



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

September 10, 2018

TO THE CITY COUNCIL

Dear Councilors:

I transmit herewith for your approval a Declaration of Trust entitled “The My Way Café Trust Fund.”

This Trust will further promote the public health, safety, convenience and welfare by promoting the health of students in Boston’s schools.

This Trust establishes a fund in the City to renovate or retrofit kitchens and to facilitate serving fresh, healthy meals cooked on-site in various Boston Public Schools.

I urge your Honorable Body to join me in this effort to establish a Trust to promote the health of students in the Boston Public Schools by serving fresh, healthy meals in Boston Public Schools.

Sincerely,

Martin J. Walsh
Mayor of Boston



CITY OF BOSTON
IN CITY COUNCIL

ORDERED: That funds contributed to the "The My Way Café Fund" may be expended in accordance with the terms of the Declaration of Trust attached hereto.

I hereby certify that the foregoing, if passed in the above form, will be in accordance with the law.

By Ray C. Feltner cal
for Eugene L. O'Flaherty
Corporation Counsel

THE MY WAY CAFÉ TRUST FUND

KNOW ALL MEN AND WOMEN BY THESE PRESENTS that the Collector-Treasurer of the City of Boston, hereinafter referred to as "Managing Trustee," declares that she has received on behalf of The My Way Café Fund and pursuant to G.L. c. 44, §53A, the sum of One Dollar (\$1.00) 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 Managing Trustee in a permanent record, and agrees and declares for herself, that she shall hold said sum and all other gifts made to her as Managing Trustee, hereunder, whether by gift inter vivos, by bequest, devise or otherwise, for the uses and purposes, and subject to the duties and powers herein set forth.

ARTICLE I

Name

Section 1.1: This trust fund shall be called “The My Way Cafe Fund.” This trust shall be designated and known as “The My Way Cafe Fund.” Its address shall be: Office of the Collector-Treasurer, One City Hall Plaza, City Hall, Boston, MA 02201.

ARTICLE II

Acceptance of Gifts, Bequests and Devises

Section 2.1: The Trustees may receive and accept property, whether real, personal, or mixed, by way of gift, bequest, or devise, from, any person, firm, trust, or corporation, to be held, administered, and disposed of in accordance with and pursuant to the provisions of this Declaration of Trust; but no gift, bequest or devise of any such property shall be received and accepted if it is conditioned or limited in such manner as to require the disposition of the income or its principal to any person or organization other than the City of Boston or for other than “charitable purposes” within the meaning of such term as defined in Article III of this Declaration of Trust, or shall in the opinion of the Trustee, jeopardize the federal income tax exemption of this trust.

ARTICLE III

Distribution and Use of Principal and Income; Purpose

Section 3.1: The principal and income of all property received and accepted by the Trustees to be administered under this Declaration of Trust shall be forever held in trust by the Trustees, and the Trustees may make payments or distributions from income or principal, or both, to or for the use of the City of Boston for such charitable purposes, within the meaning of that term as defined in Section 3.3 of this Declaration of Trust, in such amounts as the Trustees shall from time to time select and determine without making use of any other charitable organizations.

Section 3.2: It is intended that this Trust shall continue in perpetuity; provided, however, if for any reason it becomes impossible to do so, then this Trust may be terminated upon unanimous vote of the Trustees. If for any reason this Trust is voluntarily or involuntarily dissolved or wholly inoperative, all the property of the Trust shall be distributed to the City of Boston, to be used solely for the purposes consistent with Section 3.3 of the Trust.

Section 3.3: This Trust is established to promote the public health, safety, convenience and welfare by mitigating the ill effects on the health of students lacking fresh healthy meals. Therefore, in this Declaration of Trust and in any amendments to it, the term “charitable purposes” shall be limited to and shall include only this public health purpose: to facilitate serving fresh, healthy meals cooked on-site in various Boston Public Schools (BPS), and that this charitable purpose shall be accomplished specifically by renovating and/or retrofitting as many eligible BPS school kitchens as possible, facilitating the serving of fresh, health meals cooked on-site, as such charitable purpose is within the meaning of those terms used in section 501(c) of the Internal Revenue Code, or a corresponding section of any future federal tax code, but only such purposes as also constitute public charitable purposes under the law of trust of the Commonwealth of Massachusetts.

ARTICLE IV Amendments

Section 4.1: This Declaration of Trust may be amended at any time or times by written instrument or instruments signed and sealed by the Trustees, provided that no amendment 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 (c)(3) of the Internal Revenue Code, or any corresponding section of any federal tax code. An amendment of the provisions of this Article IV (or any amendment to it) shall be valid only if and to the extent that such amendment further restricts the Trustees amending power. All instruments amending this Declaration of Trust shall be noted upon or kept attached to the executed original of this Declaration of Trust held by the Managing Trustee.

ARTICLE V Trustee Provisions

Section 5.1: The Board of Trustees (the “Board”) shall consist of three (3) members (the “Trustees”) who shall serve in a fiduciary capacity without compensation; provided, however, that each Trustee may be reimbursed by the Trust for all expenses reasonably incurred by them in the performance of their duties. The Board shall consist of the following persons, each of whom shall remain in office until the appointment and qualification of their successor;

- (a) The Collector-Treasurer of the City of Boston ex officio; and
- (b) The Director of the Public Facilities Department of the City of Boston ex officio; and
- (c) The President of the Shah Family Foundation ex officio.

Under this Declaration of Trust there shall be a Managing Trustee, the Collector-Treasurer of the City of Boston, then currently in office and her successors in office from time to time.

No Trustee shall be required to furnish any bond or surety; nor shall any Trustee be responsible or liable for the acts or omission of any predecessor, or of any custodian, agent, depository or counsel retained or hired by the Trustees, if selected with reasonable care, except as otherwise required by law.

Section 5.2: The Collector-Treasurer of the City of Boston ex officio shall serve as Managing Trustee and custodian. The Managing Trustee 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.

Section 5.3: Indemnification. Neither the Managing Trustee 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 shall be required to furnish any bond or surety or shall be liable for the act or omission of any other Trustee. The Trustee may obtain insurance with respect to Trust activities and pay for such insurance with Trust funds.

Section 5.4: Meetings. The Board shall meet annually in the month of January or February for the purpose of distributing Trust funds, if any, pursuant to Article II. The Board may also meet at such other times as may be designated for Special Meetings by the Managing Trustee.

Section 5.5: Votes. Each Trustee shall be entitled to one (1) vote on each matter brought before the Board. Except as otherwise herein provided, the Board shall act by majority vote of the Trustees.

Section 5.6: Quorum. A quorum shall be constituted at each meeting if at least two (2) of the Trustees are present in person.

Section 5.7: Actions Taken By Written Consent. Any action required or permitted to be taken by the Board may be taken without a meeting if all Trustees entitled to vote consent in writing to the taking of such action without a meeting. Such written consent shall be treated for all purposes as a vote at a meeting, and shall become part of the permanent records of the Board.

ARTICLE VI

Powers of the Trustees

Section 6.1: In extension and not in limitation of the common law and statutory powers of the trustees and other powers and limitations set forth in this Declaration of Trust, and trustees shall have the following discretionary powers:

- a) 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 not for this express authority would not be considered legal investments for a Trustee 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, corporation or otherwise, who has at any time made a contribution to this trust, nor to anyone except on the basis of an adequate interest charge and with adequate security.
- b) To sell, lease or exchange 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 undertakings relating to the trust property, as they considers advisable, whether or not such leases or contracts may extend beyond the duration of the trust.
- c) To borrow money for such periods, at such rates of interest, and upon such terms as the Trustees considers advisable, and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by this trust.
- d) To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and all other instruments, sealed or unsealed, necessary, proper or incident to any

transaction in which they engage for the accomplishment of the purposes of this trust or of any of the powers herein granted.

- e) 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, depository, voting trustees, or otherwise, and in this connection to delegate authority to such committee, depository, or trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise subscription rights in respect of securities.
- f) To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deems 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 and to hold any securities in registered or in bearer form; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, accountants, investment counsel, investment agents, and contract for any special trust-related services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the Trustees.
- g) To determine to what extent money and other property coming into their possession, in order to do justice and equity, shall be deemed principal or income, and to apportion the same between principal and income to the extent they determine.
- h) To determine in the mode in which expenses incidental to the administration of the trust shall be borne as between principal and income, and to apportion the same between principal and income.
- i) To establish and maintain in such manner and to such extent as the Trustees deem necessary or proper a sinking fund or sinking funds for the payment or reduction of any mortgage upon any real estate held by them hereunder.
- j) To amortize any premium on any bonds held as part of the trust property or to refrain from doing so as they shall determine.
- k) To retain and hold any stock, bond or other security, any real estate or any other form of property given to them for as long a period as they deem advisable subject to limitations imposed upon the gifts.
- l) To join in any merger, consolidation or reorganization of any corporation or association whose securities shall be held as part of the trust property; to pay any calls and assessments imposed upon the owner of such securities as a condition of participating therein; and to consent to any

contract, lease, mortgage, purchase or sale of property, by or between such corporation and any other corporation or person.

- m) To deposit any security with any protective or reorganization committee and to delegate to such committee such power and authority with relation thereto as the Trustee may deem proper, and to agree to pay, and to pay, out of the property of this trust, such portion of the expenses and compensation of such committee as they may deem proper.
- n) 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 property.
- o) To extend the time of payment of any obligation.
- p) 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 partial 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.
- q) To grant such terms of credit as they may deem proper, with or without security, upon the occasion of making any sale or disposition of any asset contained in this trust and to give and receive money in order to affect equality in price upon the occasion of making any exchange.
- r) To make distributions in cash or in kind.
- s) To hold all or part of the trust fund not invested for such purposes and for such time as the Trustees may deem appropriate.

ARTICLE VII Fiduciary Responsibility

Section 7.1: The Trustees powers are exercisable solely in the fiduciary capacity consistent with and in furtherance of the charitable purposes of this trust as specified in Article III and not otherwise.

ARTICLE VIII

Section 8.1: In this Declaration of Trust and in any amendment to it, references to "Trustee" or "Trustees" mean the Trustees, whether original or successor, for the time being in office.

ARTICLE IX

Accounts

Section 9.1: The Managing Trustee shall submit to the Board at the annual meeting an account of the Trust prepared by an independent certified public accountant

Section 9.2: Any person may rely on a copy, certified by a notary public, of the executed original of this Declaration of Trust held by the Managing Trustee, and of any of the notations on it and writings attached to it, as fully as they might rely on the original documents themselves. Any such person may rely fully on any statements of fact certified by anyone who appears from such original documents or from such certified copy to be the Managing Trustee under this Declaration of Trust. No one dealing with any Trustee need inquire concerning the validity of anything the Trustee purports to do. No one dealing with the Managing Trustee or Trustees need see to the application of anything paid or transferred to or upon the order of any Trustee of the trust.

ARTICLE X

MISCELLANEOUS

Section X.1: 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 X.2: 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 X.3: 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 City Clerk.

Section X.4: 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.

IN WITNESS WHEREOF, This Declaration of Trust is hereby made and executed as of this _____ day of _____, 2018.

Collector-Treasurer
City of Boston

WITNESS _____

ADDRESS _____

WITNESS _____

ADDRESS _____

Approved as to form:

Corporation Counsel