

## DECLARATION OF TRUST GREENWICH AFFORDABLE HOUSING TRUST FUND

THIS DECLARATION OF TRUST is hereby made as of this [\_\_\_\_\_] day of [\_\_\_\_], 2021, by the Town of Greenwich, Connecticut, acting by and through its Representative Town Meeting, in accordance with the Housing Trust Fund Ordinance and pursuant to the provisions of Section 7-148(c)(2)(K) of the Connecticut General Statutes.

### **Section 1: Definitions**

All definitions below shall be considered automatically amended to comply with any future revisions in the Connecticut General Statutes as they may be relevant to housing or municipal zoning authority:

*"Affordable Housing"* means housing for which persons and families pay thirty per cent or less of their annual gross income, where such income is less than or equal to 80% of the area median income for the Stamford-Norwalk HUD Metropolitan Fair Market Rent Income Area, adjusted for household size as published annually by the U.S. Department of Housing and Urban Development, or other such equivalent income standard as may be established by a majority vote of the Town of Greenwich Planning & Zoning Commission. Affordable rent and home ownership cost shall not exceed thirty (30) percent of the eligible household income.

*"Affordable Rental and Home Ownership Units"* shall mean any dwelling unit for which the rent (including utilities) does not exceed thirty (30) per cent of the gross income of the renting household or for which the mortgage payment (including insurance, utilities and real estate taxes) does not exceed thirty (30) per cent of the gross income of the purchasing household or other standards as may be established pursuant to any municipal, state or federal housing program designed to assist low and moderate income households.

*"Board"* means the Board of Trustees named pursuant to Section 4 of this Declaration of Trust.

*"Connecticut General Statutes"* or *"CGS"* means the General Statutes of Connecticut, Revision of 1958, as amended.

*"Developer"* means any individual, corporation, business trust, estate trust, limited liability company, partnership or association, or any other entity or combination thereof involved in the development of commercial construction projects. For the purpose of this Declaration of Trust, the Housing Authority of the Town of Greenwich (Greenwich Communities) shall be considered a developer.

*"Greenwich Affordable Housing Plan" or "GAHP"* is the Affordable Housing plan prepared every five (5) years by the Town's Planning Zoning Director, approved by the Greenwich Representative Town Meeting and submitted to the State of Connecticut Office of Management and Budget as required pursuant to the Connecticut General Statute under Title 8 Chapter 126a Section 8-30j while it remains effective and pursuant to any other relevant State statutes, should such statute expire, be revised or substituted.

*"Housing Trust Fund Ordinance"* means the Ordinance contained in Chapter 6, Article 8, Sections 6-324 through 6-331 of the Greenwich Code of Ordinances which is entitled

"Greenwich Affordable Housing Trust Fund" as adopted by the Greenwich Representative Town Meeting on September 27, 2021.

*"State"* means the State of Connecticut.

*"Town"* means the Town of Greenwich, Connecticut, a political subdivision of the State.

*"Trust"* means the trust fund established pursuant to this Declaration of Trust.

*"Trustees"* means the members of the Board of Trustees as defined in Section 4.1 below.

## **Section 2: Name of Trust**

The trust fund created by this Declaration of Trust shall be called the “Greenwich Affordable Housing Trust Fund” and shall be referred to as the “Trust” herein.

## **Section 3: Purpose of Trust**

The purpose of the Trust shall be the preservation of existing and the creation of new affordable rental and home ownership housing in the Town, pursuant to the current Town and Regional Plans of Conservation & Development, Affordable Housing Plan and any General Statutes of Connecticut applicable now or in the future. The preservation and creation of Affordable Housing shall include but not be limited to programs designed to further housing rehabilitation and/or development opportunities and to provide for a full range of housing choices throughout the Town for households of all incomes, ages and sizes.

## **Section 4: Board of Trustees**

1. As stipulated herein, the Greenwich Affordable Housing Trust Fund shall have a Board of Trustees (“Board” or “Trustees”) comprised of seven (7) total members, as outlined below.
2. The seven (7) Trustees shall be:
  - a. Town of Greenwich Planning & Zoning Director or such Director’s designee.
  - b. Chair of the Greenwich Planning & Zoning Commission or a member designated by such Chair.
  - c. Two (2) members of the public, with a background and expertise in finance, at least one (1) of whom shall have expertise in Affordable Housing and both of whom shall be Greenwich Town residents nominated by the Greenwich Board of Selectmen and appointed by the Greenwich Representative Town Meeting.
  - d. One (1) member of the public with legal expertise who shall be a Town resident, nominated by the Board of Selectmen and appointed by the Representative Town Meeting.
  - e. Two (2) additional at large members of the public who shall also be Town residents, nominated by the Board of Selectmen and appointed by the Representative Town Meeting.

Establishment of Unique Designations for appointed positions: Each of the five (5) appointed positions on this Trust Fund is assigned a unique designation to facilitate auditing of the appointment process over the course of time. Terms for appointed public members shall be for a period of three (3) years except for the shorter one-time Interim Terms for one (1) public member with expertise in finance and one (1) at large public member to a single term of two (2) years which is used once, to accomplish a staggering of the term expiration years of the position for the purpose of limiting the scheduled turnover of public members in a single year. When appointing a new member to this Trust Fund, the new member will receive the position designation previously assigned the person she or he is succeeding and such designation will be indicated on all notices of nomination and appointment including, but not limited to, the Call and the minutes of the Representative Town Meeting, the agenda of the committees of the Representative Town Meeting and, where appropriate, the agenda and minutes of the Board of Selectmen. Appointed members of the Board shall hold office until their successors shall have been appointed and shall qualify.

3. At its first meeting, the Board shall elect a chairperson, vice-chairperson and secretary for a one (1) year terms. Elections shall be held once per year.

4. Administrative support for the Board shall be provided by the Town's Planning & Zoning Department.
5. No Trustee shall receive a salary or other remuneration for serving on the Board.
6. Trustees may be reimbursed for reasonable out-of-pocket expenses for travel, training and other Trust-related expenses. Expenses in excess of twenty-five (\$25) shall be approved in advance by the Board, unless previously approved in the Trust's budget for such fiscal year. Expenses in excess of ten thousand dollars (\$10,000) shall be approved in advance by the Representative Town Meeting, unless previously approved in the Trust's operating expense budget for such fiscal year. Such expenses shall be included in the Trust's annual budget. All such out-of-pocket expenses shall be fully documented with receipts for expenses prior to payment by the Trust.
7. Commuting to and from Board meetings shall not be a reimbursable expense.
8. The Board shall develop a policy regarding the reimbursement of expenses.
9. The Chair may establish subcommittees and/or ad hoc task related committees to carry out the purposes of the Trust. Chairs of the subcommittees may be selected by the members of the subcommittees.
10. The Representative Town Meeting may, for cause, remove any member of the Board of Trustees, or appoint another designee, but only after that member has been provided an opportunity to be heard by the Representative Town Meeting. The term "cause" shall include, but not be limited to, four (4) consecutive unexcused absences from Board meetings.
11. Any public Trustee who ceases to be a resident of the Town shall promptly provide a written notification of the change in residence to the Chair, whereupon the Trustee shall cease to be a member of the Board and action shall be taken immediately to fill such vacancy. Notice of such resignation and appointment shall be filed with the Town and Town Clerk.
12. A public Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Chair and the Town and Town Clerk.
13. 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 nominated by the Board of Selectmen and appointed by the Representative Town Meeting to fill such vacancy for the remainder of the unexpired term, provided that in each case the said appointment and acceptance in writing by the Trustee so appointed shall be filed with the Town Clerk.

#### **Section 5: Meetings of the Board**

1. The Board shall meet at least quarterly.
2. All Board meetings and decisions shall be open to the public and duly advertised and conducted, pursuant to the requirements of the Connecticut Freedom of Information Act, as per Connecticut General Statutes Chapter 14, Sections 1-200 to 1-242
3. Each member of the Board shall have one vote.
4. Affordable Housing funding decisions shall be made by a super majority of five (5) voting members of the Board. All other decisions of the Board shall be made by simple majority of four (4) voting members of the Board.
5. The presence of four (4) voting Board members constitutes a quorum.

#### **Section 6: Powers of Trustees**

The powers of the Trustees, all of which shall be carried on in furtherance of the purposes set forth in the Housing Trust Fund Ordinance and pursuant to the provisions of this Declaration of Trust, shall include the following:

1. Expenditures. Expenditures from the Trust must be approved by the Trustees. Expenditures shall be made from the Trust only in accordance with the following procedures and requirements:
  - a. Once the Fund has, for the first time, reached a level of three hundred thousand dollars (\$300,000.00) and all other relevant conditions have been met, the Board of Trustees shall thereafter accept, on a continuous basis, requests for funds for authorized purposes from eligible parties. Eligible parties include, but are not limited to, for-profit and not-for-profit housing developers or not-for-profit organizations with the goal of furthering affordable housing, along with the Housing Authority of the Town of Greenwich (Greenwich Communities). Individuals shall not be considered eligible parties. The Board shall review and make a determination whether or not to grant such requests.
  - b. Whenever two million dollars (\$2,000,000.00) or more are available in the Trust, the Board of Trustees shall issue a Notice of Funds Available (NoFA) to solicit proposals for how to further the Town's Affordable Housing Plan. Such NoFA shall be issued no later than two (2) weeks after the first Board meeting after the monies in the Trust reach the above threshold. No later than seven (7) months after the issuance of the NoFA, the Board of Trustees shall render a decision on whether or not and how to fully or partially disburse the monies of the Fund. Any proposed expenditure over five hundred thousand dollars (\$500,000.00) approved by the Board of Trustees shall be submitted as a recommendation to the Board of Selectmen and the Representative Town Meeting. The Representative Town Meeting may reject such recommended expenditure within forty-five (45) days of receipt by a vote of two-thirds (2/3) of its members present and voting. If, within forty-five (45) days of receipt of the recommendation, the Representative Town Meeting fails to reject such recommendation, it shall be considered approved.
  - c. Funds from the Trust shall only be used for the following authorized purposes. All expenditures listed below shall be based on and prioritized by the Greenwich Affordable Housing Plan ("GAHP").
    - i. Creation of affordable rental or homeownership housing units. To encourage the development of Affordable Housing through a variety of means including, but not limited to, the provision of favorable financing to developers of Affordable Housing, or by means of the direct write-down of costs for non-profit developers of Affordable Housing, or to subsidize the acquisition of sites, existing structures or designated Affordable Housing units which comprise a portion of a larger development containing housing which is not deemed affordable to persons of low and moderate income.
    - ii. Multi-family rehabilitation program. To finance the rehabilitation, repair, renovation or alteration of existing and deteriorated multi-family residential properties in a manner that preserves or enhances the affordability of dwelling units within such properties through interest rate subsidies, or the direct subsidy of project costs.
    - iii. Limited Equity Cooperative or Condominium Conversion Properties. To assist in the acquisition, rehabilitation, repair, alteration or renovation of residential properties deemed appropriate for conversion to a "common interest community" as defined pursuant to CGS 47-202(7) and consistent with the Town's current Affordable Housing Plan.
    - iv. Studies to determine the Affordable Housing needs of Greenwich residents and for the preparation and update of the Greenwich Affordable

Housing Plan. Selection of vendors for such service shall be compliant with Greenwich Purchasing Department standards and requirements.

2. Administrative expenses arising pursuant to the execution of Trust purposes and goals
  - a. Except for payments related to preparation of the GAHP, Affordable Housing needs studies and administrative expenses, no Expenditures shall be made from the Fund in absence of an approved GAHP and all expenditures must demonstrate how they meet the goals and priorities established therein.
  - b. Any Trust funds which are required to be expended only for certain purposes shall be segregated and accounted for separately.
  - c. The Board shall follow the rules established by Town regarding Purchasing.
  - d. All expenses of the Trust shall be included and controlled in accordance with the Trust's annual operating expense budget for such fiscal year.
3. Accept and Receive Funds. The Trust may accept and receive funds, 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, Special Act, Public Act or other provision of the Connecticut General Statutes or any other source, including moneys under Section 6-327 of the Housing Trust Fund Ordinance. Additional sums may be appropriated by the Town for deposit into the Fund. The Town is authorized to and shall deposit all monies received by it for the provision of Affordable Housing into the Fund.
4. Execute Instruments. The Trust may execute, acknowledge and deliver loan agreements, grant agreements, 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.
5. Employ and Compensate Advisors and Agents. The Trust may employ advisors and agents, including but not limited to, accountants, appraisers and lawyers as the Board deems necessary and may pay reasonable compensation and expenses to all advisors and agents.
6. Reimburse Town for Services. The Trust may request services from the Town and reimburse the Town for such services, including but not limited to, budgeting, accounting and auditing, which expenses for such services shall be included in the Trust's annual budget.
7. Adjust Claims. The Trust may 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 to continue to hold the same for such period of time as the Board may deem appropriate, provided that to adjust any claim or accept any property in satisfaction of any indebtedness where the Trustees reasonably determine that the value of the claim or amount of the indebtedness is equal to or greater than \$100,000 shall require approval of the Representative Town Meeting upon not less than thirty (30) days prior written notice to the Representative Town Meeting, unless previously approved.
8. Seek Funding. The Board may seek funding resources for the Trust for Affordable Housing and promote public and private efforts to increase and improve the Affordable Housing in the Town.
9. Policies and Procedures. The Board may issue policies, procedures, goals and statements to serve as guidelines for the operation of the Trust.

### **Section 7: Acts of Trustees**

1. All instruments executed by the Chair or by a majority of the members of the Board shall be binding upon the Trust, and shall be conclusive evidence that such action has been duly authorized.
2. The Trustees shall not delegate the authority to amend or terminate the Trust and no such delegation shall be effective.
3. No Trustee shall be required to give a bond.
4. 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.
5. Where an act of the Trustees requires prior written notice to the Representative Town Meeting, notice shall be deemed given when addressed to the Representative Town Meeting and filed with the office of the Town Clerk.

### **Section 8: Budgeting, Reporting and Audit Requirement**

1. The Board shall prepare an annual operating expense budget for the Trust. Said budget shall be incorporated into the Planning and Zoning Department's budget and submitted to the Office of the First Selectman, the Board of Estimate & Taxation, the Representative Town Meeting, and the Town Comptroller in compliance with Town of Greenwich mandated deadlines and requirements.
2. Other than expenditures made pursuant to Section 6.1 above, no liability shall be incurred or expenditure made by the Trust which is not provided for in the annual budget, nor shall the Comptroller pay out of any money for any purpose not authorized.
3. The annual operating expense budget and any revisions shall be posted on the Town's website for public inspection, and shall be available in hardcopy at the Town's Planning & Zoning Department and the Town Clerk's office for review during normal business hours.
4. The Trust's accounts and records shall be included in the Town's Comprehensive Annual Report and shall be subject to annual independent audit by the independent auditor selected by the Town
5. The Board shall, at the end of each fiscal year ending June 30th, prepare a report listing all expenditures and projects supported in said fiscal year, how they address Affordable Housing needs and priorities in accordance with the GAHP and how they meet the criteria of the Affordable Housing Trust Fund Ordinance. Said report shall be completed and submitted to the Planning & Zoning Commission, the Board of Selectmen and the Representative Town Meeting by no later than September 15th of the following fiscal year. The report shall also be posted on the Town's website for public inspection and shall be available in hardcopy at the Town's Planning & Zoning Department and Town Clerk's office for review during normal business hours. The Chair of the Board shall present the report to the Representative Town Meeting and shall be available to answer any questions raised by the members of the Representative Town Meeting.
6. The Trust shall be considered an audited agency for purposes of Chapter 111 of the Connecticut General Statutes and shall have all of its accounts audited by an independent auditor at least once annually in accordance therewith.

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

1. No person may serve as a member of the Board of Trustees who then has or within the previous year has had an economic interest in or management control over a proposed project or existing property within the Town Greenwich with an Affordable Housing

component. Residing in Affordable Housing shall not be considered an economic interest.

2. Any Board of Trustees member who resides in an Affordable Housing development or unit shall not participate in any expenditure decision affecting the property in which he/she resides.
3. 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.
4. The Trustees shall be considered municipal employees for the purposes of Section 7-101a of the Connecticut General Statutes and the Town shall protect and save harmless the Trustees as provided therein, provided any costs and expenses shall be an expense of the Trust.
5. The Trustees shall not be eligible for any benefit or retirement programs of the Town by virtue of their service as Trustees.
6. Any applicant who has paid a fee in lieu pursuant to the Town of Greenwich Building Zone Regulations and CGS Section 8-2i shall not be eligible to apply for funds from the Trust for the same project.

#### **Section 10: Town Comptroller as Custodian of Trust Funds**

1. The Comptroller of the Town of Greenwich shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds.
2. The Comptroller, working with the Town Treasurer, shall invest the Trust's funds in the manner authorized by Title 7, Chapter 112, Sections 7-400 to 7-403 of the General Statutes of Connecticut.
3. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust.
4. As custodian, the Comptroller shall issue checks or transfer moneys as directed by the Trustees and approved by the Comptroller in accordance with the Trust's Annual Operating Expense Budget or the Trustees' formal vote on Affordable Housing proposals.
5. No monies held in the Trust GAHTF Account, including interest and dividends earned, shall be transferred to any other account within the Town's operating or capital budgets.

#### **Section 11: Duration of the Trust**

1. This Trust shall be perpetual, notwithstanding that from time to time the Trust may be unfunded. Notwithstanding the foregoing, this Trust may be terminated by vote of the Representative Town Meeting.
2. 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 Representative Town Meeting for Affordable Housing purposes. In making any such distribution, the Trustees shall, subject to the approval of the Representative Town Meeting, liquidate all or any portion of the Trust property.
3. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

#### **Section 12: 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 State of Connecticut.

**Section 13: Filing**

This Declaration of Trust shall be filed with the GreenwichTown Clerk.

**Section 14: Amendments**

This Declaration of Trust may be amended from time to time 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 and the Representative Town Meeting, provided that in each case, a certificate of amendment shall be filed with the Town Clerk.

**Section 15: Record to be Conclusive; Certificate as to Facts**

Every contract or other instrument executed pursuant to the powers granted herein and as appear from instruments or certificates recorded with the Town of Greenwich 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 and instruments of amendment pursuant to Section 14 and an instrument of termination pursuant to Section 11 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 16: 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. (The next page is the signature page.)

IN WITNESS WHEREOF, this Declaration of Trust is hereby approved.

Dated: \_\_\_\_\_, 2021 \_\_\_\_\_

A.F. Camillo, First Selectman \_\_\_\_\_

Carmella Budkins, Town Clerk, does hereby certify that the foregoing Declaration of Trust was approved by the Representative Town Meeting held on \_\_\_\_\_, 2021.