**DECLARATION OF TRUST**

**BERLIN AFFORDABLE HOUSING TRUST**

**ESTABLISHED PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 44, SECTION 55C**

This Declaration of Trust is hereby made as of this 11th day of March2024, by the Town of Berlin, Massachusetts, by and through its Select Board, in accordance with the vote under Article 27 of the warrant for the Annual Town Meeting on May 2, 2022, and pursuant to the provisions of Massachusetts General Laws Chapter 44, Section 55C.

**ARTICLE FIRST: Name of the Trust**

The Trust shall be called the “Berlin Affordable Housing Trust.”

**ARTICLE SECOND: Purpose**

The purpose of the Berlin Affordable Housing Trust (hereinafter the “Trust”) shall be to provide for the creation and preservation of affordable housing in the Town of Berlin for the benefit of low and moderate income households. In furtherance of this purpose, the Trustees are authorized, in accordance with the procedures set forth herein, 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 Trustees shall deem most appropriate to carry out such purpose, provided however, that all property held by the Trust and the net earnings thereof shall be used exclusively for the preservation and creation in the Town of Berlin of affordable housing for the purposes for which this Trust was formed.

**ARTICLE THIRD: Trustees**

The Trust shall be governed by a Board of Trustees (the “Board”) in accordance with Massachusetts General Laws Chapter 44, Section 55C and the authority granted by Town Meeting, as revised from time to time. The Board shall consist of no fewer than five Trustees who shall be appointed by the Select Board. One of the Trustees shall be a member of the Select Board. Only persons who are residents of the Town of Berlin shall be eligible to hold the office of Trustee. Any Trustee who ceases to be a resident of the Town of Berlin shall promptly provide a written notification of the change in residence to the Trust and to the Town Clerk. Trustees shall serve for a term of two years, except that three of the initial Trustee appointments shall be for a term of one year. The Select Board may reappoint trustees for succeeding terms, and there is no limit on the number of terms that a Trustee can serve.

Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall die, resign, or for any other reason cease to fulfill the duties of a Trustee hereunder before the term of office expires, a successor shall be appointed by the Select Board to fill the remainder of the term of such vacancy provided that said appointment and acceptance in writing by the newly appointed Trustee are filed with the Town Clerk. No such appointment shall be required so long as there are at least five (5) Trustees in office. Upon the appointment of any Trustee and the filing of such appointment with the Town Clerk, 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. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder. Trustees may be removed at any time for cause by a majority vote of the Select Board following a properly noticed public hearing. Cause shall include, but not be limited to, violation of any local, state, or federal law; non-participation in business of the Trust; incapacity to perform the duties of a Trustee; acts of the Trustee, that in the opinion of the Select Board, are negligent or detrimental to the Town of Berlin or the Trust.

The Trustees shall annually elect a Trustee to serve as Chair. The original Trustees shall be Lauren Kukla, Kathryn Hendrick, Lisa Wysocki, R. Scott Hawkins, and Beth Storrs. Of the original Trustees, R. Scott Hawkins (Select Board designee) shall hold office until May 31, 2024, Lauren Kukla shall hold office until May 21, 2025, Kathryn Hendrick shall hold office until May 31, 2025, Lisa Wysocki shall hold office until May 31, 2026, and Elizabeth Storrs shall hold office until May 31, 2024.

**ARTICLE FOURTH: Meetings of the Trustees**

The Board shall meet at least quarterly at such time and at such place as the Trustees shall determine. Special meetings may be called by the Chair or any three Trustees. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, Massachusetts General Laws Chapter 39, Sections 23A, 23B, and 23C. A quorum at any meeting shall be a majority of the authorized number of Trustees qualified and present. Minutes of all meetings shall be kept with the Town Clerk in accordance with the provisions of the Open Meeting Law, Massachusetts General Laws Chapter 39, Sections 23A, 23B, and 23C.

**ARTICLE FIFTH: Powers of the Trustees**

The powers of the Trustees shall be the following, except that any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property to or from the Trust is subject to a two-thirds (2/3rds) vote of a quorum of the Trustees:

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 any zoning bylaw or any other bylaw;
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 on such terms as to credit or otherwise and to make such contracts and enter into such undertakings relative to Trust property as the Board deems 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 Board engages for the accomplishment of the purposes of the Trust;
5. to employ advisors and agents, such as accountants, appraisers and lawyers as the Board deems necessary;
6. to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Board deems advisable;
7. to apportion receipts and charges between incomes 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;
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;
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 Board may deem proper and to pay out of Trust property, such portion of expenses and compensation of such committee as the Board may deem necessary and appropriate;
10. 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;
11. to carry property for accounting purposes other than acquisition date values;
12. to make distributions or divisions of principal in kind, as well as to make loans and grants of money for the purpose of constructing or rehabilitating dwelling units for low-or-moderate income individuals or families subject to the terms and conditions imposed by the Board;
13. 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 state statutes, to continue to hold the same for such period of time as the Board may deem appropriate;
14. to manage or improve real property and to abandon any property which the Board determines not to be worth retaining;
15. to hold all or part of the Trust property un-invested for such purposes and for such time as the Board may deem appropriate;
16. to extend the time for payment of any obligation to the Trust; and
17. to adopt rules and regulations governing the conduct of the Trust and the Trustees, consistent with the General Laws.

**ARTICLE SIXTH: Funds Paid to the Trust**

Notwithstanding any general or special law to the contrary, all monies paid to the Trust in accordance with any Town of Berlin 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.

Funds appropriated by the Town of Berlin Town Meeting for payment into the Trust become Trust property and these funds need not be further appropriated to be expended. All monies remaining in the Trust at the end of any fiscal year, whether or not expended by the Trust, remain Trust property. The Trust shall comply with any conditions stipulated in the article's motion for monies appropriated by the Berlin Town Meeting.

**ARTICLE SEVENTH: Acts of Trustees**

Except as set forth otherwise, a majority of Trustees may exercise any or all of the powers of the Trustees hereunder, provided a quorum is present, and may execute on behalf of the Trust 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. Notwithstanding the foregoing, the Board shall obtain the written approval of a majority of the Select Board prior to: (a) granting or providing funds to any one party in an amount excess of $200,000.00, (b) borrowing funds in an amount in excess of $200,000.00, and/or (c) donating funds to any charitable organization by the Trust.

**ARTICLE EIGHTH: Compensation of Trustees**

The Trustees shall not receive a salary, stipend, bonus or other means of compensation for their service as a Trustee, nor shall they be eligible for any benefits from the Town of Berlin. 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 NINTH: Liability**

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town of Berlin except in the manner specifically authorized herein. The Trust is a public employer, and the Trustees are public employees for the purposes of Massachusetts General Laws Chapter 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of Massachusetts General Laws Chapter 268A. The Trustees shall be provided the same scope and degree of municipal insurance coverage as is provided to other appointed board and commission members within the Town of Berlin.

**ARTICLE TENTH: Taxes**

The Trust is exempt from Massachusetts General Laws Chapters 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 thereof.

**ARTICLE ELEVENTH: Custodian of Trust Funds**

The Town of Berlin Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities. Costs associated with the independent audit shall be borne by the Trust.

**ARTICLE TWELFTH: Governmental Body**

The Trust is a governmental body for purposes of Massachusetts General Laws, Chapter 39, Sections 23A, 23B and 23C.

**ARTICLE THIRTEENTH: Board of the Town**

The Trust is a board of the Town for purposes of Massachusetts General Laws Chapter 30B and Chapter 40, Section 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. The Trust shall be considered a public employer and the Trustees shall be subject to the conflict of interest provisions of Massachusetts General Laws Chapter 268A.

**ARTICLE FOURTEENTH: Duration of the Trust**

This Trust shall be of indefinite duration until terminated by a vote of the Berlin Town Meeting. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust, the net assets of the Trust shall be transferred to the Town of Berlin and held by the Select Board for affordable housing purposes. In making any such distribution, the Trustees may, subject to the prior written approval of the Select Board, sell all or any portion of the Trust property and distribute the net proceeds thereof to the Town of Berlin. The powers of the Trustees shall continue until the affairs of the Trust are concluded. Once the Berlin Town Meeting has voted to terminate the Trust, the Select Board shall approve all financial transactions made on behalf of the Trust.

**ARTICLE FIFTEENTH: Annual Report**

The Board shall prepare an annual report describing the activities of the Trust on a calendar year basis. The annual report shall be submitted to the Berlin Select Board by January 31st of each year. The annual report shall list all financial transactions conducted by the Trust, including all revenues and costs, provide a balance sheet of liabilities and assets of the Trust, list an inventory of all affordable housing units created, sold, and/or managed by the Trust, and any other pertinent information related to the business of the Trust. Four paper copies and an electronic copy of the annual report shall be submitted to the Select Board.

**ARTICLE SIXTEENTH: Amendments**

This Declaration of Trust may be amended from time to time except as those provisions specifically required under Massachusetts General Laws Chapter 44, Section 55C, by an instrument in writing signed by all of the qualified Trustees and approved by a majority of the qualified Trustees present and voting a duly posted meeting called for that purpose; provided, however, that in each case, a certificate of amendment has been recorded with said Registry of Deeds.

**ARTICLE SEVENTEENTH: Authority Shown by Record to be Conclusive;**

**Certificate as to Facts**

Every contract, deed, mortgage, lease, and other instrument executed by a majority of the Trustees as appears from instruments or certificates filed with the Town Clerk in accordance with Article Third hereof 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; excepting, however, that delegations of authority pursuant to Article Seventh hereof and instruments of amendment pursuant to Article Sixteenth hereof and an instrument of termination pursuant to Article Fourteenth hereof shall be conclusive only if it appears that the delegations, amendments, or termination have been executed by all of the Trustees. 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 filed 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.

**ARTICLE EIGHTEENTH: Titles**

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.

WITNESS the execution under seal this 11th day of March 2024.

TOWN OF BERLIN

By its Select Board

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Christine Keefe

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Margaret Stone

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R. Scott Hawkins

COMMONWEALTH OF MASSACHUSETTS

County of Worcester, ss.

On this 11th day of March 2024 before me, the undersigned notary public, personally appeared the above-named Christine Keefe, Margaret Stone, and R. Scott Hawkins, proved to me through satisfactory identification which is personal knowledge to be the persons whose names are signed on the preceding document and acknowledged to me that they signed it voluntarily and for its stated purpose as the members of the Select Board of the Town of Berlin.

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Notary Public

My commission expires:

ACCEPTANCE BY TRUSTEES

The undersigned hereby accept as Trustees of the Berlin Affordable Housing Trust.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ 2024.

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R. Scott Hawkins

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Lauren Kukla

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Kathryn Hendrick

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Lisa Wysocki

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Elizabeth Storrs

COMMONWEALTH OF MASSACHUSETTS

County of Worcester, ss.

On this 11th day of March 2024 before me, the undersigned notary public, personally appeared the above-named R. Scott Hawkins, Lauren Kukla, Kathryn Hendrick, Lisa Wysocki, and Elizabeth Storrs, proved to me through satisfactory identification which is personal knowledge to be the persons whose names are signed on the preceding document and acknowledged to me that they signed it voluntarily and for its stated purpose.

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Notary Public

My commission expires: