

**TOWN OF NAHANT
AND
NAHANT PRESERVATION TRUST, INC.
GIFT AGREEMENT PURSUANT TO G.L. c.44, §53A**

THIS GIFT AGREEMENT (the “Agreement”) made this 11th day of May, 2021 by and between the Town of Nahant, a municipal corporation duly organized under the laws of Massachusetts and having a usual place of business at 334 Nahant Road, Nahant, MA 01908, hereinafter referred to as the “**Town**”, and the Nahant Preservation Trust, Inc., a Massachusetts nonprofit corporation with a principal office at 41 Valley Road, Nahant, MA 01908, hereinafter referred to as “**NPT**”.

WHEREAS, NPT supports the Town’s public interest in preserving and protecting the conservation and open space value of land in the Town; and

WHEREAS, in support of such public interest, NPT wishes to make a gift of funds to the Town, acting by and through its Board of Selectmen, to assist the Town with the acquisition of land, or interests therein, located in the Town at 430 Nahant Road, subject to the terms set forth herein; and

WHEREAS, NPT has agreed to provide the Town with a grant of funds, with said funds to be placed into a gift account pursuant to the provisions of G.L. c. 44, §53A consistent with the terms set forth herein.

NOW, THEREFORE, the Town and NPT agree as follows.

1. NPT shall provide the Town with the sum of three million dollars (\$3,000,000) (the “**Gift Funds**”) pursuant to the provisions of G.L. c.44, §53A, which amount is to be deposited, upon approval of the Board of Selectmen, by the Town Treasurer into an interest bearing account (the “**Gift Account**”).
2. Expenditure of the Gift Funds shall be subject to and contingent upon the approval by vote of the May 15, 2021 Nahant Annual Town Meeting of Article 22 of the warrant for said Town Meeting (the “**Acquisition Article**”), with said Gift Funds to be expended at the direction of the Board of Selectmen exclusively for the following purposes:
 - i. The Town’s acquisition of an interest in approximately 12.5 acres of upland land (and related tidelands) at East Point (the “**Acquisition Parcel**”) by eminent domain pursuant to Chapter 80A (the “**Eminent Domain Proceeding**”) or otherwise, or as may otherwise be agreed upon by the Town and NPT; and
 - ii. Such other related costs and expenses, including but not limited to interest, fines, penalties and fees, court costs, insurance, and reasonable fees and expenses of attorneys, accountants and other experts including expert witnesses, incurred in relation to investigating, preparing, defending, asserting, settling, insuring against or avoiding any of the foregoing costs or expenses, related to such acquisition or

any proceeding or award of any kind, or any applicable law, contract, commitment or undertaking, contingent or otherwise arising in connection therewith (collectively “**Related Costs**”); if an Eminent Domain Proceeding is initiated by the Town for the acquisition of the Acquisition Parcel and subsequently discontinued or abandoned by the Town, any such costs for which the Town shall be obligated to pay to Northeastern University by virtue of such discontinuance or abandonment shall be considered Related Costs.

2. In the event that the May 15, 2021 Town Meeting, as may be extended, does not approve the Acquisition Article, the Gift Funds shall be returned to NPT, without interest. The Town will take all reasonable steps to ensure the safety and security of the Gift Funds prior to their deposit in the Gift Account, but in no event will the Town be liable if such funds are lost or stolen prior to their deposit in the Gift Account.
3. The Gift Funds may be used by the Town to pay the reasonable costs incurred by the Town for the purposes set forth above, provided, however, that the Town shall determine at its sole discretion what expenditures fall within those purposes. The Gift Funds shall be used for no other purpose without NPT’s prior written approval. It is hereby acknowledged the Town shall not be deemed to have waived its right to use the funds or be deemed guilty of laches if the Town delays in using the funds.
4. NPT may, but shall not be required to, replenish the Gift Account if there is any shortfall, in amounts as it deems appropriate, to provide additional funds to the Town to support its acquisition of the Acquisition Parcel or the Eminent Domain Proceeding, in which case this Agreement shall be modified by majority vote of the Board of Selectmen to authorize receipt and expenditure of the additional Gift Funds.
5. Once the Board of Selectman notifies the Treasurer in writing that all outstanding costs and fees for the purposes detailed above have been fully paid and notifies the Treasurer of the amount of such costs and fees, the Gift Account shall be closed and any excess funds remaining therein shall be returned to NPT or its written assign. The Town will return any unexpended Gift Funds to NPT within sixty (60) days following the final adjudication of the Eminent Domain Proceeding, which for purposes hereof shall mean the issuance of a final non-appealable judgment in the Eminent Domain Proceeding related to the Acquisition Parcel, but in any event within three (3) years of the date hereof (the “**Outside Date**”); provided, however, that if on the Outside Date, the Eminent Domain Proceeding is open and/or ongoing and the Town is diligently pursuing the prosecution of same, or an appeal is pending and the Town is diligently pursuing the prosecution of such appeal, or the period by which a party could appeal a judicial decision in the Eminent Domain Proceeding has not yet expired without an appeal having been taken, then under any such circumstance, the Outside Date shall be extended to allow for the final adjudication of the Eminent Domain Proceeding or to a later date agreed upon in writing by Town and NPT.
6. Any interest accrued under the Gift Account may be used for any purpose allowed under this Agreement.

7. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
8. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the parties submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.
9. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

[Signature Page Follows]

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

Nahant Preservation Trust, Inc.*



By: Emily Potts

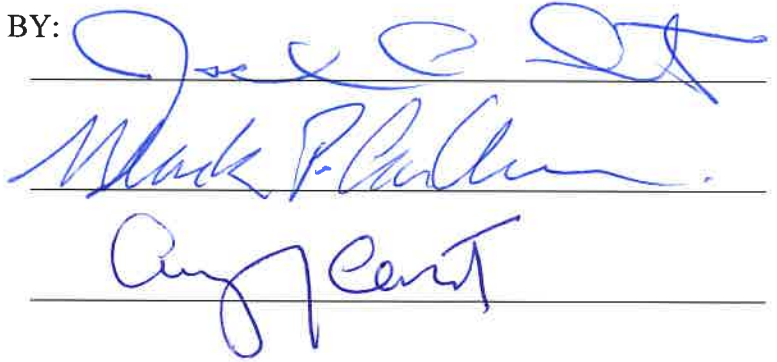
Its: President

* A corporate vote authorizing the above signature is attached hereto.

Date:

Nahant Board of Selectmen, approved by a vote of 2 to 0 on May 11, 2021.

BY:



Date:

May 11, 2021

EXHIBIT A

**NAHANT PRESERVATION TRUST, INC.
RESOLUTIONS**

On May 10, 2021 at a meeting of the Board of Directors of the **NAHANT PRESERVATION TRUST, INC.**, a Massachusetts non-profit corporation (the "Trust"), the following resolutions were adopted

Ratification of Officers

RESOLVED: That the Trust hereby ratifies, confirms and approves that the following persons serve in the offices of the Trust set forth next to their respective names below, as of the date hereof, each to serve as such until their respective successors are duly elected and qualified:

Emily Potts	-	President
Dennis Maroney	-	Treasurer
Jeffrey Musman	-	Clerk

RESOLVED: That the officers of the Trust (each an "Authorized Person"), each acting singly, is authorized in the name and on behalf of the Trust, to gift to the Town of Nahant the sum of Three Million (\$3,000,000.00) Dollars on the terms and conditions set forth in that certain Gift Agreement to be entered into by the Trust and the Board of Selectmen of the Town of Nahant in the form attached hereto and made a part hereof (the "Gift Agreement"), and to execute and to deliver on behalf of the Trust the said Gift Agreement together with any and all additional documents, agreements, certificates and other instruments, and to take any and all other actions as each of them deems necessary or advisable in order to effectuate the gift contemplated by this resolution, the taking of such actions and the execution of such documents, instruments and agreements to be conclusive evidence that the same has been approved by the Trust.

ATTEST



Jeffrey L. Musman, Clerk

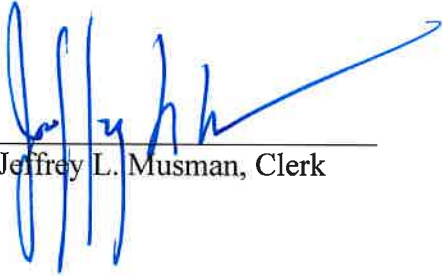
NAHANT PRESERVATION TRUST, INC.

Clerk's Certificate

I, Jeffrey L. Musman, Clerk of Nahant Preservation Trust, Inc., a Massachusetts non-profit corporation (the "Corporation"), hereby certify that, at a meeting of the Board of Directors of the Corporation held on May 10, 2021, the Resolutions set forth on Exhibit A attached hereto and made a part hereof were duly adopted and filed with the corporate records of the Corporation.

I further certify that the said votes have not been altered, amended or rescinded but remain in full force and effect.

WITNESS my hand and seal this 10th day of May, 2021.



Jeffrey L. Musman, Clerk