

## **DECLARATION OF TRUST**

### **NEWBURYPORT AFFORDABLE HOUSING TRUST**

This Declaration of Trust is made as of this 18<sup>th</sup> day of February, 2010, by and between Donna D. Holaday, Mark J. Moquin, Madeline K. Nash, Judith M. Tymon, and Karen B. Weiner, all of Newburyport, Essex County, Massachusetts, hereinafter called the Trustees, pursuant to the provisions of Massachusetts General Laws Chapter 44, Section 55C. The Trustees hereby acknowledge and agree for themselves and their successors in trust to hold the same together with such other property and funds as may be added thereto for the purposes hereof in trust nevertheless for the benefit of all of the inhabitants of the City of Newburyport in the manner and under the terms and conditions set forth herein.

#### **ARTICLE FIRST:           Name of the Trust**

This trust shall be called the “Newburyport Affordable Housing Trust”. A Certificate of Trust for this Trust shall be recorded with the Southern Essex District Registry of Deeds.

#### **ARTICLE SECOND:       Purpose of the Trust**

The purpose of this Trust shall be to provide for the creation and preservation of affordable housing in the City of Newburyport for the benefit of low and moderate income households and in furtherance of this purpose, to acquire by gift, purchase, or otherwise, real estate and personal property, both tangible and intangible, of every sort and description; to use such property, both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose, provided however, that all property comprising this Trust and the net earnings thereof shall be used exclusively for the benefit of all of the inhabitants of the City of Newburyport for the creation and preservation of affordable housing for which this Trust was formed and no part of the activities of the Trust shall consist of propaganda or otherwise attempting to influence legislation or participation in or intervention in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office and no part of the net earnings of this Trust shall inure or be payable to or for the benefit of any private individual or corporation.

#### **ARTICLE THIRD:       Tenure of the Trustees**

The Trustees hereunder shall be appointed by the Mayor subject to confirmation by the City Council. Only persons who are residents of the City shall be eligible to hold the office of Trustee. Trustees shall serve for a term not to exceed two (2) years and may be re-appointed at the discretion of the Mayor. Any Trustee who ceases to be a resident of the City shall cease to be a Trustee hereunder provided that a written notification of the change in residence has been filed with the City Clerk. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the City Clerk. A Trustee may be removed by the Mayor for cause. If a Trustee shall die, resign, or for any other reason cease to be a Trustee hereunder before his/her term of office expires, a successor shall be appointed by the Mayor,

subject to confirmation by the City Council, to fill such vacancy; provided, however, that in each case the said appointment, confirmation, and acceptance in writing by the Trustee so appointed is filed with the City Clerk. No such appointment shall be required so long as there are five (5) Trustees in office. Upon the appointment of any succeeding Trustee and the filing of such appointment, the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder. There shall be five (5) Trustees of the Trust. Of the original Trustees, Judith M. Tymon and Karen B. Wiener shall hold office until September 1, 2010. Mark J. Moquin and Madeline K. Nash shall hold office until September 1, 2011. Donna D. Holaday shall hold office until the end of her elected term as Mayor.

#### **ARTICLE FOURTH: Meetings of the Trust**

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice shall be given in accordance with the state's Open Meeting Law. A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

#### **ARTICLE FIFTH: Powers of the Trustees**

The Trustees, for the carrying out of the above purposes and except has herein otherwise specifically provided, shall have the same powers with respect to all real and personal estate at any time held by them as if they were the absolute owners thereof, all of which shall be carried on in furtherance of the purposes set forth in General Laws Chapter 44, Section 55C, and, without limiting the foregoing generality, shall include the following:

- (1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the Trust in connection with any ordinance or by-law or any general or special law or any other source, including money from Chapter 44B;
- (2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- (3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Trustees deems advisable notwithstanding the length of any such lease or contract;
- (4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;
- (5) to employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;

- (6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;
- (7) to apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- (8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- (9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Trustees may deem necessary and appropriate;
- (10) to carry property for accounting purposes other than acquisition date values;
- (11) to borrow money on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge Trust assets as collateral;
- (12) to make distributions or divisions of principal in kind;
- (13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this Trust, to continue to hold the same for such period of time as the Trustees may deem appropriate;
- (14) to manage or improve real property; and to abandon any property which the Trustees determined not to be worth retaining;
- (15) to hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate; and
- (16) to extend the time for payment of any obligation to the Trust.

The Trustees shall refrain from exercising any powers in such manner as to violate the provisions of said Chapter 44, Section 55C.

The Trust is a board of the City for purposes of Chapter 30B and Section 15A of Chapter 40; but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the City shall be exempt from said Chapter 30B.

#### **ARTICLE SIXTH:                Acts of the Trustees**

A majority of the qualified Trustees present and voting at a duly posted meeting may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. The Trustees may, by an instrument executed by all of the qualified the Trustees, delegate to any attorney, agent, or employee such powers and duties as they deem advisable, including the powers to execute, acknowledge, or deliver instruments as fully as the Trustees might themselves and to

sign and endorse checks for the account of the Trustees of the Trust. The Trustees shall not delegate the authority to amend or terminate the Trust and no such delegation shall be effective. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do or see to the application of anything paid to or upon the order of the Trustees. No Trustee shall be liable for the acts, negligence, or defaults of any other Trustee or any employee, agent, or representative of the Trustees selected with reasonable care, nor for errors in judgment, nor mistakes of law or fact made in good faith, nor in reliance in good faith on advice of counsel, nor for other acts or omissions in good faith.

#### **ARTICLE SEVENTH:      Liability**

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the City of Newburyport. The Trust is a public employer and the Trustees are public employees for the purposes of G. L. Chapter 258. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of Chapter 268A.

#### **ARTICLE EIGHTH:      Amendments**

This Declaration of Trust may be amended from time to time except as to those provisions specifically required under G. L. Chapter 44, Section 55C, by an instrument in writing signed by all of the qualified Trustees and approved by a majority of the qualified Trustees present and voting at a duly posted meeting called for that purpose; provided, however, that in each case, a certificate of amendment has been recorded with said Registry of Deeds.

#### **ARTICLE NINTH:      Accounts of the Trust**

The books and records of the Trust shall be maintained by the City Treasurer and audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the City.

#### **ARTICLE TENTH:      Duration of the Trust**

This Trust shall be of indefinite duration. However, it may be terminated only by the City Council provided that an instrument of termination is duly recorded with said Registry of Deeds.

Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the City and held by the Mayor for affordable housing purposes. In making any such distribution, the Trustees may sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.


**ARTICLE ELEVENTH: Authority Shown by Record to be Conclusive;  
Certificate as to Facts**

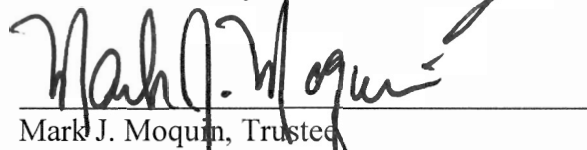
Every contract, deed, mortgage, lease and other instrument executed by a majority of the Trustees as appears from instruments or certificates filed with the City Clerk in accordance with Article Third hereof to be Trustees hereunder shall be conclusive evidence in favor of any person relying thereon or claiming thereunder, that at the time of the delivery thereof this Trust was in full force and effect and that the execution and delivery of such instrument was duly authorized by the Trustees; excepting, however, that delegations of authority pursuant to Article Sixth hereof and instruments of amendment pursuant to Article Eighth hereof and an instrument of termination pursuant to Article Tenth hereof shall be conclusive only if it appears that the delegations, amendments, or termination have been executed by all of the Trustees. Any person dealing with the Trust property or the Trustees may always rely on a certificate signed by any person appearing from instruments or certificates so filed to be a Trustee hereunder as to the identity of the then current Trustees or as to the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the Trustees or in any other manner germane to the affairs of the Trust.

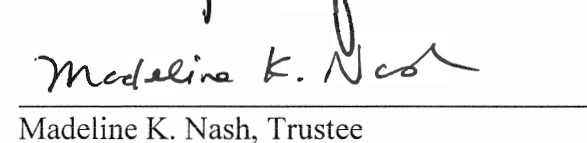
**ARTICLE TWELFTH: Titles**

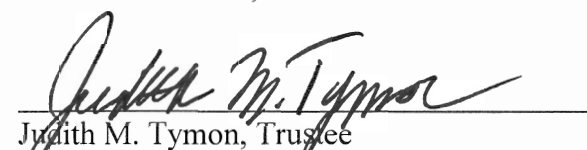
The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.

Witness the execution under seal this 18<sup>th</sup> day of February, 2010.

  
Donna D. Holaday, Trustee

  
Mark J. Moquin, Trustee

  
Madeline K. Nash, Trustee

  
Judith M. Tymon, Trustee

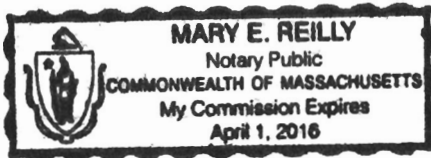
  
Karen B. Wiener, Trustee

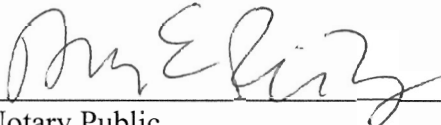
COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

February 18, 2010

Before me, the undersigned Notary Public, personally appeared the above-named Trustees, who proved to me through satisfactory evidence of identification, which were Massachusetts Driver's Licenses, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose as Trustee on behalf of the Newburyport Affordable Housing Trust.



  
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Notary Public

My Commission Expires: 4/1/2016