

REVISION OF NEWBURYPORT WATERFRONT TRUST

ARTICLE XI of the NEWBURYPORT WATERFRONT TRUST made the 28th day of January 1991, at Newburyport, in the County of Essex and Commonwealth of Massachusetts, as thereafter confirmed, recorded with the Essex South District Registry of Deeds in Book 10711, Page 353, provides: "...This Trust ...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.

Paragraph 1 of the Stipulation of March 31, 1980 provides, in pertinent part, that the Trustees of the Newburyport Waterfront Trust "will not have the power to alienate or transfer any interest in the Settlement Areas except to the City of Newburyport for public use."

Recognizing the benefit to the residents of the City of Newburyport, West Newbury and Newbury, and to the general public, of facilitating the operation of the restored Firehouse Civic Center, owned by the City of Newburyport, adjacent to the Market Landing Park; and

Recognizing the benefit to Newburyport as a seaport derived from the encouragement of maritime and other water-dependent uses of docks, piers, wharves, floats, or other maritime facilities; and

Recognizing the furtherance of Newburyport Waterfront Trust purposes resulting from income to be available to the Trust in the event of the leasing of certain of the public trust lands and docks, piers, wharves, floats, or other maritime facilities; and

Taking into account the need to consider new matters with fewer than all of the Trustees present; but

Cognizant of the duty to maintain and conserve reasonable public access, use and enjoyment of public ways, parks and boardwalks/promenades; and

Subject to any and all rights of the Commonwealth with respect to its public trust in tidelands and tidewaters and its right of entry for condition broken, if any there be:

The undersigned parties to the above-cited Stipulation, for full and adequate consideration the sufficiency of which is hereby acknowledged, agree to revise the terms of the Newburyport Waterfront Trust and the powers of the Trustees as follows:

JCP. Pkt  
Q/W  
WRH  
WRH FANSA, Inc.

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ARTICLE IV. SECTION 2

ARTICLE IV, Section 2 the last paragraph, second sentence is amended by deleting the entire text of the second sentence and by substituting therefor the following:

"In the event of the death, disability, resignation, incapacity, disinclination, conflict of interest (except a temporary conflict with regard to a specific matter which would require a Trustee to recuse himself or herself from considering that matter) or removal of any Trustee, the Mayor of Newburyport with the approval of the City Council shall forthwith appoint a successor."

ARTICLE IV. Section 3

ARTICLE IV, Section 3 the first paragraph, second sentence is amended by deleting the entire text of the second sentence and by substituting therefor the following:

"However, four (4) Trustees must be present and voting whenever any new matters are acted upon."

ARTICLE IV, Section 3 the second paragraph is amended by deleting the entire text of the second paragraph and by substituting therefor the following:

"Upon failure of the Mayor of Newburyport to appoint or the City Council to approve (a) successor Trustee(s) within sixty (60) 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 or the City Council fails to approve one or more successor Trustees within sixty (60) 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."

ARTICLE IV. Section 6

ARTICLE IV, Section 6 is amended by deleting the entire text and by substituting therefor the following:

"Section 6. Any Trustee hereunder may resign by delivering written notice to the other Trustees, to the Mayor of Newburyport, and to the City Council, unless for reason of sudden ill health. The notice of resignation shall be signed and acknowledged by said Trustee and the resignation shall become effective immediately upon recording the notice at the Registry

*JCP. 10/8*  
*WRH*  
*WRH for HSA, Jr.*

of Deeds."

ARTICLE IV, Section 9

ARTICLE IV, Section 9 is amended by deleting the entire text and by substituting therefor the following:

"Section 9. Any person dealing with the Trust property or the Trustees may rely on a certificate signed by a majority of the persons named as Trustees of record, provided that notice of the appointment of the named Trustees has been duly filed and recorded in the records of the Essex County Registry of Deeds. Any person dealing with the Trust property or the Trustees may rely upon the declaration by a majority of the Trustees of record as to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts of the Trustees or are in any other manner germane to the affairs of the Trust."

ARTICLE IV, Section 10

ARTICLE IV, Section 10 is amended by the addition of a final sentence as follows:

"A Trustee may be removed for cause only after reasonable notice and opportunity to be heard by the remaining Trustees and the Mayor of Newburyport."

ARTICLE V, Clause 7

ARTICLE V, Clause (6) is amended at its close by substituting for a period a semi-colon. Clause (7) is added to the text of Article V as follows:

"(7) to lease docks, piers, wharves, floats, pilings and other moorings, and other maritime facilities, and to lease public trust lands which are not a public way, public park, or boardwalk/promenade, provided that: (including public trust lands, public park, boardwalk/promenade, etc.)"

(a) the Trustees determine that such lease furthers Trust purposes; and

(b) reasonable public access is provided between the public ways and public boardwalks and the leased premises; and

(c) no lease shall extend beyond a term of five (5) years; and

(d) the lessee shall indemnify the Trustees and hold the Trustees harmless from and against any liability and against any damage to Trust property, whether or not said property is a portion of the leased premise, resulting from or arising out of the lease and/or activities or operations on

the leased property; and

(e) the lessee shall obtain reasonable property, contractual and/or liability insurance (or equivalent security) of a type and coverage amount acceptable to the Trustees at their sole discretion with the Trustees as named insureds. Such insurance shall at a minimum extend for the term of the lease and be sufficient in amount to fund insurable risks subject to the obligations imposed in clause 7(d) above. The insurance shall also, at a minimum, be of a type and sufficient in amount to cover the risks associated with potential damage to the leased property; and

(f) any fixtures or improvements made by the lessee during the term of the lease shall become the property of the Trustees at the end of the lease term, unless the Trustees direct that such fixtures or improvements be removed at the expense of the lessee before the end of the lease term; and

(g) the lessee shall restore the leased premises to substantially the same condition they were in prior to the commencement of the lease at the end of the lease term; and

(h) the Trustees shall receive full and fair market value for any property to be leased."

ARTICLE V, Clause 8

ARTICLE V, Clause 8 is added to the text as follows:

"(8) to lease to the City of Newburyport or to the Society for the Development of Arts and Humanities of Greater Newburyport, Incorporated, its successors and assigns, subject to the conditions of Clause 7, subsections (c), (d), (e), and (f), the land adjoining the Firehouse Civic Center as the Trustees in their discretion determine to lease, within the area shown as "Area to be Leased" on a Plan of Land in Newburyport, Re-Use Parcel 3, prepared for the Newburyport Redevelopment Authority, dated July 1983 and revised November 19, 1987, said Plan recorded in the Essex South District Registry of Deeds in Book 239, Page 62, consisting of 5052 square feet, more or less, reduced by the area of land to be conveyed pursuant to Clause 9 set forth hereinbelow. Said lease shall be subject to the following restrictions:

(a) the initial lease shall be for a term of five (5) years, which may be extended or renewed for subsequent five (5) year terms; and

(b) the rental rate of the first five years of the initial lease may be for less than the full and fair market value of the leased premises, in the sole discretion of the

Ret  
J.C.P. 1/17  
W.R.H.  
W.R.H. for N.A., Inc.

Trustees; and

(c) all subsequent leases shall be for the full and fair market rental value of the leased premises.

ARTICLE V, Clause 9

ARTICLE V, Clause 9 is added to the text as follows:

"(9) to transfer to the City of Newburyport all of the right, title and interest of the Trustees in the land under the Firehouse Civic Center as built in August 1991, for the purpose of unifying ownership of the entire building and the land thereunder in the City of Newburyport, subject to the prior preparation of a survey by the City of Newburyport identifying the boundaries of the property on which the as-built Firehouse Civic Center structure is placed."

ARTICLE V, Clause 6

ARTICLE V, Clause 6 is amended by deleting the entire clause and inserting therefor the following:

"(6) to permit the occasional transitory use of Trust property so long as such use is consistent with furthering the Trust purposes and to charge reasonable fees for such use, at the discretion of the Trustees."

ARTICLE V, Second Clause 4

ARTICLE V, the second Clause (4) is amended to delete the word "lease."

ARTICLE XI

ARTICLE XI is amended to change the period at the end of the article to a semicolon and add the following:

"provided, however, that any such party wishing to appoint a successor, and each person accepting such appointment must do so in a writing served upon the Trustees and recorded with the Essex South District Registry of Deeds, each such writing to include the full name, address and social security number of the successor(s)."

"In the event that any party to said stipulation dies, becomes incapacitated or cannot be located despite a good faith effort by a party or parties proposing a revision to this Trust, and no successor has been appointed as required in this Article, then any remaining party may petition any court of competent jurisdiction for the appointment of a successor(s)."

*Handwritten:*  
J.C.P. Hg  
WRH  
WRH for HSA, Inc.

## ARTICLE XIII

ARTICLE XIII the second paragraph is amended by deleting the entire paragraph and inserting therefor the following:

"Except as authorized specifically herein, 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) or creditor(s) or otherwise."

ARTICLE ~~XIV~~ SEE ATTACHED PAGE 6A.

The above Revisions of the Declaration of Trust and Powers of the Trustees of the Newburyport Waterfront Trust are executed in quintuplicate, one for the Trustees of the Newburyport Waterfront Trust, one for the City of Newburyport, one for the Newburyport Redevelopment Authority, one for the Committee on Civic Rights of the Friends of the Newburyport Waterfront, and one for recordation. Each said Declaration shall be considered the original.

IN WITNESS WHEREOF, the parties to the Stipulation of March 31, 1980 in Massachusetts Land Court Case 39539, and the Trustees of the Newburyport Waterfront Trust, have set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 1992.

NEWBURYPORT REDEVELOPMENT AUTHORITY  
By its Chairman

4/23/92

James E. Riley

COMMITTEE ON CIVIC RIGHTS OF THE FRIENDS  
OF THE NEWBURYPORT WATERFRONT  
By its Attorney

3/2/92

Cheryl J. Dole

3/2/92

Peter A. Lantham

3/2/92

Joanne C. Parinton  
Joanne C. Parinton

3/2/92

Thomas C. Candee  
Thomas C. Candee

ARTICLE XIV

ARTICLE XIV shall be added to the Trust, in order to comply with requirements of the Massachusetts Secretary of State's office regarding the formation of charitable organizations, as follows:

ARTICLE XIVCHARITABLE ORGANIZATION STATUS

"Section 1. Exempt Activities. Notwithstanding any other provision of this Trust, no member, Trustee, director, officer, employee, or representative of this Trust shall take any action or carry on any activity by or on behalf of the Trust not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under Section 170(c)(2) of such Code and Regulations as they now exist or as they may hereafter be amended.

Section 2. Dissolution. In the event of dissolution, all the remaining assets and property of the Trust shall, after necessary expenses thereof, be distributed to another organization exempt under IRC 501(c)(3), or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose, subject to the approval of a justice of the Superior Court of the Commonwealth of Massachusetts.

Rat  
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 WRH  
 WRH/MSA, Inc.  
 O/W  
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3/02/92

William R. Harris  
 William R. Harris

HISTORICAL SURVEY ASSOCIATES, INC.  
 By their Attorney

3/02/92

William R. Harris, Attorney-at-law

CITY OF NEWBURYPORT  
 By its Mayor

4/2/92

John J. Leary

COMMONWEALTH OF MASSACHUSETTS  
 By its Attorney: subject to any and all  
 rights of the Commonwealth with respect  
 to its public trust and its right of  
 entry for condition broken, if any  
 there be, and the legislative authority  
 to change existing usage of the subject  
 property.

3/27/92

David T. Rossman AA6  
 David T. Rossman

TRUSTEES OF THE NEWBURYPORT WATERFRONT  
 TRUST,  
 By the Trustees:

4/2/92

Carl Panall  
 Trustee Carl Panall

4/2/92

Dorothy G. Phillips  
 Trustee Dorothy G. Phillips

4/2/92

John J. Leary  
 Trustee John J. Leary

4/2/92

Stefanie Shattuck Hufnagel  
 Trustee Stefanie Shattuck Hufnagel

Phy GCP.  
 GPW



4/2/92

Robert C. Tommasino  
Trustee Robert C. Tommasino

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

Date: March 2, 1992

Then personally appeared the above-named Peter A. Latham, Joanne C. Purinton, Thomas C. Candee, William R. Harris and Robert Wolfe

and acknowledged the foregoing instrument to be his or her free act and deed, before me,

[Signature]  
Notary Public  
My commission expires: February 28, 1997

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

Then personally appeared the above named Peter Matthews, Stuart T. Rossman, Carl Panall, Dorothy G. Phillips, John J. Leary, Stefanie Shattuck Hufnagel, Robert C. Tommasino and Janet E. Richey and acknowledged the foregoing instrument to be their free act and deed on the date set forth opposite their names, before me

[Signature]  
Notary Public  
My commission expires: 8/7/92

REP JCP/PLS  
WEL  
WEL, to HSA, Inc.