

**DECLARATION OF TRUST**  
**TOWN OF WENHAM**  
**AFFORDABLE HOUSING TRUST**

**THIS DECLARATION OF TRUST** is hereby made as of this 12<sup>th</sup> day of May, 2009, by the Town of Wenham acting by and through its Board of Selectmen, as approved by vote of the Annual Town Meeting of May 2, 2009, pursuant to the provisions of M.G.L. c. 44, Section 55C.

**ARTICLE I: NAME OF THE TRUST**

The trust shall be called the "Town of Wenham Affordable Housing Trust Fund."

**ARTICLE II: PURPOSE OF TRUST**

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Wenham for the benefit of low and moderate income households.

**ARTICLE III: APPOINTMENT AND TENURE OF TRUSTEES**

There shall be a Board of Trustees consisting of not less than five and not more than seven Trustees appointed by the Board of Selectmen. At least one of the Trustees shall be a member of the Board of Selectmen.

The Trustees shall be appointed for a two (2) year term, such term to end on July 1st of the expiration year or until such time as a successor is appointed, should said appointment be delayed. Two of the initial Trustee appointments shall be for a term of one (1) year, and may be re-appointed at the discretion of the Board of Selectmen. Trustees may be appointed for no more than five (5) consecutive terms.

In the event of a vacancy in the position of Trustee, the appointment shall be made in the same manner as the original appointment.

All Trustees must be current residents of Wenham. Any Trustee who ceases to be a resident of the Town of Wenham shall promptly provide a written notification of the change in residence to the Trust and to the Town Clerk. The Trustee shall promptly cease to be a member of the Trust and action shall be taken immediately to begin replacement proceedings.

Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. 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 Board of Selectmen to fill such vacancy provided that in each case the appointment and acceptance by the Trustee so appointed is received in writing and filed with the Town 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.

#### ARTICLE IV: POWERS OF TRUSTEES

The Trustees shall have the following powers which shall be carried out in accordance with and in furtherance of the provisions of M.G.L. Chapter 44, s 55C (Municipal Affordable Housing Trust Fund) as outlined below except that it shall have no ability to borrow money, or mortgage or pledge Trust assets, purchase, sell, lease, exchange, transfer or convey any interest in real property without prior approval of the Wenham Board of Selectmen:

- 1) with Board of Selectmen approval upon recommendation of the Trustees , 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 deem advisable notwithstanding the length of any such lease or contract;
- 2) with Board of Selectmen approval upon recommendation of the Trustees, to borrow money up to the extent of the Trust's assets on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge Trust assets as collateral; and subject to 2/3 vote at any Annual or Special Town Meeting for greater than the extent of the Trust's assets.
- 3) with Board of Selectmen approval upon recommendation of the Trustees , to purchase and retain real or personal property, including without restriction investments which follow MGL Ch 44 Sect 55B. The law states, monies shall be invested in such a manner to require the payment of interest on the money at the highest possible rate reasonably available, taking account of safety, liquidity and yield;
- 4) with Board of Selectmen approval upon recommendation of the Trustees, to participate or join or form a partnership, corporation or any other legally organized entity to accomplish the purposes of this Trust and 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, person or entity;
- 5) with Board of Selectmen approval upon recommendation of the Trustees, 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;
- 6) with Board of Selectmen approval upon recommendation of the Trustees, to accept and receive real property, personal property or money, by gift, grant, contributions, devise, or transfer from any person, firm, corporation or other public entity or organization or tendered to the Trust in connection with provisions of any ordinance or by-law or any General Law or Special Act of the Commonwealth or any other source including money from M.G.L Chapter 44B (Community Preservation);

- 7) with Board of Selectmen approval upon recommendation of the Trustees, 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;
- 8) with Board of Selectmen approval upon recommendation of the Trustees, to construct, manage or improve real property; and to abandon any property which the Trustees determine not to be worth retaining;
- 9) to become the lottery and monitoring agent for affordable housing and accept compensation for those services into the Fund,
- 10) to monitor the expiring use of any affordable housing in Wenham;
- 11) to compensate Town employees for services provided as authorized by the Board of Selectmen, including but not limited to dedicated staff to Trustees, engineering support for project specific activities, and other Town services, as requested by the Trustees to the Town Administrator;
- 12) with Board of Selectmen approval upon recommendation of the Trustees, to contract for advisors and agents, including but not limited to accountants, appraisers and lawyers as the Trustees deem necessary;
- 13) with Board of Selectmen approval upon recommendation of the Trustees 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;
- 14) 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;
- 15) to carry property for accounting purposes other than acquisition date values;
- 16) with Board of Selectmen approval upon recommendation of the Trustees, to make distributions or divisions of principal in kind;
- 17) with Board of Selectmen approval upon recommendation of the Trustees, to extend the time for payment of any obligation to the Trust;
- 18) with Board of Selectmen approval upon recommendation of the Trustees, to establish a plan, guidelines, criteria and/or qualifications for recipients and expenditures in accordance with Trust's stated purposes;
- 19) with Board of Selectmen approval upon recommendation of the Trustees, to compromise, 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 act, to continue to hold the same for such period of time as the Trustees may deem appropriate;

With Board of Selectmen approval upon recommendation of the Trustees, the Trustees shall have full power and authority, at any time and from time to time and without the necessity of applying to any court for leave to do so, to expend the 100% of the Trust

funds, both principal and interest, to the extent that all funds hereunder may be expended if the Trustees deem such expenditure appropriate. All expenditures shall be made in conformance with the terms of this Trust and M.G.L. Chapter 44, s 55C.

#### ARTICLE V MEETINGS OF THE TRUSTEES

The Trust shall meet at least quarterly at such time and such place as the Trustees shall determine. Special meetings may be called by the Chairperson or by any two (2) Trustees. Notice of any meeting of the Trust shall be filed with the Town Clerk and posted in accordance with the Open Meeting Law, M.G.L. Chapter 39, s 23A, 23B and 23C.

A quorum of the Board of Trustees shall be the majority of the number of authorized Trustees.

The Trustees shall annually elect one (1) Trustee to serve as Chairperson. The Chairperson may establish sub-committees and/or ad hoc task related committees to carry out the purposes of the Trust. Chairpersons of the sub-committees may be selected by the members of the sub-committees.

If any Trustee is absent from five (5) consecutive regularly scheduled meetings of the Trust, except in the case of illness, his position shall be deemed vacant and shall be filled with a new appointment as set forth above.

#### ARTICLE VI ACTS OF TRUSTEES

A majority of Trustees 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. 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.

#### ARTICLE VII LIABILITY

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of M.G.L Chapter 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of M.G.L. Chapter 268A.

#### ARTICLE VIII TREASURER/COLLECTOR AS CUSTODIAN

The Town of Wenham Treasurer/Collector shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds.

He or she shall invest the funds in the manner authorized by M.G.L Chapter 44, s 55 (Public Funds on Deposit; Limitations; Investments,) s 55A, (Liability of Depositor for Losses Due to Bankruptcy), s 55B (Investment of Public Funds).

Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust.

Expenditures by the Trust shall be processed through the warrant but shall be controlled by the provisions of M.G.L. Chapter 44, s.55C. The yearly approved budget, and any approved budget revisions will be recorded by the Town Treasurer/Collector.

As custodian, the Treasurer/Collector shall issue checks as directed by the Trustees.

In accordance with M.G.L. Chapter 44, s.55C (Municipal Affordable Housing Trust Fund), the books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The Trust shall be audited as part of the Town audit.

#### ARTICLE IX DURATION OF THE TRUST

This Trust shall continue so long as authorized under the Laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, The trust may be terminated by a majority vote of the Town Meeting in accordance with M.G.L. Chapter 4, s 4B, provided that an instrument of termination together with a certified copy of the Town Meeting vote are duly recorded with the Southern Essex District Registry of Deeds and the Land Court. 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 Town and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Board of Selectmen, 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 X CONSTRUCTION OF TERMS

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies, trusts and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. All the powers and provisions of the Trust herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

#### ARTICLE XI RECORDING

This Declaration of Trust shall be recorded with the Southern Essex District Registry of Deeds and the Land Court.

#### ARTICLE XII AMENDMENTS

The Declaration of Trust may be amended from time to time except as to those provisions specifically required under M.G.L. Chapter 44, s 5C, by an instrument in writing signed by all of the Trustees and approved at a meeting called for that purpose, and approved by the Board of Selectmen provided that in each case, a certificate of amendment has been recorded with the Southern Essex District Registry of Deeds and the Land Court.

ARTICLE XIII 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 recorded with the Registry of Deeds and Land Registration Office 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 except that instruments of amendment pursuant to Article XII and an instrument of termination pursuant to Article IX 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 recorded to be 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.

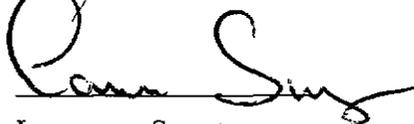
ARTICLE XIV TITLES

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.

IN WITNESS WHEREOF the said Selectmen have hereunto set their hands and seals on the day and year first hereinabove set forth.



John A. Clemenzi, Chairman



Lawrence Swartz



Harriet P. Davis

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

May 27, 2009

On this 27 day of May, 2009, before me, the undersigned notary public, personally appeared the above-named John Clemenzi, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the

person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

*Emilie A. Cademartori*

Notary Public

My commission expires *July 25, 2014*

