

171
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CONFIRMATORY
DECLARATION OF PUBLIC TRUST

BK 11089 PAGE 588

THIS DECLARATION OF PUBLIC TRUST, made the 28th day of January, 1991, at Newburyport, in the County of Essex and Commonwealth of Massachusetts by and among the City of Newburyport, Massachusetts, hereinafter called the Donor, and C. Bruce Brown, Robert Tommasino, Dorothy Phillips, Carl Panall and Jane Nelson all of the Commonwealth of Massachusetts, hereinafter called the Trustees.

The Donor, in consideration of one dollar and other consideration paid by the Trustees, the receipt of which is hereby acknowledged, does hereby grant, convey, transfer and deliver to the Trustees, to be held, used and conserved in perpetuity in Trust for the public good, as hereinafter provided, the natural resources and interests in certain parcels of land bounded and described as follows:

A certain parcel or parcels of land in said Newburyport as shown on plan entitled "Plan of Land in Newburyport Re-Use Parcel 3 Prepared for Newburyport Redevelopment Authority July 1983 Rev'd. 11/19/87 Scale: 1"=30' Pembroke Land Survey Co. Box 491 Newburyport", said plan recorded with Essex South District Deeds in PLANBOOK 239, PLAN 62, bounded and described according to said plan, as follows:

Commencing at the Northwesterly corner thereof at the Merrimac River and land of Madrigal Realty Trust; thence running in part by land of Madrigal Realty Trust and in part by land of Craig Hudson, et al, South 20 degrees 26'15" West 194.93 feet and North 72 degrees 04'31" West 17.50 feet to land of Arthur R. Evans; thence running by said last mentioned land South 12 degrees 00'17" West 243.14 feet to Merrimac Street; thence running by said Merrimac Street, South 89 degrees 49'11" East 44.09 feet to Parcel 3-A-1 as shown of said plan; thence running by said Parcel 3-A-1, North 35 degrees 07'22" East 57.87 feet to

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Parcel 3-A as shown on said plan; thence running by said Parcel 3-A on the following courses: North 42 degrees 00'22" East 36.88 feet, North 26 degrees 03'22" East 20.16 feet, North 29 degrees 31'22" East 137.22 feet, North 13 degrees 28'22" East 156.91 feet, South 84 degrees 28'06" East 164.79 feet, South 05 degrees 46'44" West 266.00 feet, South 59 degrees 04'20" West 91.00 feet, and South 06 degrees 04'03" West 76.97 feet to Merrimac Street; thence running by Merrimac Street on the following courses: South 58 degrees 07'59" East 61.05 feet, South 58 degrees 08'32" East 47.71 feet, and South 60 degrees 31'45" East 25.68 feet to Market Square; thence running by said Market Square South 74 degrees 57'58" East 41.06 feet to land of the City of Newburyport; thence running by said land of the City of Newburyport on the following courses: North 20 degrees 15'15" East 70.01 feet, North 14 degrees 11'13" East 23.99 feet, South 75 degrees 54'32" East 68.26 feet and South 05 degrees 28'06" West 96.21 feet to Merrimac Street; thence running by Market Square South 74 degrees 57'58" East 28.86 feet to land of Newburyport Redevelopment Authority; thence running by said Newburyport Redevelopment Authority land on the following courses: North 04 degrees 20'37" East approximately 143.83 feet and North 74 degrees 24'36" East 64.52 feet to Parcel 3-C-1 as shown on said plan; thence running by said Parcel 3-C-1 on the following courses: North 16 degrees 43'05" West 158.99 feet; North 05 degrees 31'36" East 160.39 feet and South 81 degrees 52'08" East 82.00 feet to Ferry Wharf Way; thence continuing on the same course across Ferry Wharf Way a distance of approximately 20 feet to Parcel 3-C-2 as shown on said plan; thence running by said Parcel 3-C-2 on the following courses: South 81 degrees 52'08" East 275.94 feet and South 74 degrees 24'40" East 79.91 feet to land of Newburyport Redevelopment Authority; thence running by said land of Newburyport Redevelopment Authority on the following courses: South 74 degrees 24'40" East 10.09 feet and South 13 degrees 56'06" West 234.56 feet to land of J.V. Emerson, et al; thence running by said last mentioned land on the following courses: South 77 degrees 22'34" East 2.37 feet and South 13 degrees 14'11" West 59.63 feet to Water Street; thence running by Water Street.

South 75 degrees 50'24" East 14.90 feet to land of Newburyport Redevelopment Authority; thence running by said land of Newburyport Authority on the following courses: North 13 degrees 56'06" East 311.89 feet and North 74 degrees 22'13" East 2.44 feet to a curve having a radius of 16.02 feet; thence running along said curve 25.30 feet to a point; thence running North 15 degrees 08'20" East 118 feet to the Merrimac River as shown on said plan thence running by said Merrimac River on the following courses: North 74 degrees 15'38" West 91.14 feet, North 81 degrees 52'06" West 415.51 feet, North 84 degrees 31'44" West 124.28 feet, North 84 degrees 28'06" West 222.96 feet, and North 78 degrees 43'14" West 69.56 feet to the point begun at, subject to and with the benefit of easements and restrictions of record.

This area and all other areas conveyed to the trust hereafter shall be referred to as "public trust lands."

ARTICLE I

NAME OF TRUST

The trust hereby created shall be called the "Newburyport Waterfront Trust" and all business carried on by the Trustees shall be conducted, and all instruments in writing by the Trustees shall be executed, so far as is legal, convenient, and practicable, under that name.

ARTICLE II

TRUST RES

The Trust Res shall consist of the above conveyed property, and in addition, any other funds or property which the Trustees may from time to time acquire by any gift, devise, exercise of easement or other rights in property, purchase or appointment with a designation, or other sufficient indication, that it is intended for the general purposes herein indicated, with any

sufficient designation to indicate the intent to hold in trust to
Trust. BK 11089 PAGE 591

ARTICLE III

TRUST PURPOSE

The purpose of this Trust shall be to hold, manage, maintain (except to the extent otherwise provided in Article VI, Section 1), conserve and utilize the "public trust lands" as natural resources for use and enjoyment by the public in perpetuity, for the benefit of the residents of the City of Newburyport, West Newbury and Newbury in particular, and of the general public, with free access of the public to and from the "public trust lands" forever.

In particular, but not in limitation, the Trustees shall hold, manage, maintain and conserve in perpetuity Somerby Landing, also known as Riverside Park, as ways and landings to and from the Merrimack River, and as a park to the extent consistent with the conservation of ways and landings. Public parking shall not be an excluded use of Riverside Park, to the extent consistent with the conservation of ways and landings.

The Trustees shall hold, manage, maintain and conserve the natural resources of the "public trust lands" to provide reasonable public access to and from the water of the Merrimack River; to provide public use and enjoyment of the ways connecting the Merrimack River to Water and Merrimack Streets; to facilitate fishing, fowling and navigation, recreation, and other public uses of the tidewaters, tidelands, and public promenade abutting the Merrimack River; to preserve and conserve archaeological

resources beneath trust lands and to protect the natural, scenic, historic and esthetic qualities of the central Newburyport waterfront. BK 11089 PAGE 592

Included in the aforesaid purpose shall be the promotion of those rights set forth in Amendment Article XCVII (1972) of Article XLIX of the Constitution of Massachusetts (1972). It is specifically intended by the Donor and Trustees that this Trust shall be entitled in particular but not in limitation to the procedural protections of Article XLIX of the Amendments of the Constitution of Massachusetts.

ARTICLE IV

TRUSTEES

Section 1. The term "Trustees" and any pronoun referring thereto, wherever herein used, shall include surviving or succeeding Trustees, who shall have all the powers of the original Trustees, unless as may be herein specified.

Section 2. There shall be five (5) Trustees hereunder. Trustees shall be appointed by the Mayor of the City of Newburyport with the approval of the City Council and shall serve a term of five (5) years. One Trustee shall be appointed each year. The terms of office shall be staggered in order that no two terms shall expire in the same calendar year. To this end, the terms of the five (5) Trustees named herein, who are the first Trustees of this Trust, shall be as follows:

Jane Nelson shall serve a term of one year, Carl Panall shall serve a term of two years, Dorothy Phillips shall serve a term of three years, Robert Tommasino shall serve a term of four

years and C. Bruce Brown shall serve a term of five years. The terms of all subsequent Trustees shall be five (5) years except as noted below. The Newburyport Harbor Master shall serve as an ex officio Trustee.

No Trustee may serve more than two terms, whether consecutive or not. In the event of the death, disability, resignation, incapacity, disinclination, conflict of interest, or removal of any Trustee, the Mayor of Newburyport shall forthwith appoint a successor. Any such successor shall serve only the balance of the term of the Trustee replaced. Any such successor may thereafter be appointed to one full term as Trustee, but in no instance is any person to serve in excess of an aggregate of ten (10) years as a Trustee.

Section 3. In any matters relating to the administration of the Trust hereunder and the exercise of powers hereby conferred, the Trustees may act by a majority of their number, provided, however, that in no event shall a majority consist of fewer than three (3). However, all five (5) Trustees must be present and voting whenever any new matters are considered.

If and whenever the number of Trustees shall become less than four (4), then the remaining or surviving Trustee(s), if any, shall have no power or authority to act whatsoever with respect to the administration of the Trust hereunder or to exercise any of the powers whereby conferred, except so far as it is necessary to maintain continuity or fulfill contracts made by the full number of Trustees until (a) successor Trustee(s) is/are named.

Upon failure of the Mayor of Newburyport to appoint (a)

successor Trustee(s) within thirty (30) days of receipt of notice of the existence of a vacancy in the office of Trustee, the remaining Trustee(s) shall, in the name of the Trust, petition any Court with legal or geographical jurisdiction over the "public trust lands" to appoint as many Trustees as are necessary to fill all vacancies. In the event the Mayor fails to appoint one or more successor Trustees within thirty (30) days and the Trustees fail to petition the Court for the making of appointments as aforesaid, any resident of the City of Newburyport may petition such Court. The terms of any Trustees appointed by the Court shall be as previously set forth herein.

Section 4. The first meeting of the Trustees hereunder shall be held no later than thirty (30) days after the execution hereof. Meetings of the Trustees shall be held from time to time thereafter, as the Trustees may decide, but in no instance shall such meetings be held less frequently than once every three (3) months.

Any four (4) Trustees may call a Trustees' meeting upon one week's written notice to the other Trustees for any matters which require action prior to the next regularly scheduled meeting.

Section 5. Trustees hereunder shall serve without remuneration of any kind from the Trust Res or donations thereto, nor are Trustees permitted to accept gifts, gratuities, or compensation from any outside source with regard to Trust matters or their actions relative thereto. Trustees may be reimbursed by the Trust upon approval of all five (5) Trustees for expenses they incur on behalf of the Trust.

Section 6. Any Trustee hereunder may resign by written notice to the other Trustees and the Mayor of the City of Newburyport at least thirty (30) days prior to the date of resignation, unless for reason of sudden ill health, in which case resignation shall be effective upon receipt by the other parties aforesaid. Such notice is to be signed and acknowledged by said Trustee and recorded in the Essex County Registry of Deeds.

Section 7. Upon the appointment of any successor Trustee, and the recording at the Essex County Registry of Deeds of an instrument signifying the appointment, title to the "public trust lands" shall thereupon be vested in said successor Trustee, jointly with the remaining Trustee(s), if any, without the necessity of conveyance or instrument.

Section 8. A Trustee shall not be liable for any error of judgment nor for any loss arising out of any act or omission in the execution of the Trust so long as he or she acts in good faith, but shall be responsible only for his or her own willful breach of Trust. No Trustee shall be liable for any act or omission of any other Trustee. No leave or license of Court shall be requisite to the validity of any transaction entered into by the Trustees.

Section 9. Any person dealing with the Trust property or the Trustees may always rely on a certificate signed by each person appearing from the records of said Registry to the Trustee hereunder as to who is the Trustee, or as to the existence or non-existence of any fact or facts which constitute conditions precedent to act by the Trustees or are in any other manner

germane to the affairs of the Trust.

Section 10. A Trustee may be removed (1) for cause by Court Order, or (2) the unanimous vote of the other four (4) Trustees and the Mayor of the City of Newburyport. "Cause" shall be any act or acts which constitute a breach of the Trustee's fiduciary duty.

ARTICLE V

POWERS OF THE TRUSTEES

The Trustees shall have the absolute control and management of the trust property, and, in extension and not in limitation of the common law and statutory powers of trustees and other powers granted hereunder, the Trustees shall be empowered as follows:

- 1) to maintain the public trust lands in the same natural conditions as received by them;
- 2) to enter into any transaction, and to execute and deliver any contract or other instrument, incident to any transaction in which they engage for the benefit of the Trust;
- 3) to hold, improve, manage, repair and renovate the "public trust lands" in accordance with the terms and purposes hereof;
- 4) to acquire, receive and accept property of any kind, from any source, by way of purchase, gift or bequest, in accordance with Article III hereof;
- 5) to apply for public and private grants to be made to the Trust for the promotion of the Trust purpose;
- 6) to charge reasonable fees for permitting the occasional transitory use of trust property by commercial enterprises.

insofar as compatible with trust purposes.

Notwithstanding any other provision hereof, no power or authority is granted or permitted to the Trustees, or any of them, in any manner, or for any purpose:

- 1) which may endanger the existence of this Trust;
- 2) which may jeopardize the status of this Trust as a tax-exempt entity under Section 501 of the Internal Revenue Code and its Regulations as they exist now or may be amended;
- 3) which involves self-dealing in or with the Trust for the private benefit of any Trustee or any other person;
- 4) to sell, alienate, transfer, mortgage, lease, assign, or otherwise dispose of, all or any part of the "public trust lands" or public rights or to grant easements with respect to the "public trust lands" or public rights except as may be herein provided.

The Trustees' powers are exercisable solely in the fiduciary capacity consistent with and in furtherance of the Purposes of this Trust as specified in Article III and not otherwise.

ARTICLE VI

RESERVATIONS OF RIGHTS

Section 1. The contents herein notwithstanding, it is reserved to the City of Newburyport and the City of Newburyport hereby agrees to accept:

the obligation to maintain the "public trust lands," and all the fixtures, furniture, ways, and structures thereupon, including without limitation the wharves, bulkheads, market landing, promenade, and park in their present condition or in an improved

condition. And to perform whatever repairs or ~~improvements~~ **BK 11089 PAGE 598**
maintenance is required in that regard. Improvements made by the
Trustees to the property shall be made with the approval of the
Mayor of the City of Newburyport, his approval not to be
unreasonably withheld.

Section 2. The contents herein notwithstanding, the City of
Newburyport hereby agrees to protect and indemnify the Trustees
from all liabilities arising out of the operation of the Trust
and the ownership of the trust property. Said protection may
take the form, in particular but not in limitation, of providing
adequate liability insurance coverage.

Section 3. The contents herein notwithstanding, it is reserved
to the Newburyport Redevelopment Authority, its successors and
assigns:

1) the right to construct pedestrian crosswalks in the air
space not less than approximately ten (10) feet over Central
Wharf Way, Ferry Wharf Way and Market Landing, said crosswalks
not to result in unaesthetic architectural effect;

2) the right of motor vehicle traffic to cross the walkway
and landscaping of Riverside Park at two specified locations to
provide access to remaining land of the Newburyport Redevelopment
Authority. Each location shall be no more than twenty feet in
width.

ARTICLE VII

EXPENSES AND ADMINISTRATION

Section 1. The City of Newburyport hereby agrees to pay all
necessary and reasonable expenses of management of this Trust and

of the "public trust lands," including without limitation repairs, maintenance, improvements, landscaping, refuse removal, costs of any appropriate insurance, and costs of administration.

Section 2. The City of Newburyport hereby agrees to make secretarial staff and office quarters available to the Trustees for business of the Trust upon reasonable notice at no expense to the Trust.

Section 3. All meetings held by the Trustees shall be public meetings which all residents of the City of Newburyport, Newbury and West Newbury may attend. Notice of the meetings of the Trustees shall be posted in City Hall at least one week in advance.

Section 4. The Trustees shall maintain minutes of their deliberations and records of their votes. The City of Newburyport agrees to store such records.

ARTICLE VIII

CHANGE IN CIRCUMSTANCES

Section 1. The purposes of this Trust shall not be deemed to have failed on account of any change in the structure, nature, or form of the governmental unit or entity with geographical jurisdiction over the "public trust lands."

Any references herein to the Mayor of the City of Newburyport shall be construed, in the event of change in governmental form, to mean the highest elected or appointed executive official of the governmental unit with geographical jurisdiction over the "public trust lands."

Section 2. In the event of the geographical change in the

"public trust lands," or their relation to the remainder of the City of Newburyport, due to natural or unnatural circumstances, whether by plan or disaster, the Purposes of this Trust shall nonetheless be carried out to the extent possible under the changed circumstances.

ARTICLE IX

ACCOUNTING

The Trustees shall make a report annually of their administration of this Trust, shall provide a copy thereof to the Mayor of the City of Newburyport, and shall make copies thereof freely available to the general public upon request.

ARTICLE X

CONTRIBUTIONS FROM OTHERS

If any person or persons at any time is/are disposed to make gifts or bequests to this Trust, the Trustees are empowered and authorized to receive such gifts and bequests and to apply same for the purposes of this Trust, under the powers, authorities, and discretions contained herein; provided such gifts or bequests are not made upon any terms or conditions that would conflict with the uses, purposes, and provisions of this Trust and the administration thereof by the Trustees.

ARTICLE XI

TERM OF TRUST

This Trust is irrevocable and shall continue without term or limitation in time. This Trust may not be revoked and may be revised only by the assent of all parties to the Stipulation of March 31, 1980 filed with the Massachusetts Land Court

Registration Case No. 39539, Newburyport Redevelopment Authority
v. Commonwealth, et al, or their successors.

ARTICLE XII

CONSTRUCTION AND INTERPRETATION

BK 11089 PAGE 601

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 (joint stock or otherwise), trusts and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. The cover, title, headings of different parts hereof, the table of contents and the marginal notes, if any, are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

In no case is it intended that this instrument be construed contrary to the Purposes set forth herein.

ARTICLE XIII

PROTECTIVE PROVISION

In keeping with the Purposes hereof, and with the intent that the "public trust lands" remain open and for the benefit of the general public forever, it is hereby further provided as follows:

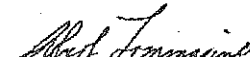
The "public trust lands" and public rights shall not be

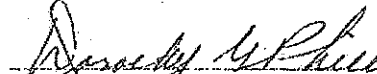
subject to assignment, alienation, pledge, attachment or claims of creditors; nor shall the "public trust lands" and public rights be encumbered or alienated, whether voluntarily or involuntarily, by the Trustees, or any of them; nor shall the "public trust lands" and public rights be subject in any way to execution, levy, attachment, or seizure, under claim(s) of creditor(s) or otherwise.

This Declaration is executed in triplicate, one for the Trustees, one for the City of Newburyport and one for recordation. Each said Declaration shall be considered the original.

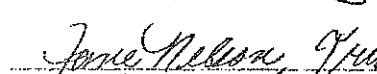
IN WITNESS WHEREOF C. Bruce Brown, Robert Tommasino, Dorothy Phillips, Carl Panall and Jane Nelson, Trustees of the Newburyport Waterfront Trust, have hereunder set their hands and seals this 28th day of January, 1991.


C. Bruce Brown, Trustee


Robert Tommasino, Trustee


Dorothy Phillips, Trustee


Carl Panall, Trustee


Jane Nelson, Trustee

ESSEX, SS.

Feb 7, 1991

Then personally appeared the above-named C. Bruce Brown and acknowledged the foregoing instrument to be his free act and deed, before me,

Michael Sullivan
Notary Public
My commission expires: April 1, 1994

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

Feb 14, 1991

Then personally appeared the above-named Robert Tommasino and acknowledged the foregoing instrument to be his free act and deed, before me,

Michael Sullivan
Notary Public
My commission expires: April 1, 1994

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

Feb 4, 1991

Then personally appeared the above-named Dorothy Phillips and acknowledged the foregoing instrument to be her free act and deed, before me,

Michael Sullivan
Notary Public
My commission expires: April 1, 1994

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

Feb 6, 1991

Then personally appeared the above-named Carl Panall and acknowledged the foregoing instrument to be his free act and deed, before me,

Michael Sullivan
Notary Public
My commission expires: April 1, 1994

COMMONWEALTH OF MASSACHUSETTS

BK 11089 PAGE 604

ESSEX, SS.

Feb 5, 1991

Then personally appeared the above-named Jane Nelson and acknowledged the foregoing instrument to be her free act and deed, before me,


Notary Public
My commission expires: April 1, 1994

The City of Newburyport, acting by and through its duly authorized Mayor, hereby ratifies and confirms the Declaration of Public Trust of the Newburyport Waterfront Trust, said Declaration recorded with the Essex South District Registry of Deeds at Book 10711, Page 353. This confirmation has been executed due to the exclusion of the City of Newburyport as a signatory to the original Trust referred to herein.


Peter J. Matthews, Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

Date: Jan 8, 1992

Then personally appeared the above named Peter J. Matthews and acknowledged the foregoing instrument to be his free act and deed, before me


Notary Public
My commission expires: 8/17/92