerk as provided in Article XI, Section 11.4 herein. Such annual accountings may be part of the annual independent audit of the City of Cambridge.

#### ARTICLE IX. AMENDMENT

The Amended and Restated Declaration may be amended from time to time by majority vote of the Board; provided, however, that no such amendment shall violate the purposes of the Trust as set forth in Article II. Any amendment made pursuant to this Article shall be attached to each original counterpart of this instrument and shall not take effect until filed with the Cambridge City Clerk as provided in Article XI, Section 11.3 herein. This Amended and Restated Declaration shall supersede in its entirety, the Amended and Restated Declaration of Trust of the Trust dated November 16, 2000.

#### ARTICLE X. DISSOLUTION

It is intended that the Trust shall continue in perpetuity. If for any reason the Managing Trustee determines that continuation of the Trust is infeasible, then the Trust may be terminated upon a two-thirds vote of the Board. If for any reason the Trust is voluntarily or involuntarily dissolved or wholly inoperative the Managing Trustee shall ensure that all property held by the Board is distributed forthwith to the City of Cambridge, to be used solely for purposes set forth in Article II hereof.

#### ARTICLE XI. MISCELLANEOUS

##### Section 11.1 Titles and Subtitles

Titles of the Articles and Section subtitles are placed herein for reference only, and in case of any conflict, the text of this instrument, other than such titles or subtitles, shall be

controlling.

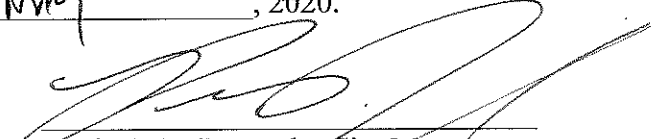
Section 11.2 Massachusetts Law

This Amended and Restated Declaration shall at all times be governed by the laws of the Commonwealth of Massachusetts.

Section 11.3 Public Records Filing

A copy of this Amended and Restated Declaration shall be filed with the Office of the Cambridge City Clerk, and in accordance with Section 9 of Chapter 482 of the Acts of 1991, with the Division of Public Charities of the Office of the Massachusetts Attorney General.

IN WITNESS WHEREOF, this Amended and Restated Declaration of Trust is hereby made and executed as of the 21<sup>st</sup> day of May, 2021, 2020.

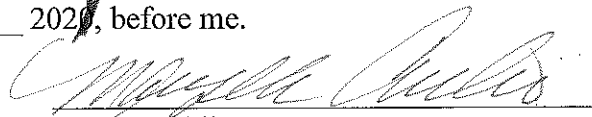
  
Louis A. DePasquale, City Manager

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

May 21, 2021

Then personally appeared the above-named Louis A. DePasquale, City Manager as aforesaid, and acknowledged the forgoing instrument to be his free act and deed on this 21 day of May, 2021, before me.

  
Notary Public

My commission expires:

