

**REVISED DECLARATION OF TRUST**

**Adopted June 16, 2005**

**Amended Aug. 23, 2005**

**Section 1.2 Amended by City Ordinance Signed Sept. 15, 2005**

**Amended July 31, 2008**

**Amended January 17, 2013**

**THE BOSTON GROUNDWATER TRUST**

KNOW ALL MEN BY THESE PRESENTS that the Collector-Treasurer of the City of Boston, hereinafter referred to as the "Custodian", hereby declares that he has received on behalf of The Boston Groundwater Trust Ten Dollars (\$10.00) from a donor, whose name, together with the names of all other donors to this Trust and the amounts contributed by each, shall be kept by the Custodian as part of the Trust's permanent records, and that he shall hold said contribution and all other amounts paid to him hereunder, for the uses and purposes, and subject to the duties and powers herein set forth.

**ARTICLE 1. NAME AND PURPOSE**

**Section 1.1 Name**

This Trust shall be known as THE BOSTON GROUNDWATER TRUST

**Section 1.2 Purpose**

The Trust is established to promote the public health, safety, convenience, and welfare by monitoring groundwater levels and making recommendations to raise, restore, or protect the water table in areas where it is low to protect wood pile and other types of foundations of buildings. For that purpose, the Trust shall engage engineers, contractors and other professionals the Trustees deem necessary in order to reactivate existing observation wells and to install new observation wells in the City of Boston in order that the ground water levels may be monitored by the Trust, the Inspectional Services Department of the City of Boston, or by any future agency of the City of Boston responsible for building safety and inspection. The Trust shall also engage engineers, contractors, and other professionals to analyze the data from said monitoring, conduct studies with regard thereto and make recommendations regarding short term and long term corrective measures in connection therewith and to file reports on the results of such monitoring, studies, and recommendations to the City of Boston.

No funds, however, shall be utilized by the Trustees to engage or employ any person who is an employee of the City of Boston or any entity in which such an employee has an interest.

## **ARTICLE 2. DISTRIBUTION AND USE OF PRINCIPAL INCOME**

### **Section 2.1 Method**

All distributions and payments of both principal and income shall be made by a majority of Trustees then in office. No one dealing with the Trustees need see to the application of anything paid or transferred to or upon the order of the Trustees.

### **Section 2.2 Distribution Amount**

During each year, the Trustees may disburse as gifts, grants, secured or unsecured loans an amount equal to the net annual income of the Trust plus so much of the principal as the Trustees on their discretion may deem to be in the best interest of the Trust.

### **Section 2.3 Purpose of Distributions**

All distributions or disbursements of this Trust shall be made only for the purpose set forth in Article I, Section 1.2 of this Declaration of Trust.

### **Section 2.4 Methods of Disbursements**

Funds may be disbursed to individuals and private or public, profit or not-for-profit developments entities in the forms of gifts, grants, secured loans or in such manner as the Trustees may deem necessary and appropriate to accomplish the purposes of this Trust. Prior to accepting any request for funds, the Trustees shall establish written rules and regulations for evaluating application to the Trust for funds, and for insuring that the funds shall be used exclusively for the purposes of this Trust and for no other purpose; a copy of such rules and regulations shall be filed with the City Clerk of the City of Boston.

### **Section 2.5 Limitation**

The Trustees shall not engage in any activity and shall not disburse any funds, except in a manner consistent with the requirements of the Internal Revenue Code of 1954, as amended (the "Code"), or any similar provisions of subsequent revenue acts as they may pertain to entities orga-

nized and operating exclusively for charitable purposes, and in a manner consistent with Chapter 68 of the Massachusetts General Laws.

## ARTICLE 3. BOARD OF TRUSTEES

### Section 3.1 Composition

The Board of Trustees (the "Board") shall consist of twelve(12) individuals (the "Trustees") who shall serve in a fiduciary capacity without compensation for services rendered hereunder; provided, however, that each Trustee shall be reimbursed by the Trust for all reasonable expenses incurred in connection with the administration of this Trust and approved by the Trustees.

The Board shall consist of the following persons, each of whom shall be and remain a City resident or maintain their place of business within the City of Boston, while in office, and may remain in office until the appointment and qualification of their successor.

3.1.1. One Trustee shall be appointed by the Mayor of Boston upon recommendation of the President of the Greater Boston Real Estate Board; and

3.1.2. One Trustee shall be appointed by the Mayor of Boston upon recommendation of the President of the Fenway Community Development Corporation; and

3.1.3. One Trustee shall be appointed by the Mayor of Boston upon recommendation of the President of the Neighborhood Association of the Back Bay, Inc.; and

3.1.4. One Trustee shall be appointed by the Mayor of Boston upon recommendation of the President of the Boston Preservation Alliance; and

3.1.5. One Trustee shall be appointed by the Mayor of Boston upon recommendation of the President of the Beacon Hill Civic Association, Inc.; and

3.1.6. One Trustee shall be appointed by the Mayor of Boston upon recommendation of the President of the Back Bay Association. and

3.1.7. One Trustee shall be appointed by the Mayor of Boston upon recommendation of the President of the Ellis Neighborhood Association. And

3.1.8 One trustee shall be appointed by the Mayor of Boston upon the recommendation of the Chinatown Neighborhood Council.

3.1.9. One trustee shall be appointed by the Mayor of Boston upon the recommendation of the President of the North End Neighborhood Council.

These eight (9) trustees shall be known as Constituent Trustees.

3.1.10The Mayor shall appoint three city officials from the executive branch of City government, who shall serve ex officio as the Mayor's representatives.

3.1.11The President of the Boston City Council, or his or her designee member of the City Council, ex officio.

### **Section 3.2 Term**

The term for each Trustee not serving as ex officio shall be two (2) years. In the event that any non ex officio Trustee shall vacate his or her office, withdraw, resign, die, be removed, become incapacitated or cease to hold such position without his or her successor assuming office, a substitute Trustee shall be appointed in accordance with Section 3.2 hereof to serve for the unexpired portion of the term. In the event that a trustee's term ends without a replacement trustee being appointed by the Mayor, the incumbent trustee will retain the position until the Mayor appoints a replacement in accordance with Section 3.1.

Any Trustee hereunder may, by written instrument, signed, acknowledged and mailed to the other Trustees, resign his office. Any Trustee may be removed, with or without cause, by written instrument, signed, acknowledged and mailed to the other Trustees, by the President of the organization designated to nominate the Trustee or the Mayor. Upon the vacancy in the office of any Trustee, the Mayor of Boston shall fill the vacant position following the same nominating procedure as if the seat were to be filled at the completion of the term.

### **Section 3.3 Custodian**

The Collector-Treasurer of the City of Boston ex officio, shall serve as Custodian. The Custodian shall be responsible for maintaining the financial and other records of the Trust and administering the Trust property for the purpose of preserving or enhancing the Trust property, with all the rights and privileges pertaining to Trust management which are granted to a Trustee by the law of the Commonwealth of Massachusetts, unless otherwise restricted by the terms of this Trust. The Custodian may choose to delegate these functions to a treasurer who shall be elected by the Trustees from among their members. The Custodian retains at all times the right to reassume these functions from the treasurer.

### **Section 3.4 Officers**

The Trustees shall elect a Chairperson, or several thereof, of the Board and any other officers it deems necessary to the functioning of the Trust.

### **Section 3.5 Secretary**

The duties of the secretary shall be recording the minutes of all Trust meetings, sending out meeting notices, and all other such written communications the Trustees deem necessary. The minutes shall be published and available to the Mayor and the City Council and other parties for review. No additional compensation shall be rendered for fulfilling of the responsibilities set forth herein.

### **Section 3.6 Trustee's Powers**

In extension and not in limitation of the common law and statutory powers of trustees and other powers and limitations set forth in this Declaration of Trust, the Trustees shall have the following discretionary powers:

3.6.1. To receive and accept property, whether real or personal, by gift, grant, devise, appropriation or transfer from any person, firm, trust, corporation or other public or private entity, to be held, administered and disposed of in accordance with the provisions of this Trust; provided, however, that no gift, grant, devise or transfer of property shall be received and accepted if it is so conditioned, in the opinion of the Trustees, as to jeopardize the federal income tax exemption of this Trust under Section 501 (c) (3) of the Code, as now in force or hereafter amended; and

3.6.2. To buy, sell, exchange, transfer or convey any of the Trust property upon such terms and conditions, and such manner and form as he or she shall deem best, and to execute, acknowledge deliver and record any contract or other instrument relating to the

Trust property which he or she may deem necessary or appropriate;  
and

3.6.3. For accounting purposes only, to determine to what extent money and other property coming into his or her possession shall be deemed principal or income, and to apportion the same between principal and income as is determined by him or her.

3.6.4. To determine whether expenses incidental to the administration of the Trust should be borne by the principal or income portions of Trust property, and to apportion the same between principal and income; and

3.6.5. To amortize any premium on any bonds held as part of the Trust property or to refrain from doing so as he or she shall determine; and

3.6.6. To invest and reinvest the principal and income of the Trust in such property, real, personal, or mixed, and in such manner as they shall deem proper, and from time to time to change investments as they shall deem advisable; to invest in or retain any stocks, shares, bonds, notes, obligations, or personal or real property ( including without limitation any interests in or obligations of any corporation, association, business trust, investment trust, common trust fund, or investment company) although some or all of the property so acquired or retained is of a kind or size which but for this express authority would be considered proper and although all of the trust funds are invested in the securities of one company. No principal or income, however, shall be loaned, directly or indirectly, to any Trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to this Trust.

3.6.7. To vote, to give proxies, to participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition, or distribution of its assets; to join with other security holders in acting through a committee, depositary, voting trustees, or otherwise, and in that connection to delegate authority to such committee, depositary, or trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise all powers and rights of subscription or otherwise which in any manner arise out of ownership of securities held as part of the trust properties.

3.6.8. To compromise, arbitrate, defend, enforce, release, settle or otherwise adjust claims in favor of or against the Trust, including claims for taxes, and to accept any property, either in total or par-

tial satisfaction of any indebtedness or other obligation and, subject to the provisions hereof, to continue to hold the same for such period of time as the Trustees may deem appropriate

3.6.9. To make distributions in cash or in kind.

3.6.10. To hold all or part of the trust fund uninvested for such purposes and for such time as the trustees may deem appropriate.

3.6.11. To extend the time for payment of any obligation to the Trust.

3.6.12. To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of the Trust; to keep any or all of the Trust property or funds in any place or places in the United States of America; to engage accountants, legal counsel, investment counsel, investment agents, and any special services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the Trustees.

### **Section 3.7 Instructions to the Custodian**

Notwithstanding the foregoing, if the Board by a majority vote shall direct the Custodian in the performance of any of the foregoing powers, the Custodian shall follow such instruction.

### **Section 3.8 Fiduciary Responsibility**

The Trustees' powers are exercisable solely in their fiduciary capacity consistent with and in furtherance of purposes specified in Section 1.2 and not otherwise.

### **Section 3.9 Indemnification**

Neither the Custodian nor any other Trustee shall be liable for, and, to the extent of its assets, this Trust shall indemnify such person against any liabilities, including actual and reasonable attorney's fees incurred in defending against such liabilities, arising out of his or her activities on behalf of and for the Trust, unless such liabilities are the result of the willful misconduct, bad faith or gross negligence of such Trustee. No Trustee, whether original or successor, shall be required to furnish any bond or surety. Except as otherwise required by law, no Trustee shall be responsible or liable for the acts or omissions of any of the other Trustees

or any predecessor or of any person or firm retained by the Trustees. The Trustee may obtain insurance with respect to Trust activities and pay for such insurance with Trust funds.

### **Section 3.10 Meetings**

Meetings may be scheduled as deemed necessary by the Trustees; provided, however, that the Board shall meet at least four (4) times each year.

3.10.1. **Votes:** Each Trustee shall be entitled to one (1) vote on each matter brought before the Board. The Board shall act by majority vote of the Trustees in attendance at any meeting at which a quorum is present.

3.10.2. **Quorum:** A quorum shall be constituted at each meeting if at least a number of Trustees equal to a majority of the Constituent Trustees are present in person.

3.10.3. **Actions Taken by Written Consent:** Any action required or permitted to be taken by the Board may be taken without a meeting if all the Constituent Trustees entitled to vote consent in writing to the taking of such action without a meeting. Such written consents shall be treated for all purposes as a vote at a meeting, and shall become part of the permanent records of the Board.

### **Section 3.11 Other Matters Affecting the Trust**

From time to time by a majority vote, the Trustees may adopt such written rules, regulations and procedures, not inconsistent with this Trust, for the conduct of their meetings, the carrying out of their duties and powers hereunder and shall in any event, prior to the approval of any distribution pursuant to this Trust, adopt such rules and regulations as they may deem necessary to carry out their powers hereunder in accordance with applicable law. Such written rules, regulations and procedures shall be published and recorded pursuant to Article VI, Section 6.4 herein.

## **ARTICLE 4. ACCOUNTS**

### **Section 4.1 Accounts**

The Custodian shall submit to the Board at the annual meeting an account of the Trust prepared by an independent certified public accountant and shall submit copies thereof to the Boston City Council, Boston City Clerk, and to the Division of Public Charities of the Office of the Attorney General of the Commonwealth of Massachusetts, or to such other



office of said Commonwealth as shall be authorized to receive accounts of public charities. Said account shall be the result of an independent audit. Such annual account shall be published and available to the public. The Trust may charge the public a nominal fee for copies of the annual account.

## **ARTICLE 5. DISSOLUTION AND AMENDMENT**

### **Section 5.1 Dissolution and Amendment of Trust**

Upon dissolution of the Trust, all assets of the Trust shall be distributed for one or more exempt purposes within the meaning of Section 501(c)3 of the Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by the Probate and Family Division of Trial Court of the county in which the principal office of the Trust is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

Amendments of this Declaration of Trust may be made by a majority vote of the Constituent Trustees; provided, however, that such amendments do not violate the purpose of this Trust pursuant to Section 1.2; and provided, further, that Section 1.2 shall not be amended.

No amendment of this Declaration of Trust shall authorize the Trustees to conduct the affairs of this Trust in any manner or for any purpose contrary to the provisions of Section 501 (3) (c) of the Code. Any amendment made pursuant to this Article shall be attached to each original counterpart of this instrument and shall be recorded as provided in Section 6.5 hereof.

## **ARTICLE 6. MISCELLANEOUS**

### **Section 6.1 Titles and Subtitles**

Titles of the articles and subtitles for the sections are placed herein for reference only, and in case of any conflict, the text of this instrument, other than such titles or subtitles, shall be controlling.

### **Section 6.2 Governed by Massachusetts Law**

This Trust shall at all times be governed by, construed, regulated and administered in all respects under the laws of the Commonwealth of Massachusetts.

**Section 6.3 Counterpart Copies**

This Declaration of Trust may be printed and executed in as many counterparts as deemed desirable, each of which shall be an original and to be recorded as herein provided. At least one (1) copy shall always be kept on file and open to public inspection in the Office of the Boston City Clerk.

**Section 6.4 Recording**

Executed counterparts shall be recorded in the Office of the Boston City Clerk, the Division of Public Charities of the Office of the Attorney General of the Commonwealth of Massachusetts, and the Office of the Secretary of the Commonwealth of Massachusetts. Any amendment shall take effect only when so recorded.