

DECLARATION OF TRUST

ORLEANS CONSERVATION TRUST
Draft As Amended and Restated – 2_9_15

The undersigned Trustees, being all the incumbent Trustees as of this date, acting pursuant to the provisions of Article X of the Declaration of Trust dated 18 April 1970 establishing the Orleans Conservation Trust (recorded April 30, 1970, in the Barnstable County Registry of Deeds in Book 1470, Page 432, and with the Barnstable County Registry District of the Land Court as Document No. 181,052, as the same may have been amended by instruments of record), hereby adopt the following Amended and Restated Declaration of Trust of the Orleans Conservation Trust. This Amended and Restated Declaration of Trust has been approved by the Members in accordance with Article X of the Declaration of Trust dated 18 April 1970.

Establishment: On 18 April 1970, Malcolm M. Dickinson, Osborne Earle, Reginald L. Higgins, Malcolm R. Hobbs, Arthur B. Nichols, Laurin C. Peterson and Orin Tovrov, all of Orleans in the County of Barnstable and Commonwealth of Massachusetts, acknowledged the receipt of property and agreed for themselves and their successors in trust to hold the same together with such other property and funds as may be and have been added thereto for the purposes hereof in trust nevertheless for the benefit of all the inhabitants of the Town of Orleans in the manner and under the terms and conditions herein set forth.

ARTICLE I – NAME OF THE TRUST

This Trust may be referred to as the Orleans Conservation Trust and the Trustees may be referred to as Trustees of the Orleans Conservation Trust. This Trust and other instruments which are pursuant to the provisions hereof are to be recorded in a timely manner with the Barnstable County Registry of Deeds and the Barnstable Land Registry District of the Land Court.

ARTICLE II – PURPOSE

The purpose of the Orleans Conservation Trust shall be to acquire and hold land in its natural state for conservation purposes forever.

In furtherance of the above purpose:

- The Trust shall ~~manage and~~ promote the conservation and preservation of woodlands, wetlands, open areas and wildlife habitat in Orleans and its

surrounds for current and future generations, including efforts to reduce the density of development for conservation purposes; and shall manage the land under its control for conservation and preservation;

- The Trust shall solicit and acquire by gift and purchase, real estate and interests therein and personal property of every sort and description, and shall use such property in such manner as the Trustees deem most appropriate to carry out the Trust's purposes;
- The Trust shall work to educate the public in the importance of preserving land for conservation purposes in Orleans, through such efforts as developing and conducting programs, lectures, and walks; promoting sound resource management and the scientific study of natural history; and involving and engaging young people in the purpose and activities of the Trust; and
- The Trust intends to supplement and lessen the burden of local government in providing open space and land for natural resource protection for its citizens as envisioned in Article 97 of the Amendments to the Massachusetts Constitution.

No substantial part of the activities of the Trust shall consist of propaganda or otherwise attempt to influence legislation or regulation. In addition, any such activities must be approved by an affirmative vote of three-quarters of the Trustees in office. The Trust shall not participate in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of this Article, the Trust is organized exclusively for one or more of the purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any activities not permitted to be carried on by an organization exempt from Federal Income Tax under Internal Revenue Code 501(c)(3) or corresponding provisions of any subsequent Federal Tax laws.

ARTICLE III – TRUSTEES

Eligibility to Serve as a Trustee: Trustees must be Members who are residents or owners of real property in the Town of Orleans. For the purposes of this Article, a Trustee shall be considered an owner of real property held in the name of the Trustee, the Trustee's spouse or the Trustee's family trust. Any OCT Trustee who ceases to be a resident or owner as herein defined shall cease to be a Trustee.

Tenure of Office: Trustees shall be elected at the Annual Meeting for terms of three (3) years. Each of the Trustees shall be elected by majority vote of the Members to a term of three (3) years and shall serve until his/her successor is elected; provided however, that Trustees elected to fill an unexpired term shall be elected for the remainder of such term if less than three years, and Trustees appointed by the Board of Trustees to fill a vacancy as herein provided shall serve until the next Annual Meeting. -A Trustee may be

nominated for an additional term at the discretion of the Nominating Committee, up to a maximum of four (4) consecutive three-year terms. Any incumbent Trustee, as of the date of the filing of the Amendment and Restatement of this Declaration of Trust with the Barnstable County Registry of Deeds and the Barnstable Land Registry District of the Land Court, whose years of service exceed these new limits, may continue to serve as a Trustee for four (4) additional three-year terms. To the extent reasonably possible, Trustees' terms shall be staggered so that approximately one-third of the terms expire each year. Trustees shall hold office until their successors are duly elected or appointed.

Election of Officers: The Officers of the Trust shall include a President, a Vice-President, a Treasurer and a Clerk/Secretary, and any other officer as approved by the Trustees from time to time. The Officers shall be elected annually by the Trustees as soon after the Annual Meeting of Members as convenient. No trustee shall hold more than one office.

Resignation, Removal and Retirement of Trustees: Any Trustee may resign at any time by submitting a letter of resignation to the President of the Trust by mail, email, telefax or any other means commonly accepted at the time of submittal. All such resignations shall be effective immediately upon receipt, unless otherwise specified in the terms of the resignation. Resignations are final upon submittal and shall not be revocable, amendable or conditional except that if the resignation is to take effect at a specified future date. In that case, the Trustee may unconditionally withdraw the resignation at any time prior to the effective date by notice in writing to the President of the Trust.

Any Trustee may be removed for cause by the affirmative vote of three-quarters (3/4) of the Trustees in office at any meeting of the Trustees in accordance with the guidelines established by the Trust's Policies and Procedures..

If a Trustee resigns, is removed or is otherwise unable to serve, ~~the other Trustees in office may, by a two-thirds majority vote, a two-thirds majority vote of all sitting Trustees can~~ appoint a replacement Trustee to serve until the next Annual Meeting, at which time, the unexpired term will be filled by a candidate nominated by the Nominating Committee and elected by the Members.

Recording Changes in the Composition of the Board of Trustees: All changes in the composition of the Board, whether due to the election, appointment, resignation, retirement or removal of Trustees shall be duly recorded in a timely manner with the Barnstable County Registry of Deeds and the Barnstable Land Registry District of the

Land Court. Members shall be notified of such changes concurrently with their being recorded as referenced above.

ARTICLE IV – NOMINATING AND ELECTION PROCESS FOR TRUSTEES AND NOMINATING COMMITTEE

Nomination and Election of Trustees and Members of the Nominating Committee: There shall be at least seven (7) and not more than thirteen (13) Trustees. Only trustee candidates solicited, vetted and presented as a slate to the membership by the Nominating Committee shall be elected or re-elected at the Annual Meeting.

The Nominating Committee shall consist of five voting (5) members and two (2) non-voting alternates.

- Two (2) voting members of the Nominating Committee and one (1) non-voting alternate shall be appointed by majority vote of the Trustees from among those Trustees in office whose terms do not expire during the current year.
- Three (3) voting members of the Nominating Committee and one (1) non-voting alternate shall not be Trustees, but shall be individuals who have been solicited from the general membership, vetted and presented as a slate to the membership by the current Nominating Committee for election at the Annual Meeting. The Nominating Committee shall serve until the succeeding Nominating Committee is elected by the membership.

If, during the course of the Nominating Committee members' terms in office, a voting member is no longer able to serve, the corresponding Trustee or non-Trustee alternate shall automatically assume the vacant position as a voting member of the Committee for the remainder of the term.

If, for any reason, the number of voting Nominating Committee members falls below five (5), the Trustees by majority vote may appoint Trustee or non-Trustee individuals to fill the corresponding vacancies for the remainder of the Nominating Committee's annual term. With input from the Trustees, the Nominating Committee shall determine and publicize the qualifications for of candidates ~~for members of for~~ both the Nominating Committee and the Trustees and shall solicit recommendations for candidates from the Members.

Further guidance regarding nominating procedures and the planning for and conduct of the election of the Nominating Committee and Trustees is outlined in the Trust's Policies & Procedures.

ARTICLE V – MEMBERS OF THE TRUST

Members of the Trust: Annual membership in the Trust is granted to individuals, Family Trusts and other organizations.

- Any individual who makes a donation equal to the minimum dues level set for individual membership for a particular year by the Trustees shall be considered a member of the Trust and shall be entitled to cast one vote at all called meetings or elections of the Trust.
- Each of the individuals whose donation as a couple is equal to or greater than two individual memberships for a particular year shall ~~each~~ be considered a member of the Trust, and shall ~~each~~ be entitled to cast one vote at all called meetings or elections of Members of the Trust.
- Anyone who has placed a conservation restriction on land in the Town of Orleans, and so advised the Trust, or donated or sold land to the Trust, during a membership year, shall be a member of the Trust for that membership year and shall be entitled to cast one vote at all called meetings or elections of the Trust.
- Family Trusts and other organizations whose donation for the year equal the level set for organizational membership by the Trustees shall be ~~granted organizational memberships and shall be~~ entitled to cast one vote at all called meetings or elections of the Trust. A Family Trust or organizational membership does not preclude the individual members of that Family Trust or organization from becoming individual members as outlined above.
- Anyone holding the title of Life Member, as shown in the records of the Trust at the time of this amendment, shall continue to hold this title and is eligible to attend and vote at all meetings of the Members of the Trust.

The Trustees may at their sole discretion determine that any contribution to the Trust shall be considered as a payment of membership dues for that membership year.

For the purposes of this Article, "to vote" means either in person or by absentee ballot by mail or online.

Membership Year: For the purpose of determining eligibility for voting, the membership year shall be from July 1 through the following June 30, unless otherwise determined by

the Trustees. All members during this period shall be eligible to vote at the Annual Meeting that follows the end of the membership year, and eligible to vote at any Special Meetings during the membership year and during the membership year immediately following.

Member Records: The Trust shall keep a record of all names and addresses, including electronic addresses if available, of all members of the Trust. A Member shall keep the Trust informed of the Member's current address and contact information for purposes of receiving notices from the Trust.

ARTICLE VI – MEETINGS OF THE MEMBERS OF THE TRUST

Meetings of the Members of the Trust: An Annual Meeting of the Trust will be held each year at a time and place determined by the Trustees.

A Special Meeting of the Trust shall be scheduled if requested by either

- (i) A resolution of a majority of the Trustees; or
- (ii) A written request for a Special Meeting stating the purposes for such meeting and signed by at least 25 Members of the Trust.

The Special Meeting called under (ii) above shall be scheduled no later than four (4) months from the date of the request.

Notification: Notice of all meetings of Members of the Trust, and notification of matters to be voted on, shall be sent to all Members, at an address for the Member appearing in the records of the Trust, at least 30 days prior to the meeting. The meetings shall also be publicly advertised no later than ten (10) days prior to the meeting.

All Trust Members may vote on all matters noticed to be voted on in person at the meeting or by absentee ballot, either by mail or online.

Treasurer's Report: The Annual Meeting will also include an annual report by the Treasurer.

Quorum for Meetings of the Members: A quorum of the membership is required to conduct official business at a meeting of the Members of the Trust. Only Members in attendance at the meeting shall be counted toward the quorum. For purposes of this article, a quorum shall be met if the number of Voting Members in attendance is equal to or greater than the lesser of 5% of all Members qualified to vote, or 50 members.

Before calling a meeting of the Members to order, the Clerk shall verify the number of Voting Members present at the meeting. If a quorum is not achieved among those in attendance at the meeting, an informal meeting may proceed, but no official business or voting may be conducted except for those noticed issues where the combined number of Members voting in person plus the absentee votes, received either by mail or online, total the number of ballots required.

Voting: As defined in Article V, Members of the Trust may vote in person at a meeting or by absentee ballot, either by mail or online, on any and all noticed matters at any meeting of Members, including the election of Trustees. A valid vote on all noticed matters requires a combined receipt of votes in person, and/or absentee ballots, either by mail or online, equal to or greater than the lesser of 10% of all Members qualified to vote, or 100 members.

Notwithstanding the foregoing, a different number of votes is required under Articles XI and XII. See the respective Articles for specific requirements.

In order to be counted towards the vote, absentee ballots, either by mail or online must be received by the Orleans Conservation Trust for validation no later than the deadline posted for their receipt. Further guidance regarding voting procedures and the planning for and conduct of the Annual Meeting and any Special Meetings is outlined in the Trust's Policies & Procedures.

ARTICLE VII – POWERS OF TRUSTEES

The Trustees, for the carrying out of the above purposes and except as herein otherwise specifically provided, shall have the same powers on behalf of the Trust with respect to all real and personal estate at any time held by the Trust as if they were the absolute owners thereof, and without limiting the foregoing generality;

- To solicit and accept gifts, devises and bequests, or otherwise acquire any real or personal property;
- To invest any of the Trust property in such manner as they may deem advisable without being limited as to the kind or amount of any investment;
- To sell and exchange any real or personal property or any interest therein for such consideration and upon such terms and conditions as they may deem advisable, except that no land held under a charitable trust for conservation purposes may be sold or exchanged;
- To join with others in the acquisition of real property or any interest therein;

- To borrow money and mortgage or pledge any part of the Trust estate assets and issue bonds, notes or other evidence of indebtedness;
- To join with others in borrowings, mortgages and pledges and to guarantee and become surety on obligations of others, in transactions in which the Trust has an interest;
- To execute as lessor or as lessee leases, including leases for terms expiring after the possible expiration of the Trust;
- To hold securities or other property or any interests in property in the name of agents or nominees without disclosure of the Trust;
- To restore, construct, repair and maintain buildings and other improvements and establish such reserves as they deem necessary therefor;
- To pay, compromise or adjust all obligations incurred and rights acquired in the administration of the Trust;
- To obtain advice of counsel and to rely thereon, and to employ such other persons, agents, brokers, managers, accountants, or advisors as they may deem advisable; and
- To execute, acknowledge and deliver all such contracts, deeds, mortgages, leases, discharges and partial releases of mortgages, or other instruments as they may deem advisable in the course of the administration of the Trust.

The Trustees shall refrain from exercising any powers in such manner as to disqualify the Trust from Federal Income Tax exemption as a charitable organization.

By a two-thirds vote of Trustees in office, the Trustees may adopt, maintain and amend a Policies and Procedures document that provides guidance on matters relating to the administration and operations of the Trust, so long as said Policies and Procedures do not conflict with any item expressed in the Declaration of Trust Document.

ARTICLE VIII– ACTS OF TRUSTEES

A majority of the Trustees may exercise any or all of the powers of the Trustees hereunder, except for the delegation of authority hereinafter provided for, and except for the following: as described in Article II hereof with respect to the power to influence legislation or regulation; as described in Article III hereof with respect to the power to remove Trustees; as described in Article VII with respect to the power to amend the Trust's Policies and Procedures; as described in Article XI with respect to amendment of this Declaration of Trust, and as described in Article XII hereof with respect to the power

of termination; and may execute on behalf of the Trustees any and all instruments except as aforesaid with the same effect as though executed by all of the Trustees.

The Trustees may by instrument executed by all the Trustees delegate to any attorney, agent or employee such other powers and duties as they may deem advisable, including power to execute, acknowledge or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust.

No Trustee shall be required to give bond. No license of Court shall be requisite to the validity of any transaction entered into by the Trustees with respect to the Trust Estate. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do or see to the application of anything paid to or upon the order of the Trustees.

No Trustee shall be liable for acts, negligence or defaults of any other Trustee or any employee, agent or representative of the Trustees selected with reasonable care, nor for errors of judgment, nor mistakes of law or fact made in good faith nor for reliance in good faith on advice of counsel nor for other acts or omissions in good faith.

ARTICLE IX– LIABILITY

Neither the Trustees nor any agent, employee, or Officer of the Trust shall have the power to bind any Member of the Trust.

~~No Neither the~~ Trustees, the Officers, employees, volunteers, ~~nor the or~~ Members of the Trust shall be personally liable hereunder.

All persons extending credit to, contracting with or having any claim against the Trustees on behalf of the Trust shall look only to the funds and property of the Trust for payment of any contract or claim, or for the payment of any debt, damage, judgment or decree or for any money that may otherwise become due or payable to them from the Trustees on behalf of the Trust, so that neither the Trustees nor the Members shall be personally liable therefor.

If any Trustee or Officer of the Trust shall at any time for any reason be held to be under any personal liability as such Trustee or Officer of the Trust on account of any act or omission in good faith as Trustee or Officer of the Trust, then such individual shall be held harmless and indemnified out of the Trust Estate against loss, cost, damage or expense by reason of such liability. -When approved by the Trustees and on a case by

case basis, any employee, volunteer or Member held to be under personal liability on account of any act or omission in good faith on behalf of the Trust may be held harmless and indemnified.

Whenever practicable in the judgment of the Trustees this instrument shall be referred to and an express stipulation that neither the Trustees nor the Members shall be personally liable shall be inserted in contracts or instruments creating liability. In no case, however, shall the absence of such references or stipulation affect the Trustees' or the Members' right of reimbursement from the Trust property.

ARTICLE X – ACCOUNTS

The Trustees shall render an account to the Members annually at the Annual Meeting of the Members. The fiscal year of the Trust shall, unless changed by the Trustees, be the calendar year. After the close of the fiscal year, the Treasurer shall arrange for an audit or review of the financial records and accounts by a qualified accounting firm.

ARTICLE XI– AMENDMENTS

This Declaration of Trust may be amended from time to time, except as to exemption of the Trustees and the Members from personal liability and except that no amendment shall be made which shall disqualify the Trust from Federal Income Tax exemption as a charitable organization. This Amendment shall pass by an instrument in writing signed by all the Trustees and then approved by vote of the Members as described herein.

A proposed Amendment may be considered only at a Special Meeting of the Members called for that purpose and only when accompanied by an instrument of approval signed by all Trustees. Approval of such an Amendment requires

- i. an affirmative vote by two-thirds of those voting (either by mail, online or in person); and
- ii. the total number of votes cast must be greater than or equal to the lesser of 20% of the total number of Members qualified to vote, or 200 Members.

After an Amendment is approved, the instrument of amendment or a certificate thereof and a certificate of the vote shall be recorded in a timely manner with said Registry of Deeds and the Barnstable Land Registry District of the Land Court.

ARTICLE XII – DURATION OF THE TRUST

This Trust, being a charitable trust, shall be of indefinite duration.

However, a proposal to terminate the Trust may be considered only at a Special Meeting of the Members called for that purpose and only when accompanied by an instrument of approval signed by all Trustees. Approval of such termination requires

- i. an affirmative vote by three-quarters of those voting (either by mail, online or in person) and
- ii. the total number of votes cast must be greater than or equal to the lesser of 30% of the total number of Members qualified to vote or 300 Members.

The instrument of termination together with a certificate of the vote shall be duly recorded in a timely manner with the Barnstable County Registry of Deeds and the Barnstable Land Registry District of the Land Court.

Upon the termination of the Trust, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be distributed to such other charitable organizations exempt from Federal Income Tax and entitled to hold land and conservation restrictions for conservation purposes, and exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. The Trustees in their discretion shall determine the organization(s) best fitted to carry out the purposes of this Trust, in such proportions as the Trustees shall in their discretion determine.

In making any such distribution the Trustees may sell all or any portion of the Trust property, except land held under charitable trust for conservation purposes, 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 completed.

ARTICLE XIII – 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, who appear from instruments or certificates recorded with the Barnstable County Registry of Deeds or the Barnstable Land Registry District of the Land Court, to be Trustees hereunder shall be conclusive evidence in favor of every 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, except that delegations of authority pursuant to Article VIII hereof and instruments of amendment pursuant to Article XI hereof and an instrument

of termination pursuant to Article XII hereof shall be conclusive only if it appears that the delegations, amendments or termination have been executed by all the Trustees.

Any Trustee, as appears from instruments or certificates recorded with the Barnstable County Registry of Deeds or the Barnstable Registration District of the Land Court to be a Trustee hereunder, may execute and deliver a certificate as to who are the Trustees of the Trust, or as to the existence or nonexistence of any fact or facts, necessary to be proven as a condition for any act or acts by the Trustees, or which for any other reason may be germane to the affairs of the Trust, and any person dealing with the Trust may rely on the truth of any fact or statement made in said certificate.

ARTICLE XIV – TAX EXEMPTION

The income from the Trust shall be distributed at such time and in such manner as not to subject the Trust to tax under Sec. 4942 of the Internal Revenue Code. The Trustees may not engage in any act of self-dealing as defined in Sec. 4941(d) of said Code, retain any excess business holdings as defined in Sec. 4943(c) of said Code, make any investments in such manner as to subject the Trust to tax under Sec. 4944 of said Code, or make any taxable expenditures as defined in Sec. 4945(d) and in such manner as not to subject the Trust to tax under Sec. 4942 of said Code.

No part of the net earnings of this Trust shall enure or be payable to or for the benefit of any private individual or corporation.

ARTICLE XV – 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.

ARTICLE XVI – ROBERT’S RULES OF ORDER

In the event a question arises not covered or laid out specifically in the Trust’s Declaration of Trust, or in the Trust’s Policies and Procedures, Robert’s Rules of Order will apply.

ARTICLE XVII– SEVERABILITY

2/9/2015

If any provision of the Declaration of Trust shall to any extent be held invalid, the remainder shall not be affected.

ARTICLE XVIII– RESTATEMENT

This Restated Declaration of Trust dated [DATE], upon its recording in the Registry of Deeds and the Barnstable Land Registry District, shall replace in its entirety the Original Declaration of Trust dated 18 April 1970 and all previous amendments recorded thereto.

WITNESS the execution hereof under seal this day of [DATE] :

[current Trustees sign here]

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

[Date]

Then personally appeared the above-named [NAME], President, and Trustee of the Orleans Conservation Trust, and proved to me through satisfactory evidence of identification, which was personal knowledge of identify, to be the person whose name is signed on the document, and acknowledged he is duly authorized to act on behalf of the Trust, and further acknowledged the foregoing instrument to be the free act and deed of said Trust, before me.