

OPERATING AGREEMENT

1. PARTIES.

This Operating Agreement (hereinafter the “Operating Agreement”) is entered into as of the date on which this Operating Agreement was executed (the “Effective Date”) by and between the Town of Lincoln, a Massachusetts municipality and trustee of the Deed Trust (defined below) (the “TOWN”), and The Trustees of Reservations, a Massachusetts charitable corporation (“TTOR”), with respect to DeCordova and Dana Museum and Park, a Massachusetts charitable corporation (“DECORDOVA”).

2. PREAMBLE AND REFERENCED DOCUMENTS

- A. Pursuant to a deed to the TOWN dated November 29, 1930 and recorded on December 1, 1930 in the Middlesex South Registry of Deeds at Book 5519, Page 537 (the “DeCordova Deed”), Julian de Cordova generously gave his land, home, and art collection in trust to the TOWN to serve as a public park and public museum (as interpreted or modified by a court of competent jurisdiction from time to time, the “Deed Trust”). In his Last Will and Testament dated October 31, 1944 and Codicil thereto dated November 29, 1944 (collectively, the “Will”), Julian de Cordova also established two charitable trusts to support the park and museum (as interpreted or modified by a court of competent jurisdiction from time to time, the “Will Trusts”). The Will Trusts and the Deed Trust are subject to the Final Decree After Rescript dated October 27, 1948 of the Massachusetts Supreme Judicial Court in the matter of the Estate of Julian deCordova (the “Decree”), which Decree approved the form of the DECORDOVA Articles of Organization (the “Articles”).
- B. The TOWN chose to operate the park and museum through a corporation, while the TOWN retained title to the land, home and art collection as trustee. DECORDOVA was therefore founded in 1948, and it has grown into a nationally and internationally recognized museum for contemporary art. The sculpture park was inaugurated in 1966 and has become a signature feature of the park. Visitors enjoy outdoor sculpture displays and curated indoor exhibits, enhanced by innovative learning and engagement programs designed for all ages.
- C. TTOR was founded in 1891 by landscape architect Charles Eliot. TTOR’s mission is to preserve, for public use and enjoyment, properties of exceptional scenic, historic, cultural, and ecological value in Massachusetts. TTOR currently protects and manages 117 properties across Massachusetts and enjoys a stellar reputation of quality property care and public programming, with leading expertise across technical fields like horticulture, ecology and land management.

- D. DECORDOVA and TTOR share overlapping purposes in seeking to connect people to special places of cultural and natural importance and inspire unique experiences that improve quality of life. DECORDOVA and TTOR have therefore entered into an Integration Agreement dated June 6, 2018 (the “Integration Agreement”), which includes DECORDOVA Bylaws in the form attached to the Integration Agreement as Exhibit A thereto and to become effective as of the Implementation Date defined in the Integration Agreement (the “Bylaws”), with the intent of creating a partnership to ensure the long-term viability and success of DECORDOVA.
- E. The TOWN’s values and history include land conservation, historic preservation, and serving as charitable trustee for donated properties. Therefore, the TOWN and TTOR have entered into this Operating Agreement, and the TOWN and DECORDOVA have entered into a Memorandum of Understanding of even date herewith in the form attached hereto as EXHIBIT A (the “Memorandum”), with the intent of creating a partnership to ensure the long-term viability and success of DECORDOVA.

3. SELECTMEN CONSENT

If the consent of the TOWN is required for any matter pursuant to this Operating Agreement, the Board of Selectmen, as the chief executive officers of the TOWN, shall have the right to grant or withhold such consent and may grant exceptions or permissions on a case-by-case basis.

4. GENERAL AUTHORIZATIONS

The parties acknowledge and agree to the following, subject to all terms and conditions of this Operating Agreement:

- A. TTOR is authorized to carry out its obligations under the Integration Agreement, including sole management of DECORDOVA’s assets and operations and appointment of DECORDOVA’s board and officers.
- B. The TOWN’s rights as title holder of the property deeded to the Town as trustee under the Deed and as the charitable trustee under the Deed Trust are hereby confirmed.
- C. The TOWN’s rights as beneficiary of the Will Trusts are hereby confirmed.
- D. The TOWN’s rights of general oversight over DECORDOVA as the TOWN’s agent and instrumentality to the extent authorized by the Decree and

established under the Articles are hereby confirmed.

5. LIMITATIONS OF TTOR AUTHORITY

TTOR will be the sole Overseer of DECORDOVA pursuant to the Bylaws, which is acknowledged and agreed to be the same as being a sole “member” under M.G.L. c. 180. Notwithstanding anything to the contrary in M.G.L. c. 180, Massachusetts law, or the Bylaws, TTOR shall not, except with the TOWN’s prior written consent (which consent shall not be unreasonably withheld), authorize or undertake, or permit the Board of Trustees or management of DECORDOVA to authorize or undertake, any of the following actions:

- A. Amendment or restatement of the Articles or Bylaws.
- B. Merger or consolidation of DECORDOVA with any other entity.
- C. Sale, transfer, or other disposal of any of the buildings, material structures (except sculpture or other artwork) or land owned or used by DECORDOVA.
- D. Dissolution of DECORDOVA.
- E. Making or consenting to any court filing or other legal declaration regarding the bankruptcy or insolvency of DECORDOVA.
- F. Granting custody to TTOR of the endowment assets held by DECORDOVA, as specified in its audited financial statements, except for the purposes of consolidating investment management of such assets with TTOR’s investment assets, provided that all DECORDOVA assets are accounted for separately and reports regarding such assets and investment performance are provided to the TOWN annually and otherwise upon request, and provided further that assets raised for and restricted to use for purposes of the integration, as described in the Integration Agreement, shall be used and disposed of in any event as required by the Integration Agreement and in accordance with any restrictions and requirements imposed upon such funds by the donors thereof.
- G. Taking any of the following actions with regard to the Will Trusts, by application to the Massachusetts Attorney General and/or a court of competent jurisdiction or otherwise:
 - i. Changing the trustee of the Will Trusts, except that the TOWN hereby consents to TTOR seeking, in the name of the TOWN as the beneficiary named in the Will Trusts, at TTOR’s expense, the resignation and replacement of the trustee of the Will Trusts that is in office as of the Effective Date subject to the following conditions: (a)

that the TOWN has consented to the specific replacement trustee(s) after receiving reasonable notice from TTOR including relevant information regarding said trustee(s)' qualifications (which consent shall not be unreasonably withheld); (b) that the TOWN receives reasonable evidence that the replacement trustee(s) has/have agreed in writing to resign and be replaced by a trustee selected by the TOWN if this Operating Agreement terminates; and (c) that TTOR keeps the TOWN reasonably informed in writing of TTOR's efforts and related governmental or court proceedings under this subsection (i).

- ii. Substantially revising any provision of the Will Trusts pertaining to the investment directions or guidelines for the Will Trusts; or
- iii. Directing the income from the Will Trusts to any entity other than DECORDOVA.

6. MEMORANDUM OF UNDERSTANDING

As of the date of this Operating Agreement, TTOR will cause DECORDOVA to enter into and comply with the Memorandum defined in Section 2.E hereinabove.

7. MEETINGS WITH SELECTMEN

TTOR shall meet with the TOWN's Board of Selectmen at least annually and more often as mutually agreed, to review and discuss the performance of this Operating Agreement and related matters. For such meetings and for all other communications with the TOWN, TTOR shall designate in writing a member of TTOR's senior management team to be the primary liaison with the TOWN.

8. TERM

The term of this Operating Agreement shall continue until such time as it may be terminated as provided in section 9 and 10 herein below.

9. TERMINATION

This Operating Agreement may be terminated by either party for a material breach of this Operating Agreement by the other party, provided that written notice is delivered by the party alleging such breach (the "delivering party") to the party which is alleged to have committed such breach (the "receiving party"), describing such breach in sufficient detail to inform the receiving party of the nature of such breach; such breach is not materially cured by the receiving

party within ninety (90) days after delivery of such written notice, or within a reasonable time thereafter provided that the receiving party in good faith, prior to the expiration of such ninety (90) day period, has commenced such cure, continues diligently to pursue such cure, and is taking all reasonable steps to eliminate material adverse public impacts of such breach; and, if such cure is impossible or impracticable, the parties have in good faith attempted to agree upon an alternative arrangement in lieu of such cure that is not inconsistent with the charitable purposes set forth in the Deed Trust. Any dispute as to any of the foregoing, including without limitation the existence or materiality of any breach, the sufficiency of any such written notice, the necessity, nature or sufficiency of any such cure or attempted cure or alternative arrangement, or the expiration of any period described herein will be deemed waived if a legal action relating to such breach is not instituted in a court of competent jurisdiction within one hundred and eighty (180) days after delivery of such written notice. Each party recognizes that monetary damages may not be sufficient on account of a breach and therefore acknowledges that each party may seek injunctive or other equitable relief in a court of competent jurisdiction, enforcing specifically the terms and provisions of this Operating Agreement. If the delivering party determines that, pending resolution of a purported breach as described herein, such purported breach is causing material, ongoing damages to the delivering party, it may, pending resolution of the purported breach and potential cure as described herein, take reasonable steps to mitigate such damages after written notice to the receiving party. For the TOWN, breach shall include a material breach by TTOR of any provision of Section 5.B-G of this Operating Agreement or a material breach by DECORDOVA of any provision of Section 11.D-F of the Memorandum (with DECORDOVA treated as the receiving party for purposes of this Section 9, and having all of the rights and obligations thereof with respect to such purported breach and potential cure, provided that in such instance any written notices shall be delivered both to DECORDOVA and to TTOR).

10. VOLUNTARY TERMINATION BY TTOR

Upon the third anniversary of the Effective Date and thereafter, TTOR may terminate this Operating Agreement without cause at any time if TTOR has given the Town at least two (2) years prior written notice of the effective date of such termination; provided that (without limiting any remedies provided in Section 9 hereof), if TTOR reasonably determines that DECORDOVA or the TOWN has willfully or negligently failed to disclose a condition that materially and negatively impacts the financial condition of DECORDOVA as of the Effective Date, TTOR may terminate this Operating Agreement without cause with one (1) year's prior written notice of the effective date of such termination. During such notice period, TTOR and the Town will work together in good faith to unwind the arrangements put in place under this Operating Agreement and the Memorandum.

11. TOWN RIGHTS UPON TERMINATION

Upon termination of this Operating Agreement, TTOR acknowledges that the TOWN, as trustee under the Deed Trust, will need to take certain actions to replace TTOR as Overseer of DECORDOVA, and TTOR therefore agrees (to the extent permitted by law and except as may be directed by a court of competent jurisdiction) to take all steps reasonably requested in good faith by the TOWN to accomplish the foregoing, including but not limited to the following: (i) amend the Bylaws to substitute the TOWN for TTOR as the sole Overseer of DECORDOVA; (ii) remove all officers and members of the DECORDOVA board; and (iii) return custody to DECORDOVA of all investment funds described in Section 5.F. above, subject to donor-restrictions referred to in said Section 5.F. TTOR agrees to indemnify the TOWN for any reasonable costs incurred by the TOWN on account of any failure of TTOR and/or DECORDOVA to take such steps in compliance with this Section 11.

12. MISCELLANEOUS

- A. This Operating Agreement may not be modified except in writing, duly executed by the parties.
- B. TTOR is not authorized to bind or otherwise involve the TOWN in any contract, or incur any liability, for or on the part of the TOWN. The TOWN is not authorized to bind or otherwise involve TTOR in any contract, or incur any liability, for or on the part of TTOR.
- C. If any portion of this Operating Agreement is declared to be illegal, unenforceable or void, then all parties to this Operating Agreement shall be relieved of all obligations under that portion; provided, however, that the remainder of this Operating Agreement shall be enforced to the fullest extent permitted by law.
- D. The captions in this Operating Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Operating Agreement or any of the provisions thereof.
- E. This Operating Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard for its conflict of laws provisions, and any and all legal actions brought in connection with this Operating Agreement shall be brought in courts within the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement, to take effect as a sealed instrument, on the ____ day of _____, 2019.

TOWN OF LINCOLN

THE TRUSTEES OF RESERVATIONS

Chairman, Board of Selectmen

Barbara Erickson, President