

DECLARATION OF TRUST

TOWN OF ANDOVER AFFORDABLE HOUSING TRUST

This Declaration of Trust is hereby made as of this 21 day of August, 2006, by the Town of Andover acting by and through its Board of Selectmen, as approved by vote of the Special Town Meeting of September 27, 2005,

ARTICLE FIRST: Name of the Trust

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

ARTICLE SECOND: Purpose

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Andover for the benefit of low and moderate-income households. In furtherance of this purpose, the Trustees are hereby authorized, in accordance with the procedures set forth herein, 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 held by the Trust and the net earnings thereof shall be used exclusively for the preservation and creation in the Town of Andover of affordable housing for the purposes for which this Trust was formed.

ARTICLE THIRD: Tenure of Trustees

There shall be a Board of Trustees consisting of not less than five nor more than seven Trustees who shall be appointed by the Board of Selectmen. One of the Trustees shall be the Town Manager. Only persons who are residents of the Town of Andover shall be eligible to hold the office of Trustee. Trustees shall serve for a term of two years, except that two of the initial trustee appointments shall be for a term of one year, and may be re-appointed at the discretion of the Board of Selectmen. Any Trustee who ceases to be a resident of the Town of Andover shall cease to be a Trustee hereunder and shall promptly provide a written notification of the change in residence to the Board and to the Town Clerk. 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 said appointment and acceptance in writing by the Trustee so appointed is filed with the Town Clerk. No such appointment shall be required so long as there are five 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.

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 of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, G.L. Chapter 39, Sections 23A, 23B and 23C. A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

ARTICLE FIFTH: Powers of Trustees

The Board of Trustees shall have the following powers which shall be carried out in accordance with and in furtherance of the provisions of G.L. Chapter 44, Section 55C:

- (1) With the approval of the Board of Selectmen, to accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation or other public or private entity, including without limitation, grants of funds or other property tendered to the trust in connection with provisions of any zoning by-law or any other by-law;
- (2) With the approval of the Board of Selectmen, to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- (3) With the approval of the Board of Selectmen and Town Meeting, to sell, lease, exchange, transfer or convey any 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 undertakings relative to trust real property as the Trustees deem advisable notwithstanding the length of any such lease or contract;
- (4) With the approval of the Board of Selectmen, to sell, lease, exchange, transfer, or convey any personal 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 undertakings relative to trust personal property notwithstanding the length of any such lease or contract;
- (5) 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 board engages for the accomplishment of the purposes of the trust;
- (6) To employ advisors and agents, such as accountants, appraisers and lawyers as the trustees deem necessary;
- (7) 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;
- (8) To apportion receipts and charges between income 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;
- (9) With the approval of the Board of Selectmen, 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;
- (10) With the approval of the Board of Selectmen, 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 board, with the approval of the Board of Selectmen, may deem necessary and appropriate;
- (11) To carry property for accounting purposes other than acquisition date values;
- (12) With the approval the Board of Selectmen and the approval of Town Meeting by a two-thirds majority vote, to incur debt, to borrow money on such terms and conditions and from such sources as the trustees deem advisable, and to mortgage and pledge trust assets as collateral;
- (13) With the approval of the Board of Selectmen, to disburse trust funds for the purpose of making loans or grants in furtherance of the creation or preservation of affordable housing in Andover upon such terms as the Trustees shall deem most appropriate to carry out such purposes;
- (14) To make distributions or divisions of principal in kind;
- (15) 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 G.L. Chapter 44, Section 55C, to continue to hold the same for such period of time as the board may deem appropriate;

- (16) To manage or improve real property and, with the approval of the Board of Selectmen and Town Meeting, to abandon any property which the trustees determine not to be worth retaining;
- (17) To hold all or part of the trust property uninvested for such purposes and for such time as the trustees may deem appropriate; and
- (18) To extend the time for payment of any obligation to the trust.

ARTICLE SIXTH: Funds Paid to the Trust

Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning by-law, exaction fee, or private contribution shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and these funds need not be further appropriated to be expended. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within one year of the date they were appropriated into the trust, remain trust property.

ARTICLE SEVENTH: 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 EIGHTH: 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 G.L. Chapter 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G.L. Chapter 268A.

ARTICLE NINTH: Taxes

The Trust is exempt from G.L. Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.

ARTICLE TENTH: Custodian of Funds

The Town Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities.

ARTICLE ELEVENTH: Governmental Body

The Trust is a governmental body for purposes of Sections 23A, 23B and 23C of G.L. Chapter 39.

ARTICLE TWELFTH: Board of the Town

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

ARTICLE THIRTEENTH: Duration of the Trust

This Trust shall be of indefinite duration, until terminated in accordance with applicable law.

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 FOURTEENTH

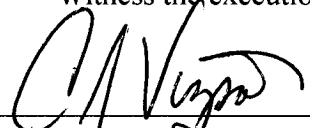
The Board of Selectmen may authorize the Trustees to execute, deliver, and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

ARTICLE FIFTEENTH: Titles

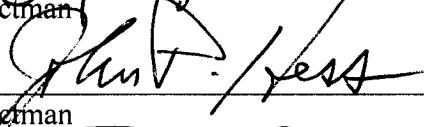
The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.

The Board of Selectmen, for themselves and their successors, hereby acknowledge and agree to the terms of this Trust, and the Trustees named hereunder, hereby acknowledge and agree for themselves and their successors to hold the trust property for the purposes hereof in trust for the benefit of all of the Inhabitants of the Town of Andover, Massachusetts, in the manner and under the terms and conditions set forth herein.

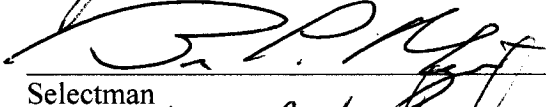
Witness the execution under seal this 21st day of August, 2006.



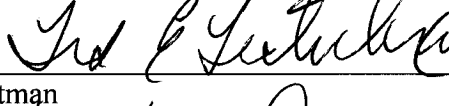
Selectman



Selectman




Selectman



Selectman



Selectman




Trustee
KIM SOUSA



Trustee



Trustee
LINDA A. O'CONNOR



Trustee



Trustee



Trustee



Trustee

Commonwealth of Massachusetts

Essex, ss.

, 2006

On this 21st day of August, 2006, before me, the undersigned notary public, personally appeared Mary Lyman, Ted Terchert, Alex Vaspoli,
John Hess and Bruce Mayo

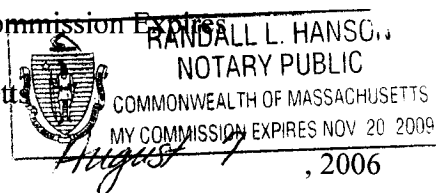
proved to me through satisfactory evidence of identification, which was to be the persons whose names are signed on the preceding document in my presence and acknowledged to me that they signed it voluntarily for its stated purpose, as Selectmen of the Town of Andover.

Randall L. Hansgo

Notary Public

My Commission Expires

Commonwealth of Massachusetts



Essex, ss.

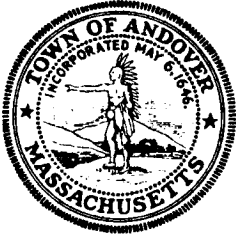
On this 7th day of August, 2006, before me, the undersigned notary public, personally appeared Kim Sousa, Joan Duff, Linda A. O'Connell, Jim Cuticcha, Reginald S. Stapczynski, Carolyn Hall Finlay, proved to me through satisfactory evidence of identification, to be the persons whose name are signed on the preceding document in my presence and acknowledged to me that they signed it voluntarily for its stated purpose, as Trustees of the Town of Andover Affordable Housing Trust Fund.

Jacki Byerley

Notary Public


My Commission Expires

JACKI BYERLEY
Notary Public
My Commission Expires
July 5, 2007



TOWN OF ANDOVER

Town Offices
36 Bartlet Street
Andover, MA 01810
(978) 623-8200
www.andoverma.gov

TO: Board of Selectmen
FROM: Lisa Schwarz,  AICP, Senior Planner
DATE: August 8, 2006
RE: Housing Trust Fund Board of Trustees Declaration of Trust

On August 21, 2006 the Board of Selectmen will be asked to sign the Declaration of Trust document that solidifies the duties and responsibilities of the Trust. The language outlined in the Declaration of Trust is identical to the language approved overwhelmingly by a majority vote at the September 27, 2006 Special Town Meeting (attached).

The purpose of the document is for the Board of Trustees and the Board of Selectmen to acknowledge and agree to the terms set forth in the Declaration of Trust and to attest that the Trust is for the benefit of all of the Inhabitants of the Town of Andover, Massachusetts in a manner consistent with the terms and conditions outlined in the Declaration of Trust (copy attached).

The original Declaration of Trust will be presented to you at the Board of Selectmen meeting. Your signatures are much appreciated.

SPECIAL TOWN MEETING - SEPTEMBER 27, 2005

ARTICLE 5. To see if the Town will vote to appropriate the sum of \$800,000 from the Wood Trust Fund for the purpose of paying costs of constructing a Senior Center on the parcel of Town-owned land located at 56 Bartlet Street including the costs of plans, project administration, site development, parking facilities, original equipment, furnishings, parking and circulation improvements to the adjacent municipal campus containing the Town Offices, School Administration and Doherty Middle School Buildings and for the payment of all other costs incidental and related thereto or take any other action related thereto.

On request of the Board of Selectmen

Upon motion made and duly seconded it was voted to WITHDRAW Article 5 by a Majority vote.

* **ARTICLE 6.** To see if the Town will vote to establish an Affordable Housing Trust, pursuant to Massachusetts General Laws, Chapter 44, Section 55C, which shall contain the following terms and conditions:

ARTICLE FIRST: Name of the Trust

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

ARTICLE SECOND: Purpose

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Andover for the benefit of low and moderate income households. In furtherance of this purpose, the Trustees are hereby authorized, in accordance with the procedures set forth herein, 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 held by the Trust and the net earnings thereof shall be used exclusively for the preservation and creation in the Town of Andover of affordable housing for the purposes for which this Trust was formed.

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property, including without restriction investments that yield a high rate of income or no income;

- (3) with the approval of the Board of Selectmen and Town Meeting, to sell, lease, exchange, transfer or convey any 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 undertakings relative to trust real property as the Trustees deem advisable notwithstanding the length of any such lease or contract;
- (4) with the approval of the Board of Selectmen, to sell, lease, exchange, transfer, or convey any personal 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 undertakings relative to trust personal property notwithstanding the length of any such lease or contract;
- (5) 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 board engages for the accomplishment of the purposes of the trust;
- (6) to employ advisors and agents, such as accountants, appraisers and lawyers as the trustees deem necessary;
- (7) 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;
- (8) to apportion receipts and charges between income 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;
- (9) with the approval of the Board of Selectmen, 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;
- (10) with the approval of the Board of Selectmen, 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 board, with the approval of the Board of Selectmen, may deem necessary and appropriate;
- (11) to carry property for accounting purposes other than acquisition date values;
- (12) with the approval the Board of Selectmen and the approval of Town Meeting by a two-thirds majority vote, to incur debt, to borrow money on such terms and conditions and from such sources as the trustees deem advisable, and to mortgage and pledge trust assets as collateral;
- (13) with the approval of the Board of Selectmen, to disburse trust funds for the purpose of making loans or grants in furtherance of the creation or preservation of affordable housing in Andover upon such terms as the Trustees shall deem most appropriate to carry out such purposes;
- (14) to make distributions or divisions of principal in kind;
- (15) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor

SPECIAL TOWN MEETING - SEPTEMBER 27, 2005

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approved by a Majority vote.

Finance Committee Report: Approval

Board of Selectmen Report: Approval

Planning Board Report: Approval

Upon motion made by Town Counsel Urbelis and duly seconded it was voted by a Majority vote to dissolve the Special Town Meeting at 8:50 P.M.

A true record

A T T E S T

Randall L. Hanson
Town Clerk