

# **AN ACT ESTABLISHING THE TOWN OF PLYMOUTH LAND BANK**

## **SECTION 1. DEFINITIONS**

For the purposes of this act, the words and phrases set forth in this section shall have the following meanings:

1.1. “Affordable Housing” shall mean either single family or multi-family housing that is deed restricted to provide for sale or rental only to those qualifying under state or federal programs, which are eligible to be counted towards Plymouth’s Subsidized Housing Inventory (SHI) as defined by the Commonwealth of Massachusetts Executive Office of Housing and Livable Communities (“EOHLC”), and where the cost for purchase or rent of any single family unit shall not exceed sixty percent (60%) of the annual median income (“AMI”) established by the United States Department of Housing and Urban Development (“HUD”) for Plymouth County or where the average cost for purchase or rent of units at any multi-family housing shall not exceed sixty percent (60%) of the AMI. At the discretion of the Land Bank Commission, Affordable Housing may include age restricted housing or veterans housing.

1.2. “Appointing Authority” shall mean the board, commission, committee or other body as designated in Section 3.1.2. herein which appoints Commissioners to the Land Bank Commission.

1.3 “Commissioner” shall refer to the members of the Town of Plymouth Land Bank Commission.

1.3. “Fund” shall refer to the Town of Plymouth Land Bank Fund established under the provisions of section eight.

- 1.4. "Institutional Lender" shall mean any bank as defined in section one of chapter one hundred and sixty-seven of the General Laws, any insurance company as defined in section one of chapter one hundred and seventy-five of the General Laws, and any mortgage company or investment company that made more than twenty mortgage loans in the calendar year preceding the year of the relevant mortgage for the purposes of subsection (*m*) of section twelve, and any national bank, federal savings and loan, federal savings bank, bank holding company, or state or federally chartered credit union.
- 1.5. "Land Bank, shall mean the Town of Plymouth Land Bank, established by section two.
- 1.6. "Land Bank Commission" or "Commission" shall mean the Town of Plymouth Land Bank Commission, established by section three.
- 1.7. "Land Use Category" shall refer to the category or categories as enumerated in section five defining the use or uses for which real property interests obtained by the Land Bank may be used.
- 1.8. "Legal representative" with respect to any person or entity, shall mean any other person acting pursuant to a written power-of-attorney, guardianship, conservatorship, or similar authority ordered by a court of law or executed by such person or entity; provided, however, that any affidavit attesting to the true and complete purchase price of real property, submitted to the land bank commission pursuant to section ten, may also be signed on behalf of such person or entity by an attorney admitted to practice in the Commonwealth.
- 1.9. "Purchaser" shall mean the transferee, grantee or recipient of any Real Property Interest(s).

1.10. "Purchase price" shall mean all consideration paid or transferred by or on behalf of a purchaser to a seller or their nominee, or for their benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred, all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; and the fair market value at the time of transfer of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

1.11. "Real Property Interest" shall mean any present or future legal equitable interest in or to real property, including the option to purchase or a contractual interest in the purchase or sale of real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, but shall not include any interest which is limited to any or all of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance, and any estate for years having a term of less than thirty years; the reversionary right, condition, or right of entry for condition broken; the interest of a mortgagee or other secured party in any mortgage or security agreement; the interest of a stockholder in a corporation, or a partner in a partnership, unless it constitutes a transfer of a majority interest in such entity, changes the majority interest holder of such entity, or any real property interest

has been transferred to such entity for the purpose of evading the fee imposed by section ten, or the creation of an affordable housing deed restriction.

1.12. “Residence” shall refer to any single or multi-family dwelling purchased for owner occupancy.

1.13. “Seller” shall refer to the transferor, grantor or immediate former owner of any real property interests.

1.14. “Time of Transfer” of any Real Property Interest shall mean, at the time that such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the Plymouth County registry of deeds or filed with the assistant recorder of the Plymouth County registry district not later than the time of such recording or filing.

1.15. “Transfer”, shall mean the event conveying legal interest in any Real Property Interest as effectuated by the parties thereto including, but not limited to, the execution of agreements, the payment of consideration, or the recording of any instrument with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district.

1.16. “Town” shall refer to the Town of Plymouth, Massachusetts.

1.17. “Transaction Fee” shall refer to the fee paid to the Land Bank upon the transfer of any real property interest in any real property situated within the Town.

## SECTION 2. ESTABLISHMENT

2.1. There is hereby established a Town of Plymouth Land Bank, to be administered by a Land Bank Commission established by section three, for the

purpose of acquiring, holding, and managing land and interests in the categories set forth in section five, and funds related thereto.

2.2 The Land Bank is hereby constituted a body politic and corporate and a public instrumentality, and the exercise of the powers herein conferred upon the Land Bank shall be deemed to be the performance of an essential governmental function.

2.3 This act shall not affect the eligibility of the Town to receive funds under the land conservation program created under section eleven of chapter one hundred and thirty-two A of the General Laws, or under any similar state program, or under any federal program.

### SECTION 3. LAND BANK COMMISSION

#### 3.1. Composition

3.1.1. The Land Bank shall be administered by a Land Bank Commission consisting of nine Commissioners.

3.1.2. The Land Bank Commissioners shall be appointed by the Town as follows:

Executive (Currently Select Board):	2 appointees
Legislative (Currently Town Meeting Appointed through the COPC)	2 appointees
Planning Board:	2 appointees
Affordable Housing Trust:	1 appointee
Open Space Committee:	1 appointee
Land Use and Acquisition Committee:	1 appointee

3.1.3. No Appointing Authority may appoint one of its own members, and in the case of any Appointing Authority representing a larger body, may not appoint a member of such larger body.

3.1.4. All Commissioners must be legal residents of the Town.

3.1.5. No Commissioner may be an elected official of the Commonwealth of Massachusetts, Plymouth County, or the Town.

3.1.6. All Commissioner appointments to the Land Bank shall be made upon acceptance of this Act, in a publicly advertised, open session of such Appointing Authority comporting with the Open Meeting Laws.

3.1.7. Should any appointing body(ies) be eliminated or dissolved by the Town, any Commissioner(s) appointed by such body(ies) shall retain their position through their existing term, and the Land Bank Commission shall select a replacement Appointing Authority or Authorities within the sooner of ninety (90) days from the elimination or dissolution of the Appointing Authority or thirty (30) days before the expiring term of any Commissioner appointed by an eliminated or dissolved Appointing Authority.

### 3.2. Term of Office

The term of office for Commissioners shall be established as follows:

3.2.1 Each Commissioner is to be appointed to a three (3) year term.

3.2.2 The initial terms, drawn by lot by the initial nine appointed Commissioners, shall be staggered so that following the initial appointment of Commissioners three (3) Commissioners are appointed each year.

### 3.3 Removal from Office

3.3.1. A Commissioner shall automatically cease office without further action necessary by the Commission or any Appointing Authority once they are no longer eligible to serve as a Commissioner per the terms of this Act.

3.3.1.1. The term of a Commissioner who is elected to a State, Plymouth County, or Town position shall cease effective the date the Commissioner takes the oath of office or otherwise commences serving in such position, whichever is earlier.

3.3.2. A Commissioner may be removed from office for one of the following reasons:

3.3.2.1. They are no longer eligible to serve as a Commissioner per the terms hereunder;

3.3.2.2. They fail to attend more than fifty percent (50%) of the Commission meetings in any twelve-month period;

3.3.2.3. They have been convicted of a crime either involving fraud or dishonesty or which requires the serving of any prison or jail sentence;

3.3.2.4. They have been found by the State Ethics Commission to have committed a material violation of the State ethics law;

3.3.2.5. They are no longer able to carry out the required functions of the position of Commissioner due to disability or incapacity; or

3.3.2.6. They have failed or refused to follow the rules for the Land Bank as established herein or by the Commission.

3.3.3. Process for Removal of a Commissioner:

3.3.3.1. A Commissioner may be removed by either the Commission or the Appointing Authority for that Commissioner.

3.3.3.2. Removal of a Commissioner shall be undertaken at a hearing before the body seeking to remove the Commissioner (either the Commission or the Appointing Authority) for which at least seven (7) days written notice has been provided to the Commissioner to be removed. At such hearing, the basis for removal shall be presented and the Commissioner to be removed shall be permitted to provide argument as to why removal is either inappropriate or should not be exercised; and

3.3.3.2. At least two-thirds (2/3) of all Commissioners (excluding the Commissioner whose removal is being sought) or members of the Appointing Authority must vote in favor of removing the Commissioner for removal to occur.

3.3.4. Appointment following Removal or Resignation. In the event a Commissioner resigns, is no longer eligible to serve, or is removed, the Appointing Authority for such Commissioner shall appoint a replacement for the remaining term of that Commissioner.



#### 3.4. Secretary of Energy and Environmental Affairs

The Secretary of the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs or his/her designee (“Secretary”) shall be a non-voting member of the Land Bank Commission. The presence or absence of the Secretary shall not count towards the quorum count for the Commission.

#### 3.5. Compensation of Commissioners

Commissioners shall serve without compensation. With pre-approval of the Commission, a Commissioner may be reimbursed expenses for a specific event in an amount not to exceed \$3,000.

#### 3.6. Rules

The Commissioners shall create and adopt the permanent operational rules for the Land Bank Commission.

#### 3.7. Organization

3.7.1. The Land Bank Commission shall elect a chair and a vice chair from among its regular members.

3.7.2. The Land Bank Commission shall have a secretary and a treasurer, either or both of whom may be Commissioners or who may be non-members specially retained by the Commission.

3.7.3. The Land Bank Commission shall reorganize at least once per year following the appointment and/or reappointment of members but may reorganize at any time by majority vote of all Commissioners.

#### 3.8. Management Plan

The Land Bank Commission shall adopt a management plan for managing each of its land holdings in a manner consistent with section five. In preparing a management plan

for any parcel of land, the Land Bank Commission shall use, as guidelines, the Master Plan, Open Space Plan, and Housing Production Plan of the Town.

### 3.9. Voting

3.9.1. Other than as otherwise specified herein, decisions of the Land Bank Commission shall be by majority vote of those Commissioners present and voting at a meeting, and no business shall be transacted at any meeting unless a majority of the Commissioners is present.

3.9.2. Decisions to acquire interests in land and to request state approval of any proposed disposition of an interest in any parcel of land or of any change in its use shall require the affirmative vote of at least two thirds of the Commissioners present and voting.

### 3.10. Records

The Land Bank Commission shall keep accurate records of its meetings and actions and shall file an annual report with the Town.

### 3.10. Public Meetings

All Land Bank Commission meetings shall be subject to the terms of the State Open Meeting Law.

## SECTION 4 AUTHORITY

The Land Bank Commission shall, subject to the provisions of this Act, have the power and authority to do the following:

### 4.1. General Powers

4.1.1. Acquire, by purchase or gift, any Real Property Interest within the Town suitable for the types of uses set forth in section five, including any improvements thereon; provided, however, that the Land Bank

Commission shall, in considering any such acquisition, use as guidelines the Open Space, Housing Production, and Master Plans of the Town.

4.1.2. Accept gifts of funds to further the purposes of the Land Bank.

4.1.3. Recommend to the Town to take any interests in land by eminent domain pursuant to chapter seventy-nine of the General Laws, but only after having first made a reasonable effort to negotiate the acquisition and purchase thereto prior to recommending such taking.

4.1.4. Dispose of or lease all or any part of its interests in any parcel of land or change the use of such parcel.

4.1.4.1. With respect to lands held solely in Land Use Category 5.1. herein, such change of use or disposal shall also require the approval of the Secretary of the Executive Office of Energy and Environmental Affairs and be subject to the provisions of Article XCVII of the Articles of Amendment to the Constitution of the Commonwealth, to the extent applicable.

4.1.5. Incur debt, pledging the full faith and credit of the Town, but only after having been authorized to do so in each instance by a two-thirds majority vote of the Town Meeting.

4.1.6. Prepare an annual budget.

4.1.7. Hire such staff and obtain such professional services and guidance as are necessary in order to perform its duties, including conferring with Town staff and officials.

4.1.8. Administer and manage its interests in any parcel of land in a manner consistent with section five and with the land management plan adopted for such parcel under section three G.

4.1.9. Expend funds to supplement municipal, state or federal funds for the purchase of interests in land of the types set forth in section five.

4.1.10. Adopt such regulations and procedures as it deems necessary or appropriate, subject to the provisions of this act, regarding the use and investment of its funds and the keeping of records and accounts.

#### 4.2. Bonds and Notes

4.2.1. The Land Bank is hereby empowered to issue bonds or notes for the purpose of acquiring land and interests in land as provided in section four. The proceeds of such bonds or notes may be used to pay, in whole or in part, acquisition costs; to provide reserves for debt service and other expenses; to pay consulting, appraisal, advisory and legal fees and costs incidental to the issuance and sale of such bonds or notes; to purchase, refund or renew bonds or notes previously issued; and to pay any other costs and expenses of the Land Bank necessary for the accomplishment of its purposes.

4.2.2. The Land Bank Commission shall have full power and authority to determine the amount, form, terms, conditions, provisions for the payment of interest and all other details of bonds or notes issued under this act, and to provide for their sale and issuance at such price and in such manner as the Land Bank Commission shall determine, subject only to any limitations set forth in this act.

4.2.3. The Land Bank Commission may enter into any agreements, including without limitation a loan agreement and a trust agreement, necessary to effectuate and to secure any bonds or notes issued by the Land Bank. Such agreements may pledge or assign, in whole or in part, the revenues and other money held or to be received by the Land Bank. Such agreements may contain provisions for protecting and enforcing the rights, security and remedy of the holders of such bonds or notes including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the land bank in relation to the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, and the establishment of special funds and reserves.

4.2.4. The pledge of any such agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made; the revenues, money, rights and proceeds so pledged and then held or thereafter acquired or received by the Land Bank shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Town, irrespective of whether such parties have notice thereof. No document by which a pledge is created need be filed or recorded except in the records of the Land Bank and no filing need be made under the Uniform Commercial Code.

4.2.5. The trustee with respect to any such trust agreement entered into pursuant to this section shall be a trust company or a bank having the

powers of a trust company within the Commonwealth. Any such trust agreement may provide that any money received thereunder may be held, deposited or invested by the trustee, notwithstanding the provisions of section eight, pending the disbursement thereof, in any deposits or investments which are lawful for the funds of savings banks and shall provide that any officer with whom or any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof and thereof, subject to such regulation or limitation as this act or such trust agreement may provide.

4.2.6. It shall be lawful for any bank or trust company within the commonwealth to act as depository of the proceeds of bonds, revenues or other money hereunder and to furnish such indemnifying bonds or to pledge such security, if any, as may be required by the Land Bank Commission.

4.2.7. Any trust agreement entered into pursuant to this section may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any such holders. In addition, any such trust agreement may contain other such provisions as the Land Bank Commission may deem reasonable and proper.

4.2.8. All expenses incurred in carrying out the provisions of such trust agreement may be (i) treated as part of the cost of operation of the Land Bank and (ii) paid from the revenues or other funds pledged or assigned to the payment of the principal of and the premium, if any, and interest on the bonds or from any other funds available to the Land Bank.

4.2.9. In addition to other security provided herein or otherwise by law, bonds or notes issued under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the Land Bank by any bank, trust company or other financial institution, within or without the commonwealth, and the Land Bank may

pledge or assign any of its revenues as security for the reimbursement by the Land Bank to the issuers of such letters or lines of credit, insurance or credit facilities of any payments made hereunder.

#### 4.3. Definition as Securities

4.3.1. Bonds or notes issued under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

4.3.2. Notwithstanding any of the provisions of this act or any recitals in any bonds issued under this act, all such bonds shall be deemed to be investment securities under the Uniform Commercial Code.

#### 4.4. Consent of Town

Bonds and notes may be issued by the Land Bank Commission under this act without obtaining the consent of any department, division, commission, board, bureau or agency of the Town, except that if the Town is pledging its full faith and credit to secure an issue of such bonds or notes of the Land Bank, they must be authorized by the appropriate two-thirds vote or votes of the Town Meeting or any other Town boards authorized to issue such bonds and notes on behalf of the Town.

#### 4.5. Revenue

4.5.1. The Land Bank and all its revenues, income and real and personal property used solely by the Land Bank in furtherance of its public purposes shall be exempt from taxation and from betterments and special assessments and the land bank shall not be required to pay any tax, excise or assessment to or for the Commonwealth or any of its political subdivisions.

4.5.2. Bonds and notes issued by the Land Bank, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation within the Commonwealth. The provisions of section twenty-seven C of chapter twenty-nine of General Laws shall not apply to this section or any other provisions of this chapter.

### SECTION 5. LAND USE CATEGORIES

Real Property Interests to be acquired and held by the Land Bank shall be situated in the Town and may be used for the following intended purposes:

#### 5.1. Natural, Open Space, and Passive Recreational Land Category

Land within this category includes:

5.1.1. agricultural land;

5.1.2. forest land;

5.1.3. fresh water and saltwater marshes and other wetlands;

5.1.4. ocean and pond frontage, beaches, dunes and adjoining backlands;

5.1.5. land for nature or wildlife preserves;

5.1.6. easements for trails and for publicly owned lands;

5.1.7. land to protect existing and future wells, well fields, aquifers and recharge areas; and

5.1.8. land for passive recreational use.



## 5.2. Active Recreational Land Category

Land in this category includes land used or to be used for outdoor recreation that requires significant alteration of the natural landscape to provide playground or active sports facilities. These include, but are not limited to, sport courts, ball fields, swimming pools or spray pads, paved bike or walking trails, golf courses, marinas, enclosed dog parks, boat rentals, concession stands, community gardens, outdoor skating rinks, locker-room buildings, bleachers or stands, or other needed facilities.

## 5.3. Municipal Use Category

5.3.1. Land designated under this category may be used for public purposes and facilities including, but not limited to, municipal wells, public safety facilities, schools and other educational facilities, community centers, public meeting facilities, libraries, municipal maintenance areas, and administration facilities.

5.3.2. Land designated under this category may be converted to use for any other category by majority vote of the Land Bank Commission.

## 5.4. Affordable Housing Category

Land under this category may be used by the Town or transferred to private developers for construction of single or multi-family housing as long as at least 50% of the housing units developed are deed restricted Affordable Housing as defined herein. Funds may also be used to “buy down” the Area Median Income (AMI) level of deed restricted affordable housing units to meet the Affordable Housing definition herein.

5.5. When obtaining any Real Property Interest, the Land Bank Commission shall identify the Land Use Category(ies) in which such real property falls and identify such category(ies) in the management plan for such real

property. Real Property Interests may be identified as falling within multiple categories as potentially applicable to future use(s).

## SECTION 6. MAINTENANCE AND IMPROVEMENTS TO REAL PROPERTY

6.1. The Land Bank Commission shall maintain any Real Property Interest obtained pursuant to this act as follows:

### 6.1.1. Natural, Scenic, Open Space, Passive Recreational Land Category

Land in this category is expected to be kept predominantly in its natural, scenic or open condition. However, the Land Bank Commission may make improvements to any land in this category not inconsistent with such use. With respect to any such improvements, the Land Bank Commission shall not permit any of the following without the approval of the Secretary of the Executive Office of Energy and Environmental Affairs:

6.1.1.1. Construction or placing of buildings, roads, billboards or commercial advertising, utilities or other structures on or above the surface, other than those ancillary to the use of the land. Ancillary uses shall include, but not be limited to, creating parking areas, facilities for community or public safety use, and trails or walkways to allow access to persons of all abilities.

6.1.1.2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

6.1.1.3. Removal or destruction of trees, shrubs or other vegetation other than for general maintenance or for ancillary uses.

6.1.1.4. Excavation, dredging or removal of loam, peat, sand, gravel, soil, rock or other mineral substance in such manner as to affect the surface.

6.1.1.5. Operation of motorized vehicles use except for maintenance and public safety purposes.

6.1.1.6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation.

6.1.1.7. Other acts or uses detrimental to the intended public use of such land or water areas.

In determining whether or not to approve of a request from the Land Bank Commission, the Secretary shall consider whether such request is in the interest of conservation and any natural, state, regional or local program in furtherance thereof, and also any public, state, regional or local comprehensive land use or development plan affecting the land and known proposals by a governmental body for use of the land.

#### 6.1.2. Active Recreational Land Category

Land in this category may be improved by or with the approval of the Land Bank to accommodate sporting or recreational uses appropriate to the setting and location.

#### 6.1.3. Municipal Use Category

6.1.3.1. Land designated under this category may be improved as necessary to achieve designated public purposes.

6.1.3.2. Land which becomes designated by the Land Bank Commission for a specific municipal purpose shall be transferred to the Town, which shall thereafter assume all responsibility for its maintenance and development.

6.1.3.3. Land designated under this category may be converted at any time while under the control of the Land Bank to use for any other category by affirmative vote of at least two thirds of the Commissioners present and voting.

#### 6.1.4. Affordable Housing Category

Land in this category may be improved to create Affordable Housing appropriate to the setting, location, and needs of the community.

- 6.2. With respect to land designated for use under sections 6.1.1 and 6.1.2, neither the Land Bank Commission nor the Town shall restrict access on the basis of residency or domicile.

### SECTION 7. REPORTING

The Land Bank Commission shall file a report at least annually with the Secretary of the Executive Office of Energy and Environmental Affairs, the Housing Authority, and the Town setting forth its activities during the year preceding such filing. The report shall list all Real Property Interests currently held by the Land Bank, including a description thereof and the Land Use Category(ies) in which it falls; a list of acquisitions and dispositions of real property interests by the Land Bank; and a list of improvements made to real property by the Land Bank during such year. The report shall also include a current plan for its future operations which shall be, as far as possible, consistent with the Open Space and Master Plans of the Town. The report shall also provide such other information reasonably requested by the Secretary of the Executive Office of Energy and Environmental affairs.

### SECTION 8. FINANCES

- 8.1. The Land Bank Commission shall meet its financial obligations by drawing upon a dedicated fund, to be set up as a revolving or sinking account within the Town. Deposits into the fund shall include:

8.1.1. Funds appropriated, borrowed or transferred to be deposited into the fund by the Town Meeting;

8.1.2. Voluntary contributions of money and other liquid assets to the fund;

8.1.3. Revenues from fees imposed upon the transfer of real property interests as set forth in section ten occurring after the effective date of this Act as set forth in section fifteen;

8.1.4. Proceeds from disposal or transfer of any real property or interests; and

8.1.5. Funds received from any federal, state, region, district or municipal source.

8.2. Grants or gifts of money or other assets to the Land Bank shall be expended only for the purposes of the grant or gift and subject to any restrictions or limitations imposed thereon by the grantor or donor thereof.

8.3. All expenses lawfully incurred by the Land Bank Commission in carrying out the provisions of this act shall be evidenced by proper vouchers and shall be paid by the Town Finance Director only upon submission of requests duly approved by the Land Bank Commission.

8.4. The Land Bank Commission shall prudently manage available assets of the fund in accordance with the regulations and procedures adopted by the Land Bank Commission pursuant to clause (j) of section four, and all income thereon shall accrue to the fund.

8.5. The Land Bank Commission shall keep a full and accurate account of its action including a record as to whom, from or to whom, and on what account money has been paid or received relative to this act, and as to when, from and to whom and for what consideration real property interests have been acquired, improved or disposed of. Said records or accounts shall be subject to examination by the director of accounts or his agent pursuant to section forty-five of chapter thirty-five of the General Laws.

## SECTION 9. TRANSACTION FEES

- 9.1. There is hereby imposed a Transaction Fee equal to two per cent of the purchase price upon the Transfer of any real property interest in any real property situated in the Town.
- 9.2. The fee percentage shall be reviewed at the first meeting of the Land Bank Commission each calendar year and may be reduced or raised at such time by a two-thirds vote of the Land Bank Commission; provided, however, that:
  - 9.2.1. At no time may the fee percentage drop below one percent (1%) or rise above two percent (2%).
  - 9.2.2. No reduction in the fee percentage shall take effect until all bonds and notes of the Land Bank issued prior thereto pursuant to section 4.2 shall have been paid in full.
- 9.3. The Transaction Fee shall be the liability of the purchaser of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser.
- 9.4. The Transaction Fee shall be paid to the Land Bank Commission or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The Land Bank Commission, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption.

- 9.5. The register of deeds for Plymouth County, and the assistant recorder for the registry district of Plymouth County, shall not record or register, or receive, or accept for recording or registration, any deed, except a mortgage deed, relative to a real property interest in land situated in the Town to which has not been affixed such a certificate, executed by the Land Bank Commission or its designee. Failure to comply with this requirement shall not affect the validity of any instrument.
- 9.6. The Transaction Fee imposed hereunder shall be due simultaneously with the time of transfer upon which it is imposed.
- 9.7. The Land Bank Commission shall deposit all Transaction Fees received hereunder into the fund established by section eight.

## SECTION 10 RECISSION

At any time within fourteen (14) days following the issuance of the certificate of payment of the Transaction Fee imposed by section ten, the purchaser or his legal representative may return said certificate to the Land Bank Commission or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury attesting that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be forthwith returned to the purchaser or his legal representative.

## SECTION 11. EXEMPTIONS

- 11.1. The following Transfers of Real Property Interests shall be exempt from the fee established by section ten:
- 11.1.1. Transfers to the government of the United States, the Commonwealth, the Town, and any of their instrumentalities, agencies or subdivisions.

11.1.2. Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

11.1.3. Transfers made as gifts without consideration, but only if at the time of Transfer the purchaser is a lineal family member (ancestor, spouse, sibling, or descendent) by blood, adoption, or marriage.

11.1.3.1. In any proceeding to determine the amount of any fee due hereunder, it shall be presumed that any Transfer for consideration of less than fair market value of the Real Property Interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, but only if the purchaser shall have been at the time of transfer the spouse, the sibling, the lineal descendant, or the lineal ancestor of the seller, by blood, adoption or marriage.

11.1.3.2. In all other instances, it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer, regardless as to the actual amount exchanged.

11.1.4. Transfers to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust or distribution by the trustees of a trust to the beneficiaries of such trust.

11.1.5. Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.



11.1.6. Transfers made in partition of the land and improvements thereto, under the provisions of chapter two hundred and forty-one of the General Laws;

11.1.7. Transfers to any charitable organization as defined in clause third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interests so transferred shall be required, and shall be, held by the charitable or religious organization solely for its public, charitable or religious purposes.

11.1.8. Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

11.1.9. Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, or such superseding provision.

11.1.10. Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company.

11.1.11. Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

11.1.12. Transfers of property consisting in part of real property interests situated within the Town and in part of other property interests.

11.1.12.1. To the extent that the property transferred consists of property other than real property situated within the Town, the purchaser shall furnish the Land Bank Commission with such information establishing the claim of exemption and manner of allocation of the consideration for such transfers, as well as any such additional information as may be reasonably requested.

11.1.13. An amount, determined on or before January 1 of each year by the Land Bank Commission after due analysis of the range of real estate prices in the Town and in no event less than \$350,000, of the purchase price of a Transfer of a Residence, provided that:

11.1.13.1.1. Such Transfer is made to a natural person or persons of whom neither they nor their spouse at the time of such transfer has at any prior time owned or possessed any Real Property Interest, either within or without the Town,

11.1.13.1.2. Such purchaser makes the Real Property Interest which is the subject of the Transfer their domicile and primary residence within one year of the time of Transfer;

11.1.13.1.3. In the event of a subsequent transfer of all or part of the Real Property Interest within two (2) years of the Transfer exempted from the fee under this subsection, other than the transfer of a mortgage to an institutional lender, the fee exempted shall become due, together with accumulated interest and penalties, and in addition to any

fee otherwise due as a result of the subsequent transfer.

The purchaser shall certify as to the foregoing, and the Land Bank Commission shall attach to the deed a certificate which shall recite the fact that there is running with the land a lien equal to the amount of the fee exempted plus accumulated interest and penalties until such time as all conditions of this subsection have been met. The Land Bank Commission shall have the power, at any time and from time to time, to require any purchaser claiming the exemption provided by this subsection to furnish such evidence of compliance with the requirements of this subsection as the Land Bank Commission shall deem necessary or appropriate. If any requirement or condition of this subsection is not met within the time specified, the amount of the fee exempted plus accumulated interest and penalties shall automatically become due and payable.

11.1.14. An amount, determined by a two-thirds (2/3) vote of the Commission on or before January 1 of each year after due analysis of the range of real estate prices in the Town and in no event less than \$350,000, of the purchase price of a Transfer of a Residence provided that such Transfer is to a person or persons who had sold a Residence in the Town within eight (8) months of such Transfer.

11.1.15. An amount, determined by a two-thirds (2/3) vote of the Commission on or before January 1 of each year by the Land Bank Commission after due analysis of the range of real estate prices in the Town and in no event less than \$350,000, of the purchase price of a Transfer of a Residence provided that such transfer is pursuant to a federal, state, or Town program, including those administered by

their agencies or subdivisions, for affordable housing, veterans housing, or disabled persons housing, whether or not such Residence falls within the definition of Affordable Housing contained herein.

11.1.16. The Transfer of all or a portion of real property which is developed into new affordable housing units counting towards the Town's Subsidized Housing Inventory which are equal to or in excess of the number of affordable housing units required by any municipal, state or federal governmental body or regulation including, but not limited to, M.G.L. c. 40B.

11.1.16.1. To be eligible for this exemption the purchaser must first pay the Transaction Fee in full for the Transfer of said real property and then provide the Land Bank Commission with documentation when the Affordable Housing Units required have been leased/rented or deeded, at which time the Land Bank Commission shall determine the percentage of the Transaction Fee that such Affordable units represent and issue a refund of that portion of the Transaction Fee.

11.2. Except as otherwise provided, the person seeking benefit of any exemption to the Transfer Fee shall have the burden of proof that any Transfer, or portion thereof, is exempt hereunder, and shall be responsible for notifying the Land Bank Commission of any request for exemption and provided such information as is reasonably requested by the Land Bank Commission to establish eligibility for such request.

## SECTION 12. INTEREST AND PENALTIES

12.1. A purchaser who fails to pay all or any portion of the fee established by section ten on or before the time when the same is due shall be liable for the following additional payments in addition to said fee.

12.1.1. Interest. The purchaser shall pay interest on the unpaid amount of the Transaction Fee to be calculated from the time of Transfer at a rate equal to twelve per cent (12%) per annum.

12.1.2. Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by this act, fails to pay all or a portion of the fee within thirty days after the time of transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the Land Bank Commission for each month or portion thereof that the fee is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed twenty-five percent (25%) of the unpaid fee due at the time of transfer.

12.1.3. Whenever the Land Bank Commission determines by a preponderance of the information provided and obtained that all of a portion of a fee due under this Act was unpaid due to fraud or with intent to defeat or evade the fee imposed by this Act, a penalty equal to one hundred percent (100%) of the amount of said fee as determined by the Land Bank Commission shall be paid by the purchaser in addition to said fee.

12.2. The Land Bank Commission shall notify a purchaser by registered or certified mail of any failure to discharge in full the amount of the fee due under this Act and any penalty or interest assessed.

12.2.1.1. The Land Bank Commission shall grant a hearing on the matter of the imposition of said fee, or of any interest or penalty assessed, if a

petition requesting such hearing is received by the Land Bank Commission within thirty days after the mailing of said notice.

12.2.1.2 The Land Bank Commission shall notify the purchaser in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing.

12.2.1.3. The Land Bank Commission shall have the authority to reduce any penalty, but not interest, if it deems such action to be appropriate under the circumstances. The Land Bank Commission may also change a prior determination as to whether or not a failure to pay the Transaction Fee was intentional, and impose the appropriate penalty based on such determination.

12.3. Any party aggrieved by a determination of the Land Bank Commission concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court in Plymouth County within ninety (90) days after the mailing of notification of the Land Bank Commission. All decisions of said courts shall be appealable.

12.3.1. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the Land Bank Commission.

12.4. Every notice to be given under this section by the Land Bank Commission shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the Transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such Transfer is not evidenced by an instrument recorded or registered

in the public records in Plymouth County, such notice shall be effective when so mailed to the purchaser in care of any person appearing of record to have a fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in Plymouth County.

12.5. All fees, penalties and interest required to be paid pursuant to this Act shall constitute a personal debt of the purchaser and may be recovered in an action in contract or other appropriate action, suit or proceeding brought by the Land Bank Commission; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.

12.5.1 If any purchaser liable to pay the fee established by this Act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, may be enforced by placement of a lien in favor of the Land Bank Commission upon all property and rights to property, whether real or personal, belonging to such purchaser, regardless as to its location.

12.5.2. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied.

12.5.3. Said lien shall in any event terminate not later than six years following the time of Transfer unless the Land Bank Commission brings suit to enforce said lien prior to that date.

12.5.4. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Land Bank Commission (i) with respect to real property or fixtures located in Plymouth, in the registry of deeds for Plymouth County i, or (ii) with respect to personal property, in the office in which a security of financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest

belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty-two of the General Laws.

12.5.5. In any case where there has been a refusal or neglect to pay any fee, interest or penalties imposed by this act, whether or not levy has been made, the Land Bank Commission, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the Commonwealth to enforce the lien of the Land Bank Commission under this section with respect to such liability or to subject any property of whatever nature of the delinquent, or in which he has any right, title or interest, to the payment of such liability.

12.5.6. Upon satisfaction or termination of any Transaction Fee, interest, and penalties, the Land Bank Commission shall issue a release of any lien imposed by this section. Such release shall be conclusive evidence that the lien upon the property covered by the release is extinguished.

SECTION 13. This Act, being necessary for the welfare of the Town of Plymouth and its inhabitants, shall be liberally construed to effect the purposes hereof.

SECTION 14. Should any provision of this Act later be deemed unlawful, invalid, or in conflict with any other State or Federal law which takes preference, that shall not invalidate this Act. The remaining provisions of this Act shall continue to be enforced consistent with the intent of this Act and such applicable law(s).

SECTION 15. Acceptance of this Act by the Town of Plymouth following its authorization by the Commonwealth of Massachusetts shall be by the affirmative vote of a majority of the voters at any regular or special



Town election at which the question of acceptance has been placed on the ballot.

SECTION 16. The Effective Date of this Act shall be ninety (90) days from the date upon which the final vote of a majority of voters accepting the Act has been verified by the Plymouth Town Clerk.