

ARLINGTON AFFORDABLE HUSING TRUST FUND

DECLARATION OF TRUST

The Town of Arlington, pursuant to M.G.L. Chapter 44, Section 55C, hereby establishes the Town of Arlington Affordable Housing Trust for the benefit of all the inhabitants of the Town of Arlington in this manner and under the terms and conditions set forth herein.

ARTICLE I: Name of Trust

The Trust shall be called the “Arlington Affordable Housing Trust Fund”, hereinafter 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 Community Housing in the Town of Arlington, as such term is defined in Section 2 of M.G.L. c.44B, the Community Preservation Act.

ARTICLE III: Appointment and Tenure of Trustees

There shall be a Board of Trustees (“Trustees”) of the Arlington Affordable Housing Trust Fund composed of one *ex officio* non-voting member and seven voting members. The Town Manager or the Town Manager’s designee shall serve as the *ex officio* member. The voting members shall include: a member of the Select Board (designated by the Select Board) and six members appointed by the Select Board. The voting members shall be residents or representatives of local housing organizations who may have relevant experience in the fields of real estate, housing, banking, finance, law, architecture, social services, or other areas of expertise applicable to advancing the purpose and goals of the Trust. Of the Select Board appointees, at least one shall be a tenant who earns a low- or moderate-income, and resides in subsidized housing units as defined by G.L. c.40B or who receives state- or federally-sponsored rental subsidies and demonstrates knowledge of tenant issues, and at least two shall be representatives of local housing organizations such as a housing authority or housing corporation dedicated to the creation and maintenance of affordable housing.

1. There shall be a Board of Trustees Fund composed of one *ex officio* non-voting member and seven (7) voting members. The *ex-officio* member shall be the Town Manager, or the Manager’s designee. The voting members shall be as follows:
 - a. One member of the Select Board to be designated by the Select Board;
 - b. Six members appointed by the Select Board, who shall be residents of the Town or representatives of local housing organizations who may have relevant experience in the fields of real estate, housing, banking, finance, law, architecture, social services, or other areas of expertise applicable to advancing the purpose and goals of the Trust;
 - i. One of the six Select Board appointee must be a tenant who earns a low or moderate-income, and resides in subsidized housing units as defined by G.L. c.40B or who receives state or federally-sponsored rental subsidies and demonstrates knowledge of tenant issues;

- ii. At least two of the six Select Board appointees shall be representatives of local housing organizations such as a housing authority or housing corporation dedicated to the creation and maintenance of affordable housing.
2. The Trustees shall be appointed for a term not to exceed two (2) years, such term to end on **June 30** of the expiration year or until such time as a successor is appointed, except that at least two (2) of the initial Trustees shall serve for One (1) year, to provide staggered terms, and Trustees must be re-appointed at the discretion of the Select Board for succeeding terms, with no limits on the number of terms that a Trustee can serve.
3. Trustee appointments must comply with Title II, Article 14 of the Town Bylaws. Any Trustee who ceases to comply with said Article shall promptly provide a written notification of the change to the Board and the Town Clerk.
4. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Trust and Town Clerk. If a Trustee shall die, resign, or for any other reason cease to be a Trustee hereunder before his/her/their term of office expires, any successor Trustee shall be appointed by the Select Board to fill such vacancy. Any Trustee may be removed for cause by the Select Board following a hearing. **If any Trustee is absent from five (5) consecutive regularly scheduled meetings of the Trust, except in the case of illness, the Chair shall notify the Select Board, who may terminate said Trustee of the Trust position.**

ARTICLE IV: Powers of Trustee; Limitations

- A. **Powers.** The Trustee shall have the following powers, which shall be carried out in accordance with and in furtherance of the provisions of M.G.L. Chapter 44, Section 55C as outlined below:
 1. To accept and receive real property personal property or money, by gift, grant, contributions, devise, or transfer from any person, firm, corporation, or other public or private entity or organization or tendered to the Trust in connection with provisions of any by-law or any general or special laws or any other source, including money from General Laws Chapter 44B, the Community Preservation Act (“Chapter 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 the funds received from sad Chapter 44B are reported to the Arlington Community Preservation Committee for inclusion in the community preservation initiatives report, form CP-3, to the 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 n such terms as to credit or otherwise, and to make such

contracts and enter into such undertaking relative to the Trust property as the Trustees deem 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 Trust engage for the accomplishment of the purposes of the Trust;
5. To employ advisors and agents, including but not limited to accountants, appraisers and lawyers as the Trustees deem necessary;
6. 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;
7. 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;
8. To compensate the Town for non-incident services provided as authorized by the Town Manager and in accordance with applicable laws, and other Town services, as request by the Trustees to the Town Manager;
9. 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;
10. 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;
11. To carry property for accounting purposes other than acquisition date values;
12. With Select Board approval, 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.
13. To make distributions or divisions of principal in kind;
14. 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 Title II, Article 14 of the Town Bylaws, to continue to hold the same for such period of time as the Trustees may deem appropriate;

15. To manage or improve real property and to abandon any property which the Trustees determine not to be worth retaining;
16. To hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate;
17. To extend the time for payment of any obligation to the Trust; and

B. Limitations. Notwithstanding anything in the contrary herein:

1. Any borrowing by the Trust must be approved by the Select Board as outline in Title II, Article 14 of the Town Bylaws and Article IV of the Declaration of Trust
2. Any borrowing by the Trust may not exceed 80 percent of the Trust's total assets. Any debt incurred by the Trust shall not constitute a pledge of the full faith and credit of the Town of Arlington, 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 Arlington, with an acknowledgement of said statement by the holder; and
3. The Trust shall carry sufficient insurance, as determined by the Town Manager.

ARTICLE V: Officers

- A. The Board of Trustees shall annually elect a Chair, Vice Chair, and a Secretary of this Trust. The officers shall serve for a term not to exceed one (1) year to expire on June 30th of each year. Any officer may be re-elected by the Board of Trustees. The Chair shall not be a member of the Select Board.
- B. All meetings shall be chaired by the Chair, Vice Chair, or Trustee designated by the Chair. The Secretary shall be responsible for posting the agenda with the Town Clerk, keeping the minutes of each meeting, and filing minutes with the Town Clerk as required by applicable law.

ARTICLE VI: Meetings of Trustees

- A. 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 quorum of the Board of Trustees. Notice of any meeting of the Trust shall be filed with the Town Clerk and posted in accordance with the Open Meeting Law, M.G.L. Chapter 39, Sections 23A, 23B and 23C.
- B. A quorum of the Board of Trustees shall be majority of the number of Trustees then serving under this Trust.
- C. The chair may establish sub-committees and/or ad hoc task related committees to carry out the purpose of the Trust. Chairpersons of the sub-committees may be selected by the members of the sub-committees.

ARTICLE VII: Acts of Trustees

- A. 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, with the exception that any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property, borrowing, and mortgaging and pledging of assets must be approved by at least two-thirds of the appointed Trustees.
- B. No Trustee shall be required to post bond.
- C. 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.
- D. Any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property, borrowing, and mortgaging and pledging of assets must be approved by a majority of the Select Board.

ARTICLE VII: Funds Paid to the Trust

- A. Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any zoning bylaw, exaction fee, or private contribution 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 Trustees within one year of the date they were appropriated into the Trust, remain Trust property set forth in G.L. c.44, §55C.
- B. All funds, property and other assets shall be accounted for by the comptroller of the Town of Arlington who shall issue quarterly reports to the Trustees, Select Board, Town Manager and the Finance Committee and an annual report to the Town Meeting.

ARTICLE VIII: Treasurer/Collector as Custodian

- A. The Arlington Treasurer/Collector shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds.
- B. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust.
- C. In accordance with G.L. c. 44, § 55C, the books and records of the Trust shall be audited annually by an independent auditor, appointed by the Select Board, in accordance with accepted accounting practices or take any other action relative thereto. Upon receipt of the audit by the Trustees, a copy shall be provided forthwith to the Select Board.

D. The Trustee designated as treasurer shall liaise with the custodian of the funds on a monthly basis.

ARTICLE IX: Amendments

This Declaration of Trust may be amended from time to time, except as to those provisions specifically required under M.G.L., Chapter 44, Section 55C, or Town of Arlington General By-Law Title II Article 14, by an instrument in writing signed by a majority plus one (1) of the Trustees and approved at a meeting called for that purpose. A certificate of amendment shall be recorded and/or filed with the Middlesex South District Registry of Deeds and the Middlesex South District of the Land Court, as applicable (the "Registry").

ARTICLE X: Duration of Trust

The Trust shall continue as long as authorized under the Laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, the Trust may terminate by a majority vote of the Town Meeting in accordance with M.G.L. Chapter 4, Section 4B, provided that an instrument of termination together with a certified copy of the Town Meeting vote are duly recorded and/or filed with the Registry. 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 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 portions 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.

ARTICLE XI: Construction of Terms

In the construction hereof, whether or not so expressed, words used in the singular or I the plural respectively include both the plural and singular, word 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. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

ARTICLE XII: Liability of Trust

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 purpose of General Laws Chapter 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purpose of General Laws Chapter 268A.

ARTICLE XIII: Recording

This Declaration of Trust shall be recorded and/or filed with the Registry.

ARTICLE XIV: Records to be Conclusive, Certificate as to Facts

Every contract, deed, mortgage lease and or instrument executed by a majority of the Trustees, as appears from instruments or certificates recorded with the Registry, to be Trustees hereunder shall be conclusive evidence in favor of any person relying thereon or claiming thereunder, that at the time of delivery thereof this Trust ws in full force and effect and that the execution and delivery of such instrument was duly authorized by the Trustees except that an instrument of termination pursuant to Article IX and an instrument of amendment pursuant to Article VIII hereof shall be conclusive only if it appears that the delegations, amendments or termination have been executed by a majority plus one (1) of the Trustees. Any person dealing with the Tust property or the Trustees may always relay 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 current Trustees or as to the existence or non-existence of any fat or facts which constitute conditions precedent to acts by the Trustees or in any other manner germane to the affairs of the Trust.

ARTICLE XV: Titles

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

IN WITNESS WHEREOF, The Trustees of the Arlington Affordable Housing Trust Fund have hereunto set their hands and seals on the day an year first hereinabove set forth.

**ARLINGTON AFFORDABLE HOUSING
TRUST FUND,
By its Board of Trustees**

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared the above-named _____, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the proceeding document, and acknowledge to me that he/she/they signed it voluntarily for its stated purpose as Trustee of the Arlington Affordable Housing Trust Fund.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

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On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared the above-named _____, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the proceeding document, and acknowledge to me that he/she/they signed it voluntarily for its stated purpose as Trustee of the Arlington Affordable Housing Trust Fund.

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Notary Public
My Commission Expires:

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