

**TOWN OF HARWICH, MASSACHUSETTS**

**COMMUNITY PRESERVATION ACT**

**GRANT AGREEMENT FOR**

**Harwich Affordable Housing Trust**

This GRANT AGREEMENT made this \_\_\_\_\_ day of September, 2019, by and between the Town of Harwich, a municipal corporation duly organized under the laws of Massachusetts and having its usual place of business at Seven Thirty-two Main Street, Harwich, MA 02645, acting by and through its Board of Selectmen (hereinafter the “TOWN” or “Board of Selectmen”, as applicable), and the Town of Harwich Affordable Housing Trust, established pursuant to Chapter 44, Section 55C of the Massachusetts General Laws, and under Declaration of Trust recorded with the Barnstable Registry of Deeds in Book 31507, Page 299, #43476 (hereinafter, the “TRUST”), having its usual place of business at: Seven Thirty-Two Main Street, Harwich, MA 02645:

**WITNESSETH:**

WHEREAS, the Harwich Community Preservation Committee (hereinafter, the “COMMITTEE”), invited the submission of proposals for grants of funds for purposes consistent with the Community Preservation Act (“CPA”), G.L. c.44B; and

WHEREAS, in response thereto, the TRUST submitted a proposal for funding for purposes of pursuing affordable housing opportunities in Harwich, hereinafter referred to as the “Project”, and the COMMITTEE reviewed and approved the Project and recommended that the May 7, 2018 Annual Town Meeting appropriate the funds herein described for the purposes of the Project; and

WHEREAS, Town Meeting on May 7, 2018 pursuant to Article 58 (the “Article”) voted to appropriate Five Hundred Thousand Dollars (\$500,000) from the Community Preservation Fund Community Housing Reserves Account (the “Funds”); and

WHEREAS, the purpose of the within Grant Agreement is to ensure that the Funds are used for the acquisition, creation, preservation and support of community housing as defined by the Community Preservation Act, G.L. c.44B; and

WHEREAS, the Board of Selectmen has conferred with the COMMITTEE concerning the terms of this Agreement, and both have approved the terms of this Agreement, as evidenced by their signatures attached hereto;

NOW THEREFORE, the TOWN and the TRUST agree as follows:

1. Contract Documents. The Contract Documents consist of this Grant Agreement, the CPA application approved by the COMMITTEE dated \_\_\_\_\_, 2018 (the "Application"), a certified copy of the Article and all documents attached thereto. The Contract Documents constitute the entire Agreement between the parties concerning the Application, and all are as fully a part of this Agreement as if attached hereto.

2. Term. The Work shall be completed within three years of the execution of this Grant Agreement (the "Completion Date"), unless the COMMITTEE grants an extension for good cause shown.

3. The Work. The Work consists of the Project, as described in the Application attached hereto as Attachment A and the following additional conditions:

a) Notwithstanding the TRUST's bylaws, all funds expended pursuant to this Grant Agreement shall be limited to the allowable spending purposes as defined under M.G.L c.44B.

b) Every six months until the Completion Date, the TRUST shall provide the COMMITTEE with a written update on the progress toward completion of the Work. A final report, including digital photo documentation of the project where appropriate, is due within 30 days of the Completion Date.

c) No more than ten percent (10%) of Funds can be used for expenses related to the administration and operation of the TRUST.

d) Consistent with the provisions of M.G.L. c.44B Section 5(b)(2), under no circumstances shall the Funds be used to rehabilitate existing community housing units.

e) Consistent with the provisions of M.G.L. c.44B Section 5(b)(2), when creating community housing the TRUST shall, wherever possible, reuse existing buildings or construct new buildings on previously developed sites.

f) Consistent with the provisions of M.G.L. c.44B Section 6, the Funds shall not replace existing TOWN operating funds nor reimburse the TOWN for services provided to the TRUST.

g) If the Funds are the sole funding source for the acquisition of real property, the property shall only be used for Community housing as defined in M.G.L. c.44B Section 2. In all other cases, the Funds may be used to cover a share of the project expenses proportionate to the part of the project that will qualify as Community housing as defined in M.G.L. c.44B Section 2. The TRUST shall track the cost of the allowable scope through a reasonable means of cost estimating, and only use the Funds for the allowable portion of the project cost.

4. Contact. The TRUST shall identify in writing a contact person responsible for the administration of the Project.

5. Restriction. With respect to any real property purchased using the Funds or housing created or preserved using the Funds, the TRUST shall execute or obtain a perpetual affordable housing restriction meeting the statutory requirements of G.L. c.184 and G.L. c.44B, §12, and running to the benefit of the TOWN. The deed restrictions executed for each unit of housing created or preserved pursuant to this grant must be approved and accepted by the TOWN.
6. Funding. The TOWN shall pay the TRUST the Funds within 30 days of the execution of this Grant Agreement. The TRUST shall manage the Funds in accordance with its Declaration of Trust and related by-laws.
7. Liability of the TOWN. The TOWN's liability hereunder shall be to make the payment specified in Paragraph 6 of this Grant Agreement and the TOWN shall be under no further obligation or liability. Nothing in this Grant Agreement shall be construed to render the TOWN or any elected or appointed official or employee of the TOWN, or their successors in office, personally liable for any obligation under this Grant Agreement.
8. Independent Status. The TRUST acknowledges and agrees that it is acting in a capacity independent of the TOWN.
9. Indemnification. The TRUST shall indemnify, defend, and hold the TOWN and its departments, committees, officers, employees, and agents harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorneys' fees, arising out of or directly from the TRUST's performance of the Work that is the subject of this Grant Agreement or the negligence or misconduct of the TRUST or its agents or employees.
10. Record Keeping. The TRUST shall keep such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the TOWN. Should the TRUST have multiple funding sources, the TRUST shall track specific expenditures of the Funds separate from other funding sources. The TOWN shall have full and free access to such records and may examine and copy such records. The TRUST further agrees to meet from time to time with the COMMITTEE or its designee(s), upon reasonable request, to discuss expenditures of the Project Funds.
11. Successors and Assigns. This Grant Agreement is binding upon the parties hereto, their successors, assigns, and legal representatives. The TRUST shall not assign or otherwise transfer this Grant Agreement, in whole or in part without the prior written consent of the TOWN.
12. Termination. This Grant Agreement shall terminate upon the TRUST's final disbursement of all Project Funds and the delivery of copies of any restrictions recorded pursuant to paragraph 6 hereof. In the event that the TRUST fails to fulfill its obligations under the terms of this Grant Agreement as determined by the TOWN, the TOWN shall have the right, in its sole discretion, to terminate this Grant Agreement upon written notice to the TRUST. Upon receipt of such notice, the TRUST shall refund all undisbursed Project Funds to the TOWN, and such funds shall be returned to the CPA account from which the Funds were appropriated.

13. Compliance with Laws. The TRUST shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the Work undertaken pursuant to this Grant Agreement. The TRUST or its designees shall be responsible for obtaining any necessary licenses, permits, and approvals required for the performance of such Work.

14. Notice. Any and all notices, or other communications required or permitted under this Grant Agreement, shall be in writing and delivered by hand or mailed postage prepaid, or by other reputable delivery service, to the parties at the addresses set forth on page 1 hereof or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, or if so mailed, when deposited with the U.S. Postal Service or if sent by private overnight or other delivery service, when deposited with such delivery service.

15. Severability. If any term or condition of this Grant Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Grant Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

16. Governing Law. This Grant Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the TRUST submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Grant Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

TOWN OF HARWICH

TOWN OF HARWICH AFFORDABLE

BOARD OF SELECTMEN

HOUSING TRUST

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TOWN OF HARWICH

COMMUNITY PRESERVATION COMMITTEE

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