

To: Cambridge City Council  
cc: City Clerk

Michael Brandon  
27 Seven Pines Avenue  
Cambridge, Massachusetts 02140

RECEIVED BY  
CITY CLERK  
1994 OCT 20 PM 4:54  
CAMBRIDGE MA.

October 20, 1994

Stephen P. Fauteux, Chief  
Enforcement Division  
State Ethics Commission  
One Ashburton Place, Room 619  
Boston, Massachusetts 02118

**RE: Ethics complaints against Cambridge City Manager Robert W. Healy  
and Cambridge City Solicitor Russell V. Higley**

Dear Mr. Fauteux:

A recent decision by your staff deferring investigation and enforcement action against the above officials seems to be based on incomplete information.

In his August 19 letter of explanation to the Cambridge Civic Association, Special Investigator Juan DeLeon noted that the materials submitted to the Ethics Commission included "no evidence that either subject has participated as a city official in matters in which they or the bank [Century Bank and Trust] have a financial interest."

Enclosed herewith is such evidence: public records indicating that the city solicitor and the city manager—his partner in the HR & HR Realty Trust—have personally and substantially participated as public officials in particular matters in which they themselves, their partner, or the bank had a financial interest.

Because the two officials failed to dispel the apparent conflicts by publicly disclosing their private financial interests in advance, and because neither obtained prior written approval from his appointing authority, their participation seems to be in direct violation of Sections 19 and 23 of the conflict-of-interest statute. Moreover, the no-money-down financing provided by the bank, together with the possibility that the two officials have derived unequal benefits from their joint real estate ventures ("gifts" from one partner to the other), suggests that Section 3 and other provisions of Chapter 268A may have been breached.

Attachment A is the "lockbox contract" executed by the City of Cambridge and Century Bank and Trust on January 3, 1991. Mr. Healy as city manager and Mr. Higley as city solicitor officially participated in this particular matter by personally approving and endorsing the arrangement with the bank, which had provided them with private financial assistance of substantial value—a full-equity mortgage loan.

As a director of the bank, Mr. Higley was expressly prohibited by Section 19 from knowingly participating in the matter owing to the bank's direct financial interest in it—not to mention his own indirect financial interest as a shareholder of the bank. It should also be noted that an attachment to the contract (enclosed) indicates that the two bank officers who executed the contract documents on behalf of Century Bank were authorized to do so by a vote of the board of directors on which the city solicitor serves.

At the time he signed this contract, Mr. Higley, a longtime attorney, had a fiduciary relationship with both parties—the City of Cambridge and Century Bank—as well as with HR & HR Realty Trust, which had received generous financing from the bank through the efforts of the two trust administrators, who apparently were beneficiaries, too—namely, Mr. Higley and Mr. Healy, his city supervisor, who also personally signed and officially executed the document, despite his partner's financial interest in it.

Attachment B is a September 29, 1989, memorandum in which City Manager Healy personally authorized a salary increase for City Solicitor Higley, who was his undisclosed partner in real estate ventures at the time. Because he did not reveal their joint trust agreement or obtain advance permission from his appointing authority (the city council), Mr. Healy seemingly violated Section 19 when he okayed the raise: he personally and substantially participated in a particular official matter in which he knew his private partner, Mr. Higley, had a significant financial interest that was distinct from that of the general public.

Attachment C is the joint declaration that created HR & HR Realty Trust on February 14, 1985, in order to "buy, acquire, sell, lease, develop, rent, hold, improve, manage and generally deal in real estate." Together with the documents submitted by the Civic Association, this agreement demonstrates that the city solicitor and the city manager are "partners" within the meaning of Chapter 268A.

Mr. Healy's and Mr. Higley's actions also seem to have violated the standards of conduct set forth in 268A MGL 23(b)(3). Certainly a reasonable person could conclude that their joint private financial relationships with the bank were likely to result in favoritism or undue influence in their official capacities, regardless of their best intentions otherwise—especially since they did not make a written or public disclosure of the facts before participating in official matters.

Mr. DeLeon's letter somewhat vaguely suggested that "the February 4, 1994 disclosure [by Mr. Healy] to the city council would seem to ameliorate any appearance problems." But in these two particular matters (as in others), the two partners' official participation *predated* February 4, 1994. The statute on its face clearly requires prospective rather than retrospective disclosure in order to dispel the appearance of conflicts—a requirement stated repeatedly and without ambiguity in Ethics Commission publications. Mr. DeLeon's comment about the February 4 "disclosure" therefore must mean that the city manager's after-the-fact communication may have constituted adequate notice to dispel subsequent appearances of conflict involving these two officials.

That seems dubious, however, for several reasons:

- the February 4 letter to the city council—which was tendered only after a newspaper reporter inquired about the undisclosed joint real estate venture—was transmitted to the councilors individually, rather than formally submitted as an official communication and fully disclosed to the public via the city agenda in accordance with City Council Rule 23;
- the document has not been submitted to the city clerk and placed with the formal disclosure notices filed by other city officials pursuant to Chapter 268A;
- the manager's communication failed to disclose pertinent facts—including his acceptance of a valuable loan from a bank that had a business relationship with the city; his personal participation in the lockbox contract; the city solicitor's overlapping fiduciary roles and continuing ownership interest in the bank; and the ongoing nature of their partnership;
- the city solicitor has not submitted a written disclosure formally revealing his financial interests as a director of Century Bank or addressing the apparent conflicts entailed in his multiple roles as a city official, a bank director, and a partner of the city manager; and
- neither official disclosed the Century Bank mortgage loan or their joint trust on the financial disclosure forms they filed under oath in 1993 pursuant to the city's ethics ordinances.

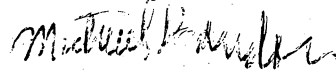
The questionable ethical conduct of these two officials and their apparent lack of candor are of particular concern because the city solicitor plays a crucial role in officially interpreting state and local ethics laws and the city manager bears responsibility for administering and enforcing them. I believe that public confidence in the integrity of

Stephen P. Fauteux  
October 20, 1994  
Page 4

local government and in the fair administration of Chapter 268A will be seriously damaged if the Ethics Commission does not formally intervene in this matter. At the very least, a closer review by your office and a clearer, more detailed explanation of your conclusions are needed.

I look forward to your formal response. In the meantime, please contact me if additional documents or other information would be useful.

Yours truly,



Michael Brandon

encl.

cc.: R. Philip Dowds, President, Cambridge Civic Association  
Cambridge City Council  
The Honorable William Weld, Governor  
Cambridge Chronicle, Cambridge Tab, Boston Globe

file

This agreement made and entered into this by and between the City of Cambridge, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, party of the first part hereinafter referred to as the "City" by and through its Purchasing Agent, and Century Bank & Trust Company, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts party of the second part hereinafter referred to as the "Contractor".

ARTICLE I. The Contractor agrees to furnish and deliver materials, supplies or equipment, as may be ordered by the Purchasing Agent; as hereinafter described in Article II, for the period beginning January 1, 1991 and ending December 31, 1993

ARTICLE IV. The City agrees to pay for the following listed materials, supplies or equipment to be furnished by the Contractor in accordance with the following schedule:

The Contractor agrees to furnish and deliver all necessary services for LOCKBOX SERVICES to the City of Cambridge, all in accordance with the specifications and the Contractor's bid of 11-8-90 (File No. 2543) and as per the attached schedule.

CONTRACTOR'S ADDRESS: 376 Mystic Avenue, Medford, Mass. 02155

TELEPHONE NUMBER: 391-4000

BILL TO: Finance Department, 795 Mass Ave., Cambridge, Mass.

ARTICLE III. The Contractor shall conform to all determinations and directions of the Purchasing Agent of the City relating to the materials, supplies or equipment and their delivery, suitability, amount, quality and value of everything furnished or to any other questions which may arise as to the materials, supplies or equipment and the time and manner of their delivery.

ARTICLE IV. The City, if the Contractor shall fail to furnish and deliver any of said goods as required after the purchase order for same has been given to the Contractor or mailed to him at the business address stated in his proposal, acting by the Purchasing Agent, may obtain the materials, supplies or equipment ordered at any other source, and the City, if the Purchasing Agent shall give to the Contractor or mail to him at the business address stated in his proposal, a notice, signed by the Purchasing Agent that the Contractor has failed to carry out the contract to the satisfaction of the Purchasing Agent, acting by the Purchasing Agent and at his discretion, and without further notice may cancel the contract.

ARTICLE V. The City, from any sums due the Contractor for materials, supplies or equipment delivered may keep for its own the whole or any part of the amount for expenses, losses and damages as directed by the Purchasing Agent, incurred by the City in consequence, of purchasing materials, supplies or equipment as aforesaid at any other source or by any failure, omission, or mistake of the Contractor, his agents or employees, in furnishing or delivering materials, supplies or equipment as provided in this contract, and the Contractor shall, within one month after any such expenses, losses or damages have been incurred by said City pay to said City the amount thereof, less any amount kept as aforesaid.

ARTICLE VI. This contract is made subject to all the laws of the Commonwealth and the ordinances of the City and if any clause thereof does not conform to such laws or ordinances, such clause shall be void and such laws or ordinances operative in lieu thereof.

ARTICLE VII. Notwithstanding anything to the contrary herebefore contained, it is expressly agreed that the City may not hold the Contractor liable for any loss, expense, or damage incurred by the City on account of failure or omission of the Contractor to furnish or deliver any of the materials, supplies or equipment called for in this contract, if the Contractor's said failure or omission shall have been caused by state of war, acts of enemies, embargoes, expropriation or confiscation of the facilities used by the Contractor or his supplier for the production, manufacture, transportation, handling or delivery of said goods, or by compliance with any law, order or regulation of any federal, state, or municipal governmental authority; the Contractor having given to the City reasonable notice of such clause.

ARTICLE VIII. The Contractor promises and agrees to furnish a bond or certified check in the penal sum of NONE REQUIRED conditioned to insure the faithful performance of this contract with surety satisfactory to the City.

ARTICLE IX. "The Contractor in the performance of all work after award and prior to completion of the contract work will not discriminate on grounds of race, color, sex, age, religious creed, disability, national origin or ancestry, sexual orientation, marital status, family status, military status, or source of income in employment practices or in the selection or retention of subcontractors, and in the procurement of materials and rental of equipment. The City may cancel, terminate, or suspend the contract in whole or in part for any violation of this paragraph".

IN WITNESS WHEREOF the parties have hereto and to three other instruments of like tenor set their hands the day and year first above written.

The legality and form of this contract are approved in quadruplicate.

CENTURY BANK & TRUST COMPANY

Contractor: William J. Stobbe

Russell B. Higley, City Solicitor

Signature and Title

EXECUTIVE DEPARTMENT Approved by

CITY OF CAMBRIDGE

Robert W. Healy, City Manager

Purchasing Agent

C#19029

CITY OF CAMBRIDGE  
PURCHASING DEPARTMENT

File No. 2543 - THURSDAY,  
NOVEMBER 8, 1990 @ 11:00 A.M.

Lockbox Services

O: Barbara L. Duffy, Purchasing Agent  
City Hall, Cambridge, Massachusetts 02139

The undersigned proposes to furnish and deliver all necessary services for Lockbox Services to the City of Cambridge, all in accordance with the attached specifications and following proposal schedule.

The contract period shall be for three years, from January 1, 1991 to December 31, 1993. Contract will be awarded by November 16, 1990 unless award date is extended by consent of all parties concerned.

Payment and performance obligations for succeeding fiscal years shall depend on the availability and appropriation of funds.

One award will be made as a result of this bid proposal. Prices must remain FIRM during the entire contract period.

PROPOSAL

PRICE SUMMARY FORM

Item	Avg Number Per Year (Estimate)	Unit Cost Year 1	Unit Cost Year 2	Unit Cost Year 3
Initial Account Setup	1	\$ 1,000.	\$ 0	\$ 0
Per Document Processed	150,000	\$ .17¢	\$ .17¢	\$ .17¢
*Multi-documents	23,000	\$ .17¢	\$ .17¢	\$ .17¢
*Scan line rejects	50,000	\$ .10¢ *	\$ .10¢ *	\$ .10¢ *
*No document (Checks rec'd w/valid acct #, but no document)	200	\$ 0	\$ 0	\$ 0
*Correspondence -separate enclosure	750	\$ 0	\$ 0	\$ 0
*Correspondence -on document stub	2,900	\$ 0	\$ 0	\$ 0
Post Office Box Rental	12 (Monthly)	\$ 25	\$ 25	\$ 25

\*Charged after 10% of bills have rejected - on monthly basis total.

NAME OF BIDDER: Century Bank

ing of	150,000	\$ 0	\$ 0	\$ 0
Microfilm look-up	100	\$ 0	\$ 0	\$ 0
Copies of Checks	100	\$ .50	\$ .50	\$ .50
Photocopies	50	\$ .75	\$ .75	\$ .75
Courier Service to Cambridge	250	\$ 15.00	\$ 15.00	\$ 15.00
Delivery to Boston or Cambridge Bank	250	\$ 15.00	\$ 15.00	\$ 15.00
Minimum Monthly Charge		\$ 0	\$ 0	\$ 0

This charge will be assessed per item/occurrence, not assessed on all items processed that day.

TERMS: \_\_\_\_\_ FOB DELIVERED

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

John C. Lavallee  
 \_\_\_\_\_  
 (Name of person signing bid or proposal)  
 Century Bank & Trust Company  
 \_\_\_\_\_  
 (Name of business)  
 Address & Telephone #: 376 Mystic Avenue  
 Medford, MA 02155  
 \_\_\_\_\_  
 (617) 391-4000  
 \_\_\_\_\_

IF PRICES QUOTED ARE NOT DELIVERED PRICES,  
 PLEASE INDICATE SHIPPING CHARGES: \$ \_\_\_\_\_.

At a meeting of the Board of Directors of the \_\_\_\_\_  
(company name)

CENTURY BANK AND TRUST COMPANY on December 20 19 90

at which a majority of the Directors were present, it was voted that

John C. Lavalley, Senior Vice President & William J. Sloboda, Executive Vice President  
(Name of Officer) (Title)

be and hereby is authorized to execute contracts and bonds in the name and behalf of said Company, and affix its corporate seal thereto; and the execution of any contract or obligation in this Company's name and on its behalf by such

John C. Lavalley, Senior Vice President & William J. Sloboda, Executive Vice President  
(Name of Officer)

shall be valid and binding upon this company.

Attest: *Laura H. Ryan*  
(Clerk)

Place of Business: Somerville, Massachusetts

Date of Contract: January 1, 1991

I hereby certify that the above vote has not been amended or rescinded and remains in full force and effect as of this date

December 10, 19 91.

*Laura H. Ryan*  
(Clerk)

AGREEMENT BETWEEN THE CITY OF CAMBRIDGE  
AND  
CENTURY BANK AND TRUST COMPANY

Lockbox Services

Article I. Agreement

This agreement entered into on the 29<sup>th</sup> day of January 1991 by and between the City of Cambridge, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the "City," and Century Bank and Trust, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, with principal offices located at 376 Mystic Avenue, Medford, Massachusetts, hereinafter referred to as the "Company."

The Company agrees to provide lockbox services to the City, including the collection and processing of all mail to the City containing real estate, personal property, water/sewer and excise tax payments according to the specifications and the Company's bid of November 8, 1990 and as per the attached schedules.

Article II. Scope of Services

- 1 The Company must produce a 9 track 1/2 inch magnetic tape, formatted to the City's exact specifications to transmit individual account payment information. The tape must be submitted on a daily basis for the previous day's activity and must be accompanied by a balanced report that equals the tape totals, and a pre-deposit receipt(s) from the City's bank that equals the tape totals.
2. The Company will provide full off-site back-up of equipment and software to insure continuity of service.
3. The Company will pick up mail at a designated post office box through 12:00 p.m. each business day.
4. The Company will process all mail with correct date and will insure that each batch is in balance, that every batch number is unique, and that every record has a sequence number.
5. Exceptions will be handled in the following manner:
  - o Checks that cannot be processed because of errors or omissions in one or more fields will be returned to the City.
  - o Checks with no identifiable account numbers will be returned to the City.

o Correspondence on a separate piece of paper will be left in the envelope. The opening clerk will insure that his/her operator number, the account number, and the dollar amount of the payment are clearly written on the envelope.

o Payments in cash will be logged in and placed in a cash safe for special handling and posting by a supervisor.

o Correspondence and change of address written on the stub will be batched separately for input and delivered for special handling by the City.

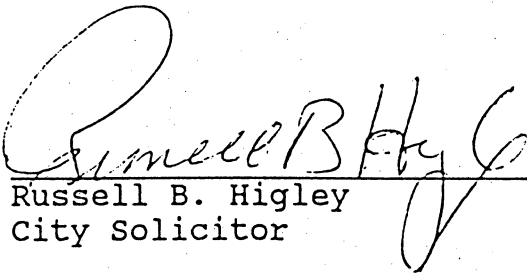
o Unequal multiple document transactions will be returned to the City.

6. Each document (the bill) will be scanned by an OCR scanner. The payment amount will be keyed off of the check manually, and compared with the amount scanned off the document.
7. The Company must process partial payments.
8. After valid check amount has been entered, each check will be encoded and endorsed. The batch number and City of Cambridge tax payer account number will be printed on the back of each check.
9. Scannable batches will be closed and balanced after approximately 300 transactions.
10. Checks will be microfilmed in batch and sequence order.
11. Daily deposits will be prepared and delivered to the City's bank.
12. The Company will edit all transactions to insure that there are no duplicate batch numbers, that batches are in balance and that the deposit(s) equals the file of records sent to Cambridge.
13. A daily lockbox report will be printed with the following information: deposit date, batch and sequence numbers, total dollar amount by batch, total dollar amount by tax type (current and delinquent real estate and personal property, current and delinquent excise, sewer/water) and total dollar amount of all batches.
14. All deposit advices, batch tapes, stubs with correspondence, exceptions, and reports will be delivered to Cambridge via courier.
15. Microfilmed records of checks will be retained by the Company for a minimum of five years.
16. Payment data will be stored for a minimum of two weeks by the Company.

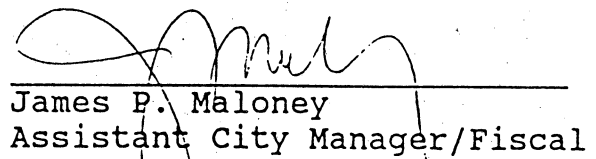
Article III. Price Agreement

Per item prices for the contract period must remain firm as per the attached schedule ("Schedule A").

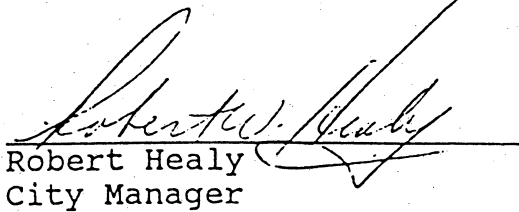
APPROVED AS TO LEGAL FORM

  
Russell B. Higley  
City Solicitor

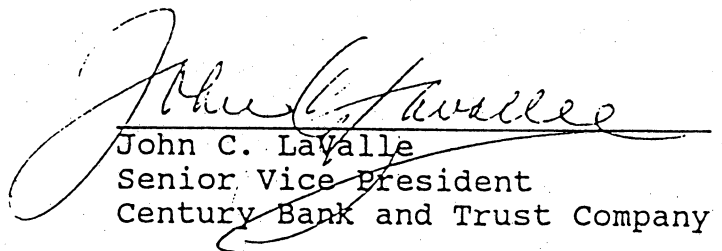
APPROVED FOR THE DEPARTMENT

  
James P. Maloney  
Assistant City Manager/Fiscal

APPROVED FOR THE CITY

  
Robert Healy  
City Manager

APPROVED FOR THE COMPANY

  
John C. LaValle  
Senior Vice President  
Century Bank and Trust Company



CITY OF CAMBRIDGE  
CAMBRIDGE, MASSACHUSETTS 02139  
TEL 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

MEMORANDUM

RICHARD C ROSSI  
Deputy City Manager

TO: Russell Higley  
City Solicitor

FROM: Robert W. Healy  
City Manager

DATE: Sept. 29, 1989

Re: Salary Increase

-----  
Effective 7-1-89, your salary will increase by 5.5%, to \$53,789 per year (\$27.4917 per hour). Please prepare the appropriate Personnel Transaction Form to submit to Personnel by Oct. 10 for processing in the next week's payroll.

I look forward to your continuing support and leadership as we work together to guide the City through very difficult times while maintaining essential services.

HR & HR REALTY TRUST

THIS DECLARATION OF TRUST made this 14th day of February, 1985, by

Robert W. Healy, Jr. and Russell B. Higley

(hereinafter called the Trustee, which term may be singular or plural and any pronoun referring thereto shall be deemed to include his, her or their successors in trust hereunder and to mean the Trustee for the time being hereunder wherever the context so permits).

1. The Trust hereby created shall be known as:

HR & HR REALTY TRUST

and under that name, so far as legal, convenient and practicable shall all business carried on by the Trustee be conducted and shall all instruments in writing by the Trustee be executed.

2. This Trust may be referred to as:

HR & HR REALTY TRUST

and the Trustee may be referred to as:

Trustee of HR & HR REALTY TRUST

The purpose of this Trust is to buy, acquire, sell, lease, develop, rent, hold, improve, manage and generally deal in real estate.

3. The Trustee, except as herein otherwise specifically provided, shall have the same powers with respect to all real and personal estate, at any time held by him, as if he were the absolute owners thereof, and shall, but without limiting the foregoing general powers, have the following powers: to purchase and otherwise acquire any real or personal property; to invest and re-invest any of the Trust property, in such manner as he may deem advisable, without being limited as to the kind or amount of any investment, to sell, assign, convey, transfer, exchange and otherwise deal with or dispose of any real estate or personal property or any interest therein for such consideration and upon such terms and conditions as he may deem advisable; to join with others in the acquisition or development of real property or any interest therein; to borrow money and mortgage or pledge any part of the Trust assets and issue bond, notes, securities or other evidences of indebtedness, including any evidences of indebtedness expiring after the expiration of the Trust; to lend money without or with security; to execute as Lessor or as Lessee leases, including leases for terms expiring after the expiration of the Trust; to hold any property or any interest in property in the name of agents or nominees without disclosure of the Trust; to develop any property purchased and construct buildings and other improvements; to pay, compromise or adjust all obligations incurred and rights acquired in the administration

ROBERT W. HEALY  
RUSSELL B. HIGLEY  
TRUSTEES AT LAW  
211 DEARBORN  
ANN ARBOR, MICHIGAN  
48106  
401-947-7111

the Trust, and to execute, acknowledge and deliver all such contracts, deeds, mortgages or other instruments as he may deem advisable in the course of the administration of the Trust. The Trustee shall be entitled to obtain advice of counsel and to rely thereon and to appoint and employ such other persons, agents, brokers, managers, accountants or advisors as he may deem advisable and no Trustee shall be held personally liable for any act or omission of any Co-Trustee or of any person so employed or retained.

4. Only the Trustee may exercise all of the powers hereunder and may execute any and all instruments. No Trustee shall be required to give bond nor be liable except for his own willful breach of trust. No license of Court shall be requisite to the validity of any transaction entered into by the Trustee with respect to the Trust Estate. Each Trustee shall be entitled to such reasonable remuneration for his services and also additional remuneration for extraordinary or unusual services, legal or otherwise, rendered by him in connection with the Trust hereof, all as shall be from time to time fixed and determined by the Trustee. No one dealing with Trustee shall be bound to see to the application of any money or other property paid or delivered to the Trustee or any one or more of them.

5. Neither the Trustee nor any officer or agent of the Trust shall have the power to bind the beneficiaries personally or to call upon them for the payment of any sum of money or any assessment whatever. Neither the Trustee nor the shareholders shall ever be personally liable hereunder as partners or otherwise. All persons extending credit to, contracting with or having any claim against the Trustee shall look only to the funds and property of the Trust for the payment of any contract or claim or for the payment of any debt, damage, judgment or decree or for any money that may otherwise become due or payable to them from the Trustee so that neither the Trustee, present or future, shall be personally liable therefor. Whenever practicable in the judgment of the Trustee, this instrument shall be referred to and an express stipulation that neither the Trustee nor the shareholders shall be personally liable shall be inserted in contracts or instruments creating liabilities. In no case, however, shall the absence of such reference or stipulation affect the Trustee's or beneficiaries' right of reimbursement from the Trust property.

6. The Trustee shall hold the said real estate and personal property and any other property which may be conveyed, transferred, sold or assigned to him as Trustee under this Declaration of Trust, subject to the provisions of said deeds or conveyances and of this instrument, solely for the benefit of the beneficiaries of said Trust, in the proportions and percentages indicated, who shall be the persons hereinafter named, to wit:

Schedule of Beneficiaries are on file at the office trust.

ESTER A. HIGLEY  
JOSSELL S. HIGLEY  
ATTORNEYS AT LAW  
225 BROADWAY  
CAMBRIDGE MASS  
02142  
647-7771

Upon the death of any beneficiary, the share shall go to her or her estate, unless otherwise indicated by a subsequent alteration or amendment. The interest of any beneficiary hereunder presently named or included by subsequent amendment, either as to income, interest or principal shall not be anticipated, alienated or in any manner assigned by such beneficiary and shall not be subject to any legal or equitable process, bankruptcy or insolvency proceedings, or the attachment, interference or control by or of creditors or others. No title, interest or estate in any lands, buildings or other property held by the Trustee at any time hereunder is to vest in the beneficiaries, the interest of all the beneficiaries being equitable; the beneficiaries shall have no right to call for any partition or distribution during the continuance of the Trust, and the sole right, claim and interest of each beneficiary shall be in the obligation of the Trustee hereunder to hold, manage, apply, dispose of the Trust "res" and account for the income and proceeds thereof in the manner provided for herein. Any Trustee may be a beneficiary and exercise all rights of a beneficiary and power of a Trustee.

7. The Trustee may declare dividends from the net income or profit of the Trust "res" for the beneficiaries, from time to time as he sees fit in his discretion, among the beneficiaries at the time in proportion of their several beneficial interest if the income and profits accumulated in the discretion of the Trustee justifies a dividend to be declared and his decision as to the amount of the dividends shall be final; and the Trustee may make distribution to the beneficiaries of any uninvested capital at any time as said Trustee may in his judgment decide but nothing herein contained shall impair or limit the rights or powers of the Trustee to reserve such sums as he may deem necessary to pay debts, expenses and obligations of the Trust whether due and payable or future contingent.

8. In the event of the death of the original Trustee, herein named, or the unavailability or inability to act of any Trustee, then the surviving Trustee, if any, and the beneficiaries or the beneficiaries alone, if there are no surviving Trustee shall appoint a succeeding Trustee upon the execution and recording of a certificate setting forth same.

9. Any Trustee hereunder may resign by written instrument signed and acknowledged by such Trustee and recorded in the Registry of Deeds for said County. Additional Trustees may be appointed provided that the instruments or a certificate signed by a majority of the Trustees then in office naming the Trustee or Trustees appointed and stating that the appointment was so made. The acceptance in writing by the Trustee or Trustees appointed shall be recorded in said Registry of Deeds. Upon the appointment of any succeeding Trustee, the title to the Trust Estate shall thereupon and without the necessity of any conveyance be vested in said succeeding Trustee jointly with the remaining Trustee or Trustees, if any. Reference herein to Trustee shall mean the Trustee for the time being acting hereunder.

HESTER A. HOLEY  
 USSELL B. HOLEY  
 ATTORNEYS AT LAW  
 200 BROADWAY  
 CAMBRIDGE, MASS  
 02142  
 617-547-7111

10. This Declaration of Trust may be amended from time to time, except as to the exemption of Trustee and shareholders from personal liability, by an instrument or instruments in writing signed by majority of the Trustees then in office provided that the instrument of amendment or a certificate signed by a majority of the Trustees then in office reciting the amendment and stating that it was so made shall be recorded in said Registry of Deeds.

11. This Trust shall terminate upon the death of any original Trustee and may be sooner terminated by an instrument or instruments in writing signed by one of the original Trustees then in office, provided that the instrument or instruments or a certificate signed by said original Trustee then in office setting forth such termination and stating that it was so made shall be recorded in said Registry of Deeds. Upon the termination of the Trust subject to the payment or provisions for payment of all obligations and liabilities of the Trust and Trustee, the real and personal assets of the Trust shall be distributed among the beneficiaries, to their beneficial interests, free of all trust. In making such distribution, the Trustee may sell all or any portion of the Trust property and distribute any of the assets or undivided interests therein in kind at such valuations as he may deem to be fair, his determination to be conclusive upon all parties concerned. In any distribution, the Trustee may transfer any property subject to any liability of the Trust or on condition that the transferees shall assume in a manner satisfactory to the Trustee any such liability. The powers of the Trustee shall continue until the affairs of the Trust have been wound up.

12. Every contract, deed, mortgage, lease and other instrument (other than an amendment or termination) executed by the Trustee, who according to the records of said Registry of Deeds appears to be Trustee hereunder, and any instrument of amendment or termination executed by a majority of the persons who according to such records appear to be Trustees hereunder, shall be conclusive evidence in favor of every 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 Trustee. Any person dealing with the Trust property or the Trustee may always rely on a certificate signed by the Trustee who according to the records in said Registry of Deeds appear to be the Trustee hereunder, as to who are the Trustees or beneficiaries hereunder or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Trustee or are in any other manner germane to the affairs of the Trust.

HESTER A. HIGLEY  
JESSELL B. HIGLEY  
ATTORNEYS AT LAW  
212 BROADWAY  
CAMBRIDGE, MASS  
02108  
—  
617 847-7111

PG 58

IN WITNESS WHEREOF, the said Trustee(s) hereby accepts and executed these presents as a sealed instrument this 14th day of February, 1985.

*Robert W. Healy Jr.*  
Robert W. Healy Jr.

*Russell B. Higley*  
Russell B. Higley

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

February 14, 1985

Then personally appeared: Robert W. Healy, Jr. and Russell B. Higley and acknowledged this instrument to be a free act and deed before me.

*Seamus M. Lynch*

Notary Public

Rec Mar 20 1985 8:30AM #9050

My commission expires: 6/15/90

BESTER A. HIGLEY  
RUSSELL B. HIGLEY  
ATTORNEYS AT LAW  
100 BRADSHAW  
CAMBRIDGE, MASS.  
02138  
617 547-700

S-450

**Consent Comm #14**

**A comm. was received from, Michael Brandon regarding ethics complaints against Robert Healy and Russell Higley.**

**In City Council October 24, 1994**

*Placed on file*