

FEDERAL CHARTER OF INCORPORATION

ISSUED BY THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

TO THE
MASHPEE WAMPANOAG TRIBE
FOR THE

MASHPEE WAMPANOAG COMMUNITY DEVELOPMENT
AUTHORITY
A FEDERALLY CHARTERED CORPORATION

WHEREAS, the Congress of the United States enacted the Indian Reorganization Act (48 Stat. 984), codified at 25 U.S.C. § 461, et seq., as amended, (the “IRA”) which in part authorizes the Secretary of the Interior to issue a federal corporate charter to an Indian tribe; and

WHEREAS, the Mashpee Wampanoag Tribe (the “Tribe”) is a federally recognized Indian tribe; and

WHEREAS, on _____, 2011, the Mashpee Wampanoag Tribal Council, the governing body of the Tribe, petitioned the Secretary of the Interior to issue a federal charter of incorporation to the Tribe to establish a business corporation as authorized by Section 17 of the IRA; and

WHEREAS, all of the legal prerequisites to the issuance of this charter have been fulfilled.

NOW, THEREFORE, I, Larry Echo Hawk, Assistant Secretary - Indian Affairs, by virtue of the power conferred upon the Secretary of the Interior by the IRA and delegated to me, do hereby issue this **CHARTER OF INCORPORATION** (the “Charter”) to the Mashpee Wampanoag Tribe for the Mashpee Wampanoag Community Development Authority (the

“Corporation”) to be operative upon ratification by the Mashpee Wampanoag Tribal Council (“Tribal Council”).

ARTICLE ONE: NAME

The name of the Corporation is the **Mashpee Wampanoag Community Development Authority**.

ARTICLE TWO: AUTHORITY FOR CHARTER

The Corporation is organized, incorporated and chartered under the laws of the United States as a federally chartered corporation under 25 U.S.C. § 477, as amended, and shall have the powers, privileges and immunities granted by that statute as embodied in this Charter.

ARTICLE THREE: STATUS

3.1 The Corporation is organized, incorporated and granted its powers, privileges and immunities under the laws of the United States as a federally chartered Indian business corporation. The Corporation shall have the same privileges and immunities under federal law as the Tribe. The Corporation shall retain the Tribe’s tax exempt status and shall enjoy any and all tax benefits available to this type of Corporation.

3.2 The Corporation is a distinct legal entity wholly owned by the Tribe, a federally-recognized Indian tribe, and its corporate activities, transactions, obligations, liabilities and property are those of the Corporation, and not those of the Tribe.

ARTICLE FOUR: CORPORATE PURPOSES

The purposes of this Corporation are as follows:

4.1 To engage in any lawful activity, business, enterprise, venture, investment, or financing;

4.2 To promote the social welfare, economic security, and development of the Tribe and its enrolled members; and

4.3 To enable the Tribe to be self-sufficient and to provide economic support for enrolled members of the Tribe.

ARTICLE FIVE: CORPORATE POWERS

The Corporation is authorized to take the following actions:

5.1 To engage in any lawful activity;

5.2 To adopt, use and alter a corporate seal in the sole discretion of the Board of Directors (defined below);

5.3 To purchase, take by gift or bequest, acquire, lease, own, hold, manage, operate, use, deal in and dispose of real or personal property of every kind and description, or any interest therein, wherever situated, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property;

5.4 To buy, sell, lease and otherwise acquire and maintain buildings, offices, shops and other facilities or appurtenances thereto proper and necessary for the carrying on of the Corporation's activities;

5.5 To carry on its business either within or without the exterior boundaries of the Mashpee Wampanoag Tribe Reservation or its other Indian country or restricted lands;

5.6 To sell, convey, mortgage (including leasehold mortgage), pledge, lease, exchange, transfer or otherwise dispose of all or any part of its corporate property or assets as shall be permitted by federal law;

5.7 To guarantee, purchase, hold, assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidence of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights, privileges and powers of ownership thereto;

5.8 To enter into and make contracts or agreements of every kind and nature with any person, firm, association, corporation, municipality, country,

nation, Indian tribe, state or body politic, without the approval of the Tribe or the Secretary of the Interior, except when required;

5.9 Subject to the limitations imposed by Article Six of this Charter, to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise, without the approval of the Tribe or the Secretary of the Interior, except when required;

5.10 To apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to use, exercise, develop, grant and give licenses in respect thereto;

5.11 To sue and be sued in its Corporate name to the extent provided in Article Fourteen of this Charter;

5.12 To employ or appoint employees and agents of the Corporation and define their duties and fix their compensation;

5.13 To lend money for its Corporate purposes, invest and reinvest its funds and to take and hold real and personal property as security for the payment of funds so loaned or invested;

5.14 To adopt bylaws for the regulation of the internal affairs of the Corporation consistent with this Charter and Mashpee Tribal law, provided that such bylaws and any amendments thereto are approved by the Shareholder representative (defined below). Copies of the organizational documents shall be provided to the Shareholder representative;

5.15 To obtain a certificate of authority to transact business in the Commonwealth of Massachusetts or any other state as a foreign corporation;

5.16 To create subordinate organizations, agencies, instrumentalities or entities of the Corporation to engage in any lawful activity, and to regulate the activities of such organization, agency, instrumentality or entity; and

5.17 To have and exercise all lawful powers incidental, necessary or convenient to give effect to any or all of the purposes for which the Corporation is organized.

ARTICLE SIX: LIMITATIONS ON CORPORATE POWERS

The Corporation is not authorized to take the following actions:

6.1 To expressly or by implication enter into any agreement of any kind on behalf of the Tribe;

6.2 To pledge the credit of the Tribe;

6.3 To dispose of, pledge, or otherwise encumber real or personal property of the Tribe, except that the Corporation shall have the power to encumber real property pursuant to the terms of written lease agreement(s) between the Tribe and the Corporation;

6.4 To waive any right, privilege or immunity of, or release any obligation owed to, the Tribe;

6.5 To explicitly or implicitly waive any sovereign immunity or rights of the Tribe;

6.6 To sell, lease, exchange or otherwise dispose of all or substantially all of the Corporation's assets, other than in the usual and regular course of its business, without the prior approval of the Shareholder representative. Approval of the Shareholder representative shall be in the form of a resolution duly adopted by it at a special meeting called for that purpose; and

6.7 To engage in any unlawful activity.

ARTICLE SEVEN: BOARD OF DIRECTORS

7.1 Management Authority. The affairs of the Corporation shall be managed exclusively by its Board of Directors (the "Board"). The Tribe shall have no authority to direct the affairs of the Corporation, except through its status as the sole shareholder of the Corporation and as provided in this Charter.

7.2 Number and Positions. The Board shall consist of eleven (11) Directors elected by the Shareholder representative (defined below). At least a majority of the Directors must be enrolled members of the Tribe. The Board shall elect its officers, which includes a Chairman, Vice-Chairman, Treasurer and Secretary, whose duties shall be set forth in the bylaws.

7.3 How Elected. At each annual meeting of the Shareholder representative following ratification of this Charter, Directors shall be elected to succeed the Directors whose terms are scheduled to expire at that annual meeting. Nominations for each open position shall be made and seconded by a member of the Shareholder representative until nominations cease. The Shareholder representative shall elect from the list of seconded nominations a person to fill each open position. The person receiving the highest number of votes for each position shall fill that position. In the event of a tie vote, the Chairperson of the Shareholder representative shall cast the deciding vote.

7.4 Term of Office. The Directors shall be elected for terms of three (3) years each, and shall serve only for the term of office or until resignation, removal or death. When electing Directors to fill an open position on the Board, the Shareholder representative may lengthen or shorten the term of office of any Director then being elected in order to achieve staggered terms of office. A Director may serve any number of consecutive three-year terms for which he or she is elected.

7.5 Initial Board of Directors. The initial eleven (11) Directors of the Corporation and their staggered terms shall be determined by Tribal Council at the time this Charter is ratified by Tribal Council.

7.6 Qualifications of Directors.

- A. Each Director shall possess the level of business experience and expertise determined by the Shareholder representative to be necessary to carry out the duties of a Director and to contribute to the ability of the Corporation to achieve the purposes for which this Charter is issued.
- B. No person who has been convicted of a felony shall sit on the Board.
- C. No person who has been convicted of any crime involving theft, fraud, embezzlement or conversion of money or property shall sit on the Board.

- D. No employee of the Corporation or of the Bureau of Indian Affairs shall be eligible to serve as a Director during the time of such employment.
- E. No more than one-half (1/2) of the Directors may serve concurrently on the Board and on any other board of a corporation or enterprise of which the Tribe is a majority shareholder or owner.
- F. No more than one (1) member of the Tribal Council is eligible to serve as a Director of the Corporation at any one time.

7.7 Duties of Directors. The Board shall manage the general affairs and business of the Corporation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper, not inconsistent with this Charter, the bylaws of the Corporation or applicable Tribal or federal law. A Director shall perform the duties of a Director in good faith, in a manner the Director believes to be in or not opposed to the best interests of the Corporation, the Shareholder and the Shareholder representative, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties a Director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- A. one or more officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;
- B. legal counsel, public accountants or other persons as to matters which the Director reasonably believes to be within such person's professional or expert competence; or
- C. a committee of the board upon which the Director does not serve, duly designated in accordance with a provision of the bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence, but the Director shall not be considered to be acting in good faith if the Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

7.8 Conflicts of Interest. Rules governing conflicts of interest shall be set forth in the bylaws.

7.9 Directors' Meetings. Each meeting of the Board of the Corporation shall be called and conducted in the manner prescribed by the bylaws. The first regular meeting of the Board shall be held immediately following the first regular meeting of the Shareholder representative at which the initial Directors and terms are determined. At such meeting, the Directors shall elect officers of the Board.

7.10 Resignation and Removal of Directors.

- A. Any Director may resign at any time by giving written notice to the Chairman of the Board and such resignation shall be effective on the date specified in the notice.
- B. Any one or more of the Directors may be removed for cause (as defined below) at any time by the Shareholder representative. A Director that has been removed by the Shareholder representative may appeal such removal to the Mashpee Wampanoag Tribal Court (the "Tribal Court"). The Tribal Court shall only be empowered to either reinstate a removed Director if the Tribal Court deems that the Director was removed without cause, or the Tribal Court may affirm the removal of the Director by the Shareholder representative. The decision of the Tribal Court shall be final.
- C. Any one or more of the Directors may be removed for cause at any time by the unanimous vote of the remaining Directors, at a special meeting called for that purpose or at a regular meeting. Cause for removal shall consist of malfeasance, misfeasance or non-feasance of office, gross neglect of duty, misconduct reflecting on the dignity and integrity of the Corporation, or an irresolvable conflict of interest. In addition, any Director who is absent without excuse and approval from three (3) consecutive meetings of the Board, whether such meetings be regular meetings, special meetings, or a combination thereof, shall be automatically removed and such seat shall be declared vacant.
- D. Any Director selected for removal for cause by the Board shall be informed in writing of the specific grounds for removal and shall be given a reasonable opportunity to respond in person or through legal counsel before a decision to remove is made.

E. Any decision by the Board to remove a Director may be appealed to the Shareholder representative. The Shareholder representative's decision on appeal shall be final.

7.11 Vacancies. Whenever any vacancy shall occur on the Board by death, resignation, or removal, the same shall be filled without undue delay by the Shareholder representative at a special meeting of the Shareholder representative which shall be called for that purpose. Such election shall be held within sixty (60) days after the occurrence of such vacancy, unless the remaining vacant term is less than sixty (60) days from the next annual meeting of the Shareholder whereupon the vacancy shall be filled. The person so chosen to fill a vacancy shall hold office for the remainder of the vacant term.

7.12 Presumption of Assent. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless such dissent shall be entered in the minutes of the meeting or unless the Director shall file a written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Board immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

7.13 Liability of Directors. A Director shall not be personally liable to the Corporation or its Shareholder for monetary damages for breach of fiduciary duty as a Director unless:

- A. the Director has breached or failed to perform the duties of the Director's office as provided in paragraph 7.7 of this Article Seven, and
- B. such breach or failure to perform constitutes willful misconduct or recklessness.

7.14 Council Member/Tribal Employee Directors. Tribal Council members or Mashpee Tribal employees serving as Directors shall not be deemed to be acting within the scope of their duties as Council members or Tribal employees or acting in any other capacity while acting on behalf of the Corporation or under color of office of the Corporation.

7.15 Compensation. The Directors shall receive such compensation and expense reimbursement as is reasonable, prudent, and consistent with the Corporation's budgets. Director compensation and expense reimbursement shall be subject to written policies and procedures drafted by the Board and approved by the Shareholder representative. The Board shall disclose to the Shareholder representative each Director's compensation and reimbursements.

ARTICLE EIGHT: OWNERSHIP OF CORPORATION

8.1 All shares in the Corporation shall be owned solely by the Tribe for the benefit of the Tribe and its enrolled members. No individual or legal entity other than the Tribe shall acquire any shares in the Corporation.

8.2 The Tribe's shares in the Corporation shall not be sold, transferred, pledged or hypothecated, voluntarily or involuntarily.

8.3 The Tribal Council shall serve as the Shareholder representative, and all rights of the Shareholder shall be exercised by the Tribal Council in accordance with this Charter and applicable Tribal law.

8.4 The Corporation shall not accumulate earnings and profits beyond the Corporation's reasonable business needs, as determined by the Board. The Corporation may distribute its income, whether or not from current or accumulated earnings and profits, to the Shareholder, as determined by the Board.

ARTICLE NINE: SHAREHOLDER ACTION

9.1 Regular Meetings. Regular meetings of the Shareholder representative shall be held twice annually, as scheduled by the Corporation for the purpose of electing Directors, approving the Corporation's annual business plan and budget, and transacting any business that may come before the meeting. If the election of Directors is not held on the date scheduled for any regular meeting of the Shareholder representative, or at any adjournment thereof, the Directors shall cause the election to be held at a special meeting of the Shareholder representative as soon thereafter as is convenient.

9.2 Special Meetings. Special meetings of the Shareholder representative, for any purpose or purposes, unless otherwise proscribed by applicable law, may be called by the Shareholder representative or a majority of the Board. Each special meeting of the Board shall be called and conducted in the manner prescribed by the bylaws and applicable Tribal law.

9.3 Meeting Procedures. At all meetings of the Shareholder representative, whether a regular meeting or a special meeting, the Shareholder representative shall sit in its capacity as the sole shareholder of the Corporation, and not in its governmental capacity as the governing body of the Tribe. Matters within the scope and legal authority of the Shareholder under this Charter shall only be discussed and decided by the Tribal Council when sitting as the Shareholder representative at a Shareholder meeting duly called as provided in this Charter. On any issue or question presented to the Shareholder representative, a vote shall be taken of those members present. All meetings and votes of the Shareholder representative shall be conducted consistent with the procedures applicable to Tribal Council meetings, except that notice of special meetings shall also be consistent with paragraph 9.2 of this Article Nine.

ARTICLE TEN: CORPORATE BYLAWS

10.1 The Corporation shall, within ninety (90) days of ratification of this Charter, adopt bylaws which provide for the internal regulations and management of the affairs of the Corporation in a manner not inconsistent with federal or Tribal law or the provisions of this Charter. Such bylaws shall not require federal approval.

10.2 The power to propose alterations or amendments to the bylaws is vested in the Board, but such alterations or amendments shall not become operative until approved by the Shareholder representative. Such alterations or amendments shall not require federal approval.

ARTICLE ELEVEN: PERPETUAL SUCCESSION

This Corporation shall have perpetual duration or until this Charter is revoked by Act of Congress pursuant to 25 U.S.C. § 477, as amended.

ARTICLE TWELVE: ACCOUNTABILITY

12.1 The Corporation shall maintain its financial records in conformity with generally accepted accounting principles.

12.2 The Board shall, no less frequently than on a quarterly basis, report in writing to the Shareholder representative on the financial and operating condition of the Corporation, including the assets and liabilities of the Corporation and the official actions of the Corporation's Directors, officers and employees.

12.3 The financial and operating records of the Corporation shall at all reasonable times be open to inspection by the Shareholder representative.

12.4 The Board shall, within one-hundred twenty (120) days following the close of the Corporation's fiscal year, submit to the Shareholder representative an audited financial statement showing the status of the Corporation as of the last day of the Corporation's fiscal year.

ARTICLE THIRTEEN: PRINCIPAL AND REGISTERED OFFICE

13.1 Principal Office. The principal office of the Corporation shall be located at such locations as designated by the Board. The Corporation may have such other offices, either within or without its federal reservation, as the Board may designate or as the business of the Corporation may require from time to time.

13.2 Registered Office. The registered office of the Corporation is identical to the principal office of the Corporation. The registered office may be changed from time to time by the Board.

ARTICLE FOURTEEN: CLAIMS AGAINST THE CORPORATION

14.1 The Corporation is an instrumentality of the Tribe and is entitled to all of the privileges and immunities of the Tribe, including sovereign immunity from suit. Nothing herein shall be construed to constitute a waiver of the Corporation's sovereign immunity from suit, and any and all such waivers shall be given in strict compliance with this Article Fourteen.

14.2 The Corporation is authorized to waive, as provided in this Article Fourteen, any defense of sovereign immunity from suit that the Corporation, its Directors, officers, employees or agents may otherwise enjoy under applicable federal, state or Tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, to consent to suit in tribal, state, or federal court, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation.

14.3 The Corporation is authorized to waive, as provided in this Article Fourteen, any defense the Corporation, its Directors, officers, employees or agents may otherwise enjoy that federal, state or Tribal law requires exhaustion of Tribal court remedies prior to suit against the Corporation in a tribal, state or federal court otherwise having jurisdiction over the subject matter and the parties.

14.4 Any waiver by the Corporation authorized by paragraph 14.2 or 14.3 of this Article Fourteen shall be in the form of a resolution duly adopted by the Board, a copy of which resolution shall be mailed to the Shareholder representative but the resolution shall not require the approval of the Tribe or the Secretary of the Interior. The resolution shall identify the party or parties for whose benefit the waiver is granted, the transaction or transactions, and the claims or classes of claim for which the waiver is granted, the property of the Corporation which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall identify the court or courts in which suit against the Corporation may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, its Directors, officers, employees or agents, and shall be construed only to affect the property and income of the Corporation.

14.5 Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article Fourteen, shall be construed as a waiver of the sovereign immunity of the Tribe or any other instrumentality of the Tribe, and no such waiver by the Corporation shall create any liability on the part of the Tribe or any other instrumentality of the Tribe for the debts and obligations of the Corporation, or shall be construed as a consent to the encumbrance or attachment of any property of the Tribe or any other instrumentality of the Tribe based on any action, adjudication or other determination of liability of any nature incurred by the Corporation.

14.6 Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing, or granting the Commonwealth of Massachusetts any regulatory or taxing jurisdiction over the property or activities of the Corporation or its employees.

ARTICLE FIFTEEN: AMENDMENTS

15.1 The authority to petition for amendments to this Charter is vested in the Tribal Council, but such amendments shall have no legal effect until approved by the Secretary of the Interior and ratified by the Tribal Council in accordance with 25 U.S.C. § 477, as amended, and in accordance with applicable Tribal law.

15.2 The Board may request the Tribal Council to petition the Secretary of the Interior for amendments to this Charter, but the final decision on submitting any such petition shall be made by the Tribal Council.

ARTICLE SIXTEEN: CERTIFICATE OF APPROVAL

I, Larry Echo Hawk, the Assistant Secretary - Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. §477), as amended, and delegated to me hereby approve this Federal Corporate Charter for use by the Mashpee Wampanoag Tribe and the Mashpee Wampanoag Community Development Authority. This Charter shall become effective upon ratification by the Tribal Council; provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to federal law.

Larry Echo Hawk
Assistant Secretary – Indian Affairs
Washington, D.C.

Date: