

ST. PIERRE & JENKINS  
COUNSELLORS AT LAW  
512 WEST MAIN STREET  
SHREWSBURY, MASSACHUSETTS 01545-2253  
[A PROFESSIONAL ASSOCIATION]

RODERICK A. ST. PIERRE  
JOSEPH R. JENKINS

TELEPHONE: (508) 842-1000  
FACSIMILE: (508) 842-9666

October 13, 1994

Joel A. Lerner, Director  
Commonwealth of Massachusetts  
Executive Office of Environmental Affairs  
Division of Conservation Services  
100 Cambridge Street  
Boston, MA 02202

RE: Carruth Capital Corporation, Westborough CR #4

Dear Mr. Lerner:

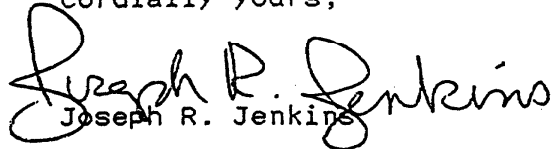
I have enclosed herewith the Conservation Restrictions executed by Carruth Capital Corporation and the Town of Westborough Board of Selectmen.

I would appreciate it if you would kindly review same and have the appropriate representative of the Environmental Affairs execute same and return to me for filing.

If you have any questions or concerns, please feel free to contact me.

Thank you.

Cordially yours,

  
Joseph R. Jenkins

JRJ/ces  
Enc.

cc: Westborough Planning Board ✓

RECEIVED  
TOWN OF WESTBOROUGH OFFICE  
2001 AUG 14 PM 3:11  
TOWN OF WESTBOROUGH

CONSERVATION RESTRICTION  
TO  
TOWN OF WESTBOROUGH, MASSACHUSETTS

RECEIVED  
TOWN CLERK'S OFFICE  
2001 AUG 14 PM 3:11  
TOWN OF WESTBOROUGH

I. Grantor Clause:

Carruth Capital Corporation, a Massachusetts Corporation with a principal place of business at 176 East Main Street, Westborough, Massachusetts 01581 Trustee of the Piccadilly Mill Open Space Trust dated July 30, 1993 and recorded with Worcester District Registry of Deeds, Book 15445, Page 263, ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws, grants, with quitclaim covenants, to the Town of Westborough, Massachusetts, acting by and through its Conservation Commission in accordance with Massachusetts General Laws, Chapter 40, Section 8c, a Massachusetts municipal corporation and its successors and permitted assigns ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on certain parcels of land located in the Town of Westborough, Massachusetts (the "Premises"), being designated and described as Open Spaces 1-5 on a plan (the "Subdivision Plan") entitled "Piccadilly Mill Open Space Community, A Definitive Plan" by Beals and Thomas, Inc., recorded at Worcester District Registry of Deeds, Plan Book 665, Plan 59, specifically excepting from said conveyed premises the area shown as utility easement situated within Open Space Parcel 5 as shown on said plan.

II. Purposes:

The Premises contain unusual, unique and outstanding qualities the protection of which in their predominantly natural or open condition will be of benefit to the public. In particular, a portion of the Premises is located in the vicinity of a town well, a portion of which is within Zone 1 of the well and a portion of which is within Zone II and another portion of the Premises contains the historic Piccadilly Mill and adjacent mill pond (Open Space Parcel #5), this Conservation Restriction is in accord with the Special Permit issued by the Westborough Board of Appeals, dated August 30, 1989, Worcester District Registry of Deeds, Book 13766, Page 203.

III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:

- A. Prohibited Acts and Uses. Subject to the exceptions set forth in paragraph B below, the following acts and uses are prohibited on the Premises:
1. Constructing or placing of any building, tennis courts, landing strip, mobile home, swimming

- pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or below the Premises;
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
  3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
  4. Cutting, removing or otherwise destroying trees, grasses, or other vegetation;
  5. Activities detrimental to drainage, flood control, water conservation, erosion control, water quality or soil conservation;
  6. Any further subdivision of the Open Space Parcels as shown on the subdivision plan.
  7. Any other use of the Premises or activity which would materially impair significant conservation or historic interests (including but not limited to the use of high nitrogen fertilizers or any pesticides) unless necessary for the protection of the conservation or historic interests that are the subject of this Conservation Restriction. Notwithstanding the above, no use of the premises shall be in violation of applicable water supply laws or regulations as promulgated by state or federal authorities, including but not limited to Commonwealth of Massachusetts Department of Environmental Protection Regulations 310CMR 27.00.

B. Exceptions to Otherwise Prohibited Acts and Uses. The following acts and uses otherwise prohibited in subparagraph A are permitted but only if such acts or uses do not materially impair significant conservation interests.

1. Passive recreational activities.
2. The maintenance of piles and limbs, brush, leaves and similar biodegradable material provided such piles are not conspicuous from travelled ways or otherwise interfere with the conservation purposes of this Conservation Restriction.

3. The placing of sight pervious fences that do not interfere with the conservation purposes of this restriction or the aesthetic values of the open space areas.
  4. Selective cutting of trees for fire protection, creation of unpaved trails and maintenance thereof, tick control, or otherwise to preserve the present condition of the Premises, per the Open Space Landscape Management Plan, dated April 10, 1992, prepared by Beals & Thomas, Inc. for Piccadilly Mill Realty Trust.
  5. Woodland and farming operations carried on in accordance with sound agricultural and forest management practices (including but not limited to the cultivation of fields, the mowing and grazing of meadows and the selective cutting and planting of trees).
  6. Restoration and alteration of the mill, flume raceways, pond and brook but only upon prior written approval of the Westborough Historical Commission.
  7. Erection of signs by the Grantor or Grantee identifying the Grantee as holder of the restriction and to educate the public about the conservation values protected and any limitations relating to public access.
- C. Permitted Acts and Uses. All acts and uses not prohibited by subparagraphs A and B are permissible except as noted below.
1. Portions of Open Space Parcels #1-5 are situated within the Town of Westborough Aquifer and Watershed Protection District. This overlay district is governed by Article 4, Section 4700 of the Town Zoning Bylaw. Notably, the 12.71 acre Open Space Parcel #1 lies within the 400 foot radius of a town well, the "Hopkinton Road Well", and, within Zone II, the Aquifer and Direct Recharge Area.
  2. Any portion of Open Space Parcel #1-5 which lies within the District shall fully and completely comply with the uses and prohibitions set forth in Section 4700 as may be revised from time to time. Notwithstanding Sections III, A & B above, no use shall be allowed which contravenes the prohibitions of the Aquifer and Watershed Protection District regulations of the Town Zoning Bylaw and State Department of Environmental Protection Water Supply Regulations. 310 CMR 27.00.

3. Notwithstanding anything contained herein to the contrary, as to that portion of Open Space Parcel #1 which lies within Zone I (the 400 foot radius of a town well) the Westborough Conservation Commission or the Town of Westborough shall have the right to further restrict any use or activity within said Zone I.

D. Improvements as Shown on Plans.

1. Notwithstanding anything else contained herein, Grantor and/or its successors or assigns are specifically permitted to construct, maintain and reconstruct all improvements, alterations, or other changes as shown on the Subdivision Plan, including but not limited to a Sewer Pump Station located in the utility easement within Open Space Parcel # 5, and all related sewer pipe line, utility easements and highway easements, running on, under and through Open Space Parcels numbered 2, 3, 4 and 5, said highway easements are shown on said plan.

IV Legal Remedies of the Grantee:

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

B. Reimbursement of Costs of Enforcement

The Grantor, and thereafter the successors and assigns of the Grantor, covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating any violation thereof.

C. Grantee Disclaimer of Liability

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the

Premises.

D. Severability Clause

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver

Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

V. Access:

The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon Premises except there is granted to the Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner for the purposes of inspecting the same to determine compliance herewith. The Westborough Conservation Commission shall have the right of entry but no obligation to maintain the open space if grantor fails to do so, including but not limited to the right to enter onto the premises to mow the fields. The Westborough Conservation Commission shall notify the Grantor prior to exercising any right of entry set forth above, and the Grantor shall reimburse the Westborough Conservation Commission for any reasonable costs incurred maintaining the Open Space in the event of such failure by the Grantor to maintain the open space. Nothing contained herein shall prevent the Grantor from granting rights of access and use of Premises to third parties, subject to the terms of the Conservation Restriction.

VI. Assignability:

A. Running of the Burden

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation

Restriction; the Grantor on behalf of itself and its successors and assigns appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agrees itself to execute any such instruments upon request.

C. Running of the Benefit

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time:

- (i) as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out, and
- (ii) the assignee, at the time of assignment, qualifies under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly. The Assignee acknowledges that nothing contained herein shall relieve the Town of Westborough of the constitutional requirements of Article 97 of the Massachusetts Constitution.

VIII. Subsequent Transfer:

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including leasehold interests.

IX Estoppel Certificates:

Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

X. Effective Date:

The Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded, or if registered land, it has been registered.

XI. RECORDATION:

The Grantor shall record this instrument in a timely fashion in the Worcester District Registry of Deeds.

Executed under seal this 12<sup>th</sup> day of July, 1994.

CARRUTH CAPITAL CORPORATION

BY:

Christopher F. Egan  
CHRISTOPHER F. EGAN, President  
and Treasurer

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

July 12, 1994

Then personally appeared the above-named Christopher F. Egan, President and Treasurer and acknowledged the foregoing instrument to be the free act and deed of Carruth Capital Corporation, before me.

Joseph R. Jenkins  
JOSEPH R. JENKINS  
Notary Public  
My Commission Expires: 4/9/2000

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 12 day of July, 1994.

TOWN OF WESTBOROUGH  
Conservation Commission

BY:

Michael M. Michaels Chairman



COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

July 12, 1994

Then personally appeared the above named Michael M. Maddock, Chairman of the Westborough Conservation Commission and acknowledged the foregoing to be his free act and deed, before me.

Jeanne E. Smith

Notary Public

My Commission Expires: April 4, 1997

APPROVAL BY SELECTMAN

We, the undersigned, being a majority of the Selectmen of the Town of Westborough, Massachusetts, hereby certify that at a meeting duly held on July 26, 1994 the Selectmen voted to approve the foregoing Conservation Restriction to the Conservation Commission pursuant to G.L.c. 184, Sec. 32 and c. 40, sec. 80.

BOARD OF SELECTMEN

[Signature]

Jean M. Bentley

Kenneth V. Allen

John F. Cahill

COMMONWEALTH OF MASSACHUSETTS

✓ Worcester, ss.

July 26, 1994

Then personally appeared the above-named Board  
of Selectmen and acknowledged the foregoing to be his or  
her free act and deed, before me.

Elizabeth Deke Ross  
Notary Public Justice of the Peace  
My Commission Expires: July 3, 1998

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of  
Environmental Affairs of the Commonwealth of Massachusetts,  
hereby certifies that the foregoing Conservation Restriction  
to the Town of Westborough has been approved in the public  
interest pursuant to G.L. c. 184, sec. 32.

Date: \_\_\_\_\_, 1994 \_\_\_\_\_  
Secretary of Environmental  
Affairs

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 1994

Then personally appeared the above-named \_\_\_\_\_  
\_\_\_\_\_ and acknowledged the foregoing to be his  
or her free act and deed, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires: