

DECLARATION OF PICCADILLY MILL
OPEN SPACE TRUST

DECLARATION OF TRUST made this ^{30~~th~~} day of July, 1993 by CARRUTH CAPITAL CORPORATION, INC., a Massachusetts corporation with a principal place of business in Westboro, Massachusetts, which hereby declares that it and its successors in Trust hereunder will hold for the benefit of the beneficiaries hereunder upon the terms herein set forth the Trust Estate, (hereinafter described) and all other rights or property conveyed or transferred to it as Trustee hereunder.

ARTICLE I

Definitions

In this Declaration, the following words and phrases shall have the following meanings:

Section 1.01 - Common Expenses. The expenses for the operation, administration, management, maintenance, repair and replacement of the Common Open Space and the Private Drainage Facilities including specifically, without limitation, the following: (a) real estate taxes assessed against the Common Open Space; (b) expenses incurred in the collection of Common Expenses and administrative fines, including court costs, and legal and accounting fees; (c) such reserves as may be established by the Trustees for repair, replacement or addition to the Common Open Space, Private Drainage Facilities or any other real or personal property acquired or held by the Trustees on behalf of all Members.

Section 1.02 - Common Funds. All funds held by the Trustees on behalf of all Members.

Section 1.03 - Common Open Space. The common open space as shown on the Plan.

Section 1.04 - Community-Wide Standards. The standards of conduct, maintenance, or other activity generally prevailing in Piccadilly Mill as determined, from time to time, by the Trustees.

Section 1.05 - Conservation Restriction. The Conservation Restriction to the Town of Westborough dated _____, 1993, to be recorded in the Worcester District Registry of Deeds.

Section 1.06 - Definitive Approval. The decision of the Westborough Planning Board dated June 17, 1993 granting definitive subdivision approval to the Plan.

Section 1.07 - Historic Preservation Restriction. The Historic Preservation Restriction and Easement granted to the Westborough Historical Commission dated April 12, 1993.

Section 1.08 - Developer. Carruth Capital Corporation.

Section 1.09 - Lot. One of the lots in Piccadilly Mill as shown on the Plan.

Section 1.10 - Lot Expense. An expense incurred by the Trustees with respect to an individual Lot or a fine, penalty or interest charge against a particular Member which is assessed against an individual Lot and is payable on demand.

Section 1.11 - Member. An owner of a Lot.

Section 1.12 - Members' Easement Rights. The right and easement of each Member, his family and guests, to the use and enjoyment of the Common Open Space for the purposes, and in the manner, for which they are intended as reasonably determined, from time to time, by the Trustees.

Section 1.13 - Passive Recreation. Use of the Common Open Space for passive recreational activities in accordance with the Special Permit and the rules and regulations adopted by the Trustees from time to time pursuant to this Trust.

Section 1.14 - Person. An individual, corporation, trust, estate, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 1.15 - Plan. The Plan entitled "PICCADILLY MILL OPEN SPACE COMMUNITY, A DEFINITIVE PLAN." by Beals and Thomas, Inc., latest revision dated April 10, 1992 and recorded with Worcester District Registry of Deeds, Plan Book 665, Plan 59, as it may be amended or revised from time to time.

Section 1.16 - Landscape Management Plan. The plan entitled "Open Space Landscape Management Plan", by Beals and Thomas, Inc., as it may be amended or revised from time to time.

Section 1.17 - Private Drainage Facilities. The drainage swales, sedimentation and detention basins shown on the Plan.

Section 1.18 - Registry. The Worcester District Registry of Deeds.

Section 1.19 - Special Permit. The decision of the Westborough Board of Appeals dated August 30, 1989, notice of

which is recorded in the Worcester District Registry of Deeds, Book 13766, Page 203.

Section 1.20 - Transfer of Control Date. The date on which the Members shall commence to be entitled to elect the Trustees, which shall be the earlier of (a) the date the Developer ceases to own a Lot or (b) the date the Developer records at the Registry a statement that the Transfer of Control Date has occurred and that the owners of all of the Lots have been so notified, or (c) ten (10) years from the date hereof.

Section 1.21 - Trustees. The Trustee hereunder and its successors as Trustees.

Section 1.22 - Trust Estate. The Common Open Space, the Trustees' Easement Rights, the Common Funds and any other real or personal property acquired by the Trustees and held by them on behalf of the Members.

Section 1.23 - Piccadilly Mill. The open space community shown on the Plan.

ARTICLE II

Name of Trust

The Trust hereby created shall be known as The Piccadilly Mill Open Space Trust, and under that name, so far as legal, convenient and practicable, all business shall be carried on by the Trustees and all instruments shall be executed by the Trustees. The Trust name shall refer to the Trustees in their capacity as Trustees, and not individually or personally, and shall not refer to the Members.

ARTICLE III

The Purpose of the Trust

Section 3.01 - Purpose. The purpose of the Trust is to provide an association through which the Trustees may own, operate and manage the Common Open Space for the benefit of the Members.

Section 3.02 - Trust Estate. The Trustees shall hold title to the Common Open Space, subject to the Members' Easement Rights.

Section 3.03 - Compliance Requirements. The Trustees will ensure that Piccadilly Mill complies with all requirements of the Special Permit, the Definitive Approval, the Conservation Restriction and the Historic Preservation Restriction pertaining to the Common Open Space, including, without limitation, the obligation of maintaining the Private

Drainage Facilities.

ARTICLE IV

The Trustees

Section 4.01 - Number of Trustees. There shall be a Board of Trustees hereunder consisting of such number, not less than one nor more than five (5), as shall be determined from time to time by Members holding more than fifty percent (50%) of the membership votes present in person or by proxy at a meeting of the Members, except that there shall always be an odd number of Trustees. The Trustees shall be chosen by vote of the Members, with the person (or such number of persons as is equivalent to the number of Trustees as may be determined by the Members) receiving the greatest individual totals of membership votes being the winners of the election. Trustees so elected shall serve for a term of one (1) year and until their successors are chosen and qualified, or until a Trustee sooner dies, resigns, is removed or becomes disqualified.

Section 4.02 - Developer Control of Board. Notwithstanding Section 4.01 above, , until the Transfer of Control Date, the Developer shall have the right to appoint and remove the Trustees at will. At such time as the Transfer of Control Date occurs, the office of the original Trustees or such other persons so designated shall be deemed vacant so as to permit the vacancies to be filled by the Members as provided herein. Until such vacancies have been filled as provided herein, the original Trustees (or successors thereto) shall continue to act as Trustees hereunder.

At least thirty (30) days prior to the Transfer of Control Date, the Trustees shall call a meeting for the purpose of electing successor Trustees to take office on the Transfer of Control Date. The successor Trustees shall be chosen by vote of the Members, with the person (or such number of persons as is equivalent to the number of Trustees as may be determined by the Members) receiving the greatest individual totals of membership votes being the winners of the election. If a quorum is not present at this meeting, the Trustees shall have the right, but not the obligation, to hold a non-binding referendum and shall have the right, but not the obligation, to appoint successor Trustees on such reasonable basis as the Trustees, in their sole discretion, shall deem appropriate and in the best interest of the Members.

Notwithstanding an election by the Members to appoint successor Trustees pursuant to this Section or an appointment by the Trustees as provided above, there shall be a Transition Period from the date of such election or appointment until the Transfer of Control Date (the "Transition Period") during which time the newly elected Trustees shall meet on such basis as may be determined in order to effectuate an informed and orderly transition of

control. During such Transition Period the Trustees then in office shall continue to be the Trustees for all purposes until the Transfer of Control Date or until such time as the Trustees then in office have resigned by an instrument recorded in the Registry, whichever is earlier.

Section 4.03 - Effective Date. With respect to each person appointed or elected to be a Trustee hereunder as provided for in this trust, there shall promptly be recorded with the Registry a certificate of such appointment or election signed by any one or more of the Trustees hereunder and an acceptance of such appointment signed by the person so appointed, and such appointment or election shall take effect upon such recording. The person so appointed or elected shall then be and become such Trustee and shall be vested with the title of the Trust property and with all the powers of the Trustees, jointly with the remaining or surviving Trustees or Trustee, without the necessity of any act of transfer or conveyance.

Section 4.04 - Vacancies; Appointment and Acceptance of Trustees. If and whenever the number of Trustees shall become less than one (1), or less than the number of Trustees as last determined, due to death, disability, removal or resignation, each such vacancy shall be filled by the appointment of a person to act as Trustee, signed

- (i) by the Developer if the vacancy is in the office of a Trustee chosen by the Developer, or
- (ii) by a majority of the Trustees then in office or the sole remaining Trustee, if only one, if the vacancy is in the office of a Trustee not chosen by the Developer, certifying that such appointment was made by Members holding more than fifty percent (50%) of the membership votes represented at a duly held meeting of Members, or
- (iii) by a majority of the then remaining Trustees, or by the sole remaining Trustee if only one, if the Developer or Members holding more than fifty percent (50%) of the membership votes represented at a duly held meeting of Members, as the case may be, have not within sixty (60) days after the occurrence of any such vacancy made such appointment.

Such appointment shall become effective upon the recording with the Registry of such certificate and acceptance as provided in Section 4.03 above. If there shall be no remaining Trustee and a vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court

of competent jurisdiction upon the application of any member and notice to all Members and to such other, if any, parties in interest to whom the court may direct that notice be given. Notwithstanding anything contained herein to the contrary, despite any vacancy in the office of Trustee, however caused and for whatever duration, the then remaining or surviving Trustee or Trustees shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees, in the manner prescribed in this Trust.

Section 4.05 - Trustee Action. In any matters relating to the administration of this Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by majority vote at any duly called meeting at which a majority of Trustees is present. The Trustees may also act without a meeting by instrument signed by a majority of them. Notwithstanding the above, any instrument signed by a majority of those Trustees appearing from the records of the Registry to be such, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of delivery thereof the execution and delivery of that instrument was duly authorized by the Trustees.

Section 4.06 - Resignation. Any Trustee may resign at any time by instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds and delivered to the remaining Trustees. Such resignation shall take effect upon the recording of such instrument with the Registry unless specified to be effective at some other time.

Section 4.07 - Removal. By vote of Members holding more than fifty percent (50%) of the membership votes at a duly held Meeting, any Trustee may be removed with or without cause and the vacancy among the Trustees caused by such removal shall be filled in the manner above provided. Such removal shall become effective upon the recording with the Registry of a certificate of removal signed by a majority of the then remaining Trustees in office of by the majority of Members percent at the Meeting referred to above. Notwithstanding the foregoing, any of the original Trustees and successor Trustees appointed by the Developer may be removed only by the Developer, and may be removed from office by the Developer with or without cause.

Section 4.08 - Compensation of Trustees. No Trustee shall receive remuneration (which term shall not be deemed to include reimbursement for expenses incurred by a Trustee in connection with his duties, which reimbursement shall be permitted and charged as a Common Expense) for his services unless so provided by a vote of Members holding more than fifty percent (50%) of the membership votes and any remuneration so provided shall be from time to time fixed by

said Members, and shall be a Common Expense of the Trust Members.

Section 4.09 - No Personal Liability. No Trustee shall be held liable or accountable out of his personal assets or be deprived of compensation, if any, by reason of any action taken, suffered or omitted in good faith, or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of anything except his own willful misconduct.

Section 4.10 - Self-Dealing. No Trustee nor Member shall be disqualified by his office from contracting or dealing directly or indirectly with the Trustees or with one or more Members as vendor, purchaser or otherwise because of his, the Trustees' or any member's interest in any corporation, firm, trust, partnership or other organization connected with such contracting or dealing, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee or Member shall be in any way interested be avoided nor shall any Trustee or Member shall be in any way interested be avoided nor shall any Trustee or Member so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, or by reason of such Member's status, provided the Trustee or Member shall act in good faith and shall, upon request of any Member or Trustee, disclose the nature of his interest before the dealing, contract or arrangement is entered into.

Section 4.11 - Indemnification. The Trust shall, to the extent legally permissible, indemnify each of its Trustees against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceedings, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office of thereafter, by reason of his being or having been such a Trustee, except with respect to any matter as to which he shall have been adjudicated in any proceeding to have acted in bad faith or with willful misconduct or reckless disregard of his duties or not to have acted in good faith in the reasonable belief that his action was in the best interests of the Trust.

Section 4.12 - Powers and Duties of Trustees. The Trustees shall, subject to all provisions of applicable laws and this Trust, have the absolute control and management and disposition of the Trust Estate as if they were the absolute owners thereof and shall have all of the powers necessary for the administration for the affairs of the Trust and may do all such acts and things in connection therewith. The powers

and duties of the Trustees shall include, but shall not be limited to, the following, all of which shall be exercised subject to the provisions of this Trust:

- a. Operation, care, upkeep, management, leasing and maintenance of the Trust Estate or any part thereof;
- b. Owning, conveying, acquiring, encumbering and otherwise dealing with all or any part of the Trust Estate, including, but not limited, to conveying all or any part of the Trust Estate to an organization whose main purpose is to preserve open space.
- c. Compliance with the requirements of the Special Permit, the Definitive Approval, the Conservation Restriction and the Historic Preservation Restriction pertaining to the Common Open Space;
- d. Determination and budgeting of the Common Expenses required for the affairs of the Trust, including, without limitation, the operation and maintenance of the Trust Estate;
- e. Collection of the Common Expenses from Members;
- f. Employment and dismissal of the personnel necessary for the maintenance and operation of the Trust Estate;
- g. Opening and utilizing bank accounts on behalf of the Trust and designating the signatories required therefor;
- h. Obtaining insurance pursuant to the provisions of this Trust;
- i. Maintaining, repairing, and making replacements to the Trust Estate;
- j. Incurring obligations and paying, compromising or adjusting all obligations incurred and rights acquired in the administration of the Trust;
- k. Adoption and amendment of rules and regulations for the operation and use of the Trust Estate by the Members;
- l. Obtaining advice of counsel and relying thereon, and employing, appointment and removing such other person, agents, managers, engineers, architects, employees, servants and assistants as they shall deem advisable, and defining their respective duties and fixing their pay and compensation; provided, however, no Trustee shall be held personally liable for the act or default of any such person;
- m. Enforcing obligations of the Members, including the levying and enforcing the collection of general and special

assessments for Common Expenses and the providing of adequate remedies for failure to pay such assessments, allocating income and expenses and levying reasonable fines against the Members for violations of the Rules and Regulations;

n. Investing and reinvesting the Common Funds, or any part or parts thereof and from time to time all to such extent as to them in their sole discretion shall seem proper;

o. Generally, in all matters not herein otherwise specified, controlling, managing and disposing of the Trust Estate as if the Trustees were the absolute owners thereof and doing any and all acts, including the execution of any instrument, which in their judgment is in the interest of the Members.

ARTICLE V

Members

Section 5.01 - Beneficiaries. The beneficiaries of the Trust shall be the Members. The primary benefit to be enjoyed by a Member shall be the right to exercise the Members' Easement Rights in common with the other Members.

Section 5.02 - Membership and Voting Rights. Every owner of a Lot, whether one or more persons, shall be a Member but the ownership of a Lot shall have only one membership vote. Whenever any Lot is owned of record by more than one person, the several owners of such Lot shall: (i) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Lot hereunder, and (ii) notify the Trustees of such designation by a notice in writing signed and acknowledged by all of the record owners of such Lot. Any such designation shall take effect upon receipt by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one such Member for such purposes.

Section 5.03 - Members Meetings; Quorum. Meetings of the Members shall be held not less than once every twelve months after the Transfer of Control Date and may be called at any time by the Trustees and shall be called by them upon the written request of Members holding more than twenty-five percent (25%) of the membership votes hereunder (a "Meeting"). Written notice of any Meeting designating the place, day and hour thereof shall be given by the Trustees to the Members at least fourteen (14) days prior to the date so designated. The Trustees shall give written notice of all Meetings to mortgagees that have requested that notices of meetings be sent to them.

Whenever at any meeting the Trustees propose to submit to the Members any matter with respect to which approval of or action by the Members is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter.

The presence in person or by proxy of twenty-five percent (25%) of the membership votes shall constitute a quorum at all Meetings. Each Member, or a person designated by such Member to act as proxy on his behalf and who need not be a Member, shall be entitled to cast the votes appurtenant to his Lot at all Meetings of members. The designation of any such proxy shall be made in writing to the Trustees and shall be revocable at any time prior to the meeting at which it is to be used by written notice to the Trustees by the Member so designating. The vote of Members representing a majority of the membership votes who are present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Members for all purposes except where otherwise provided by law or by this Trust.

ARTICLE VI

Maintenance, Replacement and Repair

The Trustees shall be responsible for all maintenance, replacement and repairs necessary or appropriate to keep the Common Open Space and all facilities contained therein in good, clean, attractive and sanitary condition, order and repair for exercise of the Passive Recreation activities of the Members. The Landscape Management Plan shall be the basis for the establishment of a trail system and maintenance of the Common Open Space. The Trustees shall periodically amend the Landscape Management Plan, to implement the Members' goals for active and passive recreation, and be responsible for obtaining the necessary approvals from the Town of Westborough and other State and Federal jurisdictional agencies as required. The Trustees shall also maintain the Private Drainage Facilities and comply with any and all other post construction obligations imposed by the Special Permit, the Definitive Approval, the Conservation Restriction and the Historic Preservation Restriction pertaining to the Common Open Space. Except to the extent that any insurance proceeds are available, the Trustees' maintenance, replacement and repair responsibilities shall be accomplished through the expenditure of Common Funds provided by the Common Expense annual and/or special assessments against the Members.

ARTICLE VII

Common Expenses

Section 7.01 - Members' Liability. The owner of each Lot

shall be liable to the Trust for an equal share of all annual and special assessments of the Members by the Trustees to pay the Common Expenses.

Lot Expenses, fees, charges, late charges, fines and interest charged against a Member pursuant to the Trust are enforceable as Common Expenses against the Member who incurred the Lot Expense, fee, charge, late charge, fine or interest.

Section 7.02 - Determination of Common Expenses and Fixing of Common Expenses. Prior to the commencement of each fiscal year, the Trustees shall prepare a budget for the Trust by estimating the Common Expenses expected to be incurred during the fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed Common Funds from prior years, shall determine the assessments, if any, to be made for the fiscal year. The Common Expenses shall include but in no way be limited to, all the amounts as the Trustees may deem proper for the operation and maintenance of the Common Open Space and the Trust including without limitation, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained pursuant to the provisions of the Trust, an amount for working capital for the Trust, a general operating reserve, an amount for a repair and replacement reserve and an amount to make up for any deficit in the Common Expenses for any prior year.

The Trustees shall promptly render written statements to the Members for their respective equal shares of any such assessment and the amount shown on such statement shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same is rendered. In the event that the Trustees shall determine at any time during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or in the reasonable opinion of the Trustees, likely to be incurred, or in the event that the Trustees shall determine that it is advisable to establish a larger reserve or other fund for projected capital or other expenditures or otherwise, the Trustees may make one or more supplemental assessments and render such statements as they may deem necessary therefor in the manner aforesaid, and the amount shown in such statements shall be payable and take effect as aforesaid.

Section 7.03 - Payment and Collection of Common Expenses. The Trustees shall, so far as reasonably possible, provide for payments of the Common Expenses in advance in monthly, substantially equal, installments. The amount of each such installment, together with interest on that amount, if that amount is not paid when due, at a per annum rate but in no event higher than the highest interest rate allowable by law in the Commonwealth of Massachusetts shall be payable on

demand. The Trustees shall take prompt action to collect any Common Expenses due from any Member which remains unpaid for more than ten (10) days from the due date for payment thereof. The Trustees shall have the right to impose reasonable late charges and administrative fines for any such late payment including all costs and expenses and reasonable attorney's fees incurred in such collection, and to institute all proceedings deemed necessary or desirable by the Trustees, to recover such unpaid Common Expenses. In the event of default for a period of ten (10) days by any member in the payment of any Common Expense assessment, the Trustees shall have the right, but not the obligation, to declare all unpaid assessments for the pertinent year to be due and payable, to suspend the Member's voting rights hereunder and to suspend or limit the Member's Easement Rights.

Section 7.04 - Payment of Common Expenses Subsequent to Transfer. No Member shall be liable for the payment of any part of the Common Expenses assessed against his Lot subsequent to a sale, transfer or other conveyance by him of such Lot. A purchaser of a Lot shall be liable for the payment of Common Expenses assessed and unpaid against such Lot prior to the acquisition by him of such Lot, except that a purchaser at a foreclosure sale of such Lot or any first mortgagee who comes into possession of the Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Lot which accrued prior to the time the first mortgagee first comes into possession or ownership of the Lot.

Section 7.05 - Default in Payment of Common Expenses. In the event of default by any Member in paying to the Trustees the Common Expenses, such Member shall be obligated to pay all expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Expenses. The Trustees shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action to recover the same brought against such Member.

Section 7.06 - Certificate of Unpaid Common Expenses. The Trustees shall promptly provide any Member and potential purchaser of a Lot so requesting the same in writing, with a written statement in recordable form of all unpaid Common Expenses due from such Member.

ARTICLE VIII

Rules and Regulations

The Trustees shall have the right (which right shall not be

delegated) at any time, and from time to time, to adopt, amend and rescind reasonable administrative Rules and Regulations governing the operation, appearance and use of the Open Common Space. A vote of Members holding more than fifty percent (50%) of the membership votes at a Meeting may overrule and declare void any rule or regulation adopted by the Trustees provided, however, that until the Transfer of Control Date, no such vote shall be effective unless the Developer has approved such override. Any rule and/or regulation shall be consistent with provisions of the Special Permit and the Trust. Copies of the Rules and Regulations and any amendments or changes thereto shall be furnished by the Trustee to each Member. The Rules and Regulations, as from time to time amended, shall be enforced by the Trustees. The Trustees may eliminate any violation of any Rule or Regulation and the cost and expense of eliminating same shall be chargeable to the Member who himself or whose family, servants, employees, agents, visitors, lessees, or licensees are responsible for such violation as a Lot Expense. The Trustees may also levy reasonable fines against such Member for such violation and such fine shall constitute a Lot Expense. Each day a violation continues after notice shall be considered a separate violation. Fines may be suspended or abated by the Trustees for good cause shown to them. In addition, for any such violations, the Trustees shall have the right, but not the obligation, to suspend the member's voting rights hereunder and to suspend or limit the Member's Easement Rights. In the case of persistent violation of the Rules and Regulations by a Member, the Trustee shall have the power to require such Member to post a bond to secure adherence to the Rules and Regulations.

ARTICLE IX

Insurance

Section 9.01 - Liability Insurance. The Trustee shall obtain and maintain, to the extent obtainable, master policies of insurance with respect to the Trust Estate for the benefit and protection of the Trustees and all Members for:

- a. Comprehensive public liability insurance in such limits as the Trustees may, from time to time, determine but in no case less than \$1,000,000 / \$1,000,000 in coverage, covering the Trust, the Trustees, any Manager, and each Member with respect to liability arising out of ownership, use, maintenance or repair of the Trust Estate and any act or failure to act by the Trustees, or anyone acting on their behalf, pursuant to this Trust, such insurance to provide for cross claims by the coinsured, and such insurance policy shall also contain a "severability of interest" endorsement which shall preclude the insurer from denying the

claim of a Member because of negligent acts of the Trustees or other Member;

- b. Workmen's compensation and employee's liability insurance, if and when the same in their discretion shall be appropriate; and
- c. Such other insurance as the Trustees may from time to time deem to be desirable or appropriate, including without limitation, fiduciary liability insurance.

Section 9.02 - Casualty Insurance. The Trustees shall in their discretion obtain such casualty insurance as they deem appropriate covering any structures, improvements or personal property which form a portion of the Trust Estate.

ARTICLE X

Notices

Section 10.01 - Notices to Trustees. Notices to the Trustees may be mailed or delivered to any one of the Trustees at the address which the particular Trustee has designated as his notice address by certificate recorded at the Registry or if no such certificate has been recorded to a home or business address of such Trustee. Any such notice to a Trustee shall be by registered or certified mail, return receipt requested.

Section 10.02 - Notices to Members. Every notice to any Member required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Member by leaving such notice, or mailing it postage prepaid and addressed to such Member, at his address, unless such Member has designated in writing to the Trustees some other address for the receipt of notices, at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given.

ARTICLE XI

Inspection of Books; Reports to Members

Books, accounts and records of the Trustees and of the Trust shall be open to inspection to any one or more of the Trustees, to the Members and to first mortgagees at all reasonable times. In addition, all Members and prospective Members shall be notified by the Trustees that documentation pertaining to the Special Permit, the Definitive Approval, the Conservation Restriction and the Historical Preservation Restriction are on file with the Westborough Zoning Board of

Appeals, Planning Board, Town Clerk and Historic Commission, respectively and available for inspection. All prospective Members are advised to obtain copies of such documents from the Developer. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Members a report of the operations of the Trustees for such year, which report shall include financial statements in such summary form and in only such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by registered mail, return receipt requested within a period of three (3) months of the date of receipt by him shall be deemed to have assented thereto.

ARTICLE XII

Fiscal Year

The fiscal year of the Trust shall be each calendar year ending December 31 or such other date as may from time to time be determined by the Trustees.

ARTICLE XIII

Rights and Obligations of Third Parties Dealing with the Trustees

Section 13.01 - Third Parties No Duty of Inquiry. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry shall be bound to ascertain or inquire further as to the identity of said Trustees or any changes therein. The receipts of the Trustees or any one or more of them, for moneys or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was part of the Trust Estate shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, nor otherwise as to the purpose or regularity of any of the acts of the Trustees, or any one or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained, nor as to the regularity of the resignation or appointment of any Trustee.

Section 13.02 - No Recourse to Trustees. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation,

covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise and all persons extending credit to, contracting with or having any claim against the Trustees, shall look only to the assets of the Trust for payment under contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the Members, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Members for their share of Common Expenses.

Section 13.03 - All Instruments Subject to Terms Hereof.

Every note, bond, contract, deed, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall have been made to this instrument.

Section 13.04 - Recording. This Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or paper signed by said Trustees or any of them which it may be deemed desirable to record shall be recorded with the Registry and such recording shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust Estate or any Member shall be held to have notice of any alteration or amendment of the Trust, or change of Trustee or Trustees, when the same shall be recorded with the Registry. Any certificate signed by a Trustee in office at the time, setting forth as facts any matters affecting the Trust, including statements as to who are the Members, as to what action has been taken by the Members, and as to matters determining the authority of the Trustees to do any act when duly acknowledged and recorded with the Registry shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder setting forth the existence of any fact, the existence of which is necessary or appropriate with respect to any matter affecting this Trust, the Members or any action of the Trustees, or of the Members, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statement

made in such certificate and of the existence of the fact set forth therein.

ARTICLE XIV

Amendment and Termination

Section 14.01 - Amendment to Trust. The Trustees may at any time and from time to time amend, alter, add to or change the Trust in any manner or to any extent without the consent of the Members, provided, however, that after the Transfer of Control Date, such amendment, alteration, addition, or change must be consented to in writing by Members holding more than fifty percent (50%) of the membership votes with the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change shall be valid or effective if (a) made without the consent of the Developer prior to the time the Developer ceases to own any Lot, which consent shall be recorded in the Registry; or (b) conflicts with any of the terms or conditions of the Special Permit, the Definitive Approval, the Conservation Restriction or the Historic Preservation Restriction.

Section 14.02 - Effective Date of Amendment. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Article shall become effective upon the recording with the Registry of an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged by a majority of the Trustees then in office, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Members herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity thereof, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons, and for all other purposes. Nothing in this Article contained shall be construed as making it obligatory upon the Trustees to amend, alter, add to or change the Trust upon obtaining the necessary consent(s) as hereinbefore provided.

Section 14.03 - Termination: The Trust hereby created shall terminate only upon the termination of Piccadilly Mill as an open space community for single family residences pursuant to the Special Permit and the Definitive Approval.

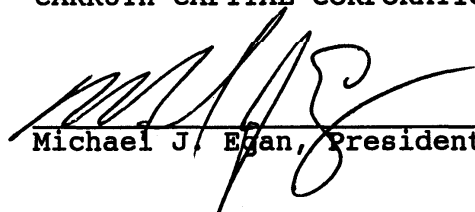
Section 14.04 - Actions Upon Termination. Upon the termination of this Trust, the Trustees may sell and convert into money the whole of the Trust Estate or any part or parts thereof, and, after paying or satisfying all known liabilities and obligations of the Trustees and providing for

indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, all other property then held by them in Trust hereunder, to the Lot Owners equally as tenants in common. All valuations made by the Trustees shall be conclusive. In making any sale under this provision, the Trustees shall have power to sell by public auction or private contact and to buy in or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of any instrument, which in their judgment is necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of property may have passed.

EXECUTED as a sealed instrument on the day and year first above written.

CARRUTH CAPITAL CORPORATION,,

BY:



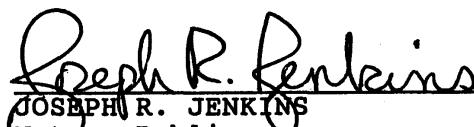
Michael J. Egan, President

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

July 30, 1993

Then personally appeared the above-named Michael J. Egan and acknowledged the foregoing to be the free act and deed of Carruth Capital Corporation, before me.



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