

## ARTICLE 41: AFFORDABLE HOUSING TRUST

To see if the Town will vote to accept the provisions of Massachusetts General Laws Chapter 44, Section 55C, and establish a trust known as the West Stockbridge Affordable Housing Trust Fund, whose purpose shall be to provide for the preservation and creation of affordable housing in the Town of West Stockbridge for the benefit of low and moderate income households, and, further, to amend the General Bylaws of the Town to insert a new Chapter 9 of the West Stockbridge General Bylaws entitled: Affordable Housing Trust Fund, as follows, or act in any manner relating thereto:

### **Chapter 9 - Affordable Housing Trust Fund**

§ 9-1	Authority; Establishment.
§ 9-2	Purpose.
§ 9-3	Composition.
§ 9-4	Declaration of Trust.
§ 9-5	Powers.
§ 9-6	Acts of Trustees.
§ 9-7	Funds Paid to Trust.
§ 9-8	Meetings; Quorum.
§ 9-9	Custodian of Funds.
§ 9-10	Liability.
§ 9-11	Taxes.
§ 9-12	Governmental Body.
§ 9-13	Board of Town.
§ 9-14	Compensation of Trustees.
§ 9-15	Amendments.
§ 9-16	Duration of Trust.

#### § 9-1 Authority; Establishment.

Pursuant to the authority of G.L. c. 44, §55C, there is hereby created a local municipal affordable housing Trust fund to be known as the “West Stockbridge Affordable Housing Trust Fund” (hereinafter “the Trust”).

#### § 9-2 Purpose.

The purpose of the Trust shall be to provide for the preservation and creation of affordable and community housing in the Town of West 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 the Community Preservation Act, G.L. c. 44B (“Chapter 44B”).

#### § 9-3 Composition.

There shall be a Board of Trustees of the West Stockbridge Affordable Housing Trust Fund (the “Board”), composed of one ex officio non-voting member and five (5) voting members. The Town Administrator or the Town Administrator's designee shall serve as the ex officio member. The voting members shall include: a member of the Select Board (chosen by the Select Board)

and four (4) members appointed by the Select Board. Members must be residents of the Town of West Stockbridge.

The Select Board shall appoint the Trustees for terms not to exceed two (2) years (except if a person is appointed as a representative of a board or committee, in which case his or her term shall terminate upon the sooner vacating of the underlying office), provided, however, that the term of three (3) of the initial Trustee appointments shall be one year, so as to allow staggered terms. Trustees may be re-appointed at the discretion of the Select Board and there are no limits on the number of terms that a Trustee can serve. Vacancies shall be filled by the Select Board for the remainder of the unexpired term, notice of which shall be filed 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. The Trustees shall annually elect a Trustee to serve as Chair.

Any member of the Board of Trustees may be removed by a vote of the Select Board for cause after the opportunity of a properly noticed public hearing. For purposes of this bylaw, the term “cause” shall include, but not be limited to, each of the following: violation of any local, state, or federal law; incapacity to perform the duties of a Trustee; and acts of a Trustee, that in the opinion of the Select Board, are negligent or detrimental to the Town or the Trust; or four (4) consecutive absences from Board of Trustees meetings. Any Trustee may resign by filing with the Town Clerk written notice thereof.

#### § 9-4 Declaration of Trust.

The Trustees are hereby authorized to execute a Declaration of Trust and Certificates of Trust for the West Stockbridge Affordable Housing Trust Fund, to be recorded with the Southern Berkshire Registry of Deeds and filed with the Berkshire County Registry of the Land Court.

#### § 9-5 Powers.

The powers of the Board of Trustees, all of which shall be carried on in furtherance of the purposes set forth in G.L. c. 44, §55C, and inclusive of any future amendments to that section, and 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 any Bylaw or any general or special law or any other source, including money from 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 funds received from said Chapter 44B are reported to the Community Preservation Committee 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 Board deems 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, grant agreements, 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;

E.

To employ advisors and agents, such as consultants, accountants, appraisers and lawyers, full-time or part-time staff, and to contract for administrative and support goods and services, 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 as the Board deems advisable;

G.

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;

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 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;

J.

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

K.

With Town Meeting approval, 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;

L.

To make distributions or divisions of principal in kind;

M.

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 G.L. c. 44, §55C, to continue to hold the same for such period of time as the Board may deem appropriate;

N.

To manage or improve real property; and to abandon any property which the Board determined 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 Board may deem appropriate;

P.

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

Q.

To exercise such additional powers consistent with the provisions of this Bylaw and G.L. c. 44, §55C, as such section may be amended from time to time.

#### § 9-6 Quorum; Acts of Trustees.

Three (3) voting Trustees shall constitute a quorum and shall also be required to approve any motion. An affirmative vote of three (3) voting Trustees is required to exercise any or all of the powers of the Trustees hereunder, unless otherwise provided, and three (3) voting Trustees may execute on behalf of the Trustees 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. Any borrowing by the Trust shall require the prior approval of the West Stockbridge Town Meeting.

#### § 9-7 Funds paid to Trust.

Notwithstanding any general or special law to the contrary, all monies paid to the Trust in accordance with any zoning Bylaw, exaction fee, or private contributions 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 the fiscal year,

whether or not expended by the Board within one year of the date they were appropriated into the Trust, remain Trust property.

§ 9-8 Meetings.

Meetings of the Board shall be held on a regular basis. Special meetings may be called by the Chairperson or two Trustees. A Trust is a governmental body for purposes of G.L. c. 30A, §§18 through 25, the Open Meeting Law; notice of any meeting of the Trust Fund shall be filed with the Town Clerk and posted in accordance with the Open Meeting Law. Minutes of all meetings shall be kept in accordance with the provisions of the Open Meeting Law, G.L. c. 30A, §22. While a majority of the full Board shall constitute a quorum for the transaction of any business, less than a quorum may, subject to the requirements of the Open Meeting Law, continue a meeting to a time, date and place certain.

§ 9-9 Custodian of Funds.

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

§ 9-10 Liability.

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town. The Trust is a public employer and the members of the Board are public employees for the purposes of G.L. c. 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for purposes of G.L. c. 268A.

§ 9-11 Taxes.

The Trust is exempt from G.L. c.59 and G.L. c. 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth of Massachusetts or any political subdivision thereof.

§ 9-12 Governmental Body.

The Trust is a governmental body for purposes of the Open Meeting Law, G.L. c. 30A, §§18-25.

§ 9-13 Board of Town.

The Trust is a board of the Town of West Stockbridge for the purposes of G.L. c. 30B and G.L. c. 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 said G.L. c. 30B.

§ 9-14 Compensation of Trustees.

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 West Stockbridge.

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.

§ 9-15            Amendments.

The provisions of this Trust can only be amended by a vote of the West Stockbridge Town Meeting.

§ 9-16            Duration of Trust.

This Trust shall be of indefinite duration until terminated by a vote of the West Stockbridge 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 and the Trustees, the net assets of the Trust shall be transferred to the Town of West Stockbridge 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 portion of the Trust property and distribute the net proceeds thereof to the Town of West Stockbridge. The powers of the Trustees shall continue until the affairs of the Trust are concluded. Once the West Stockbridge Town Meeting has voted to terminate the Trust, the Select Board shall have the power to approve all financial transactions made on behalf of the Trust.

§ 9-16            Annual Report.

The Trustees shall prepare an annual report describing the activities of the Trust on a calendar year basis. The annual report shall be submitted to the West Stockbridge Select Board by February 12<sup>th</sup> 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.