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TOWN OF LANCASTER
BOARD OF SELECTMEN

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March 23, 2004

Board of Selectmen
TOWN OF LANCASTER
Municipal Building
695 Main Street
Lancaster, MA 01523

Dear Lancaster Selectmen:

Our office has been asked by James Piermarini to research the possibility of the Town selling property it owns on the Town Common. The Estate of Pauline R. Thayer left the property to the Inhabitants of the Town of Lancaster. Mrs. Thayer's will in 1934 left 18.9 acres to be used by the Town "to be used by the said town for the purposes of providing a proper and adequate recreation and play ground center for the inhabitants of the Town of Lancaster" (a copy of Mrs. Thayer's will, in its pertinent parts, are attached hereto as **Exhibit A**). This parcel is referred to herein as the "Gymnasium Property." The "Old Inn" land (as shown on a plan recorded with the Worcester District Registry of Deeds in Plan Book 22, Plan 38, a copy of which is attached hereto as **Exhibit B**) was excepted from this devise, and therefore excepted from the restrictions imposed by Mrs. Thayer in her will (see Article 2 of said will in Exhibit A). That property was left to Lancaster Social Service Association. The LSSA deeded this property to the Town in two separate deeds recorded in Book 3775, Page 457 and Book 5363, Page 466 (copies of said deeds are attached hereto as **Exhibit C**).

In 1956, the residual beneficiaries of Mrs. Thayer's will, Massachusetts General Hospital and House of the Good Samaritan attempted to release the Gymnasium Property from the restriction that the property be used as a playground. It is my opinion, however, that this attempt fails to remove the restriction imposed by Mrs. Thayer's will, and that the Town can neither convey the property nor change the use of the property from a "playground use" without a vote of the Massachusetts legislature.

As I am sure you are aware, the town need a two-thirds vote at town meeting under Mass. Gen. Laws, ch. 40, sec. 15 (a) in order to convey town owned real property. In addition to this requirement, in order for the town to convey the Gymnasium Property without running afoul of the restriction, the town would first need to comply with Article 49 of the Massachusetts Constitution. Article 49 guarantees the citizens of the

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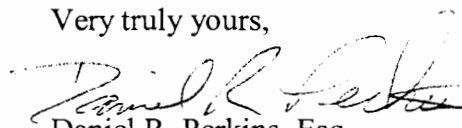
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Commonwealth the right to enjoyment of what we would call open space. Because Thayer's will restricted the property to use as a playground, Article 49 would apply to this property, disavowing any attempt to change the use of the property without a two-thirds vote by both the State Senate and State House of Representatives.

If the town endeavored change the use of the Gymnasium Property or to sell it without having the restriction successfully removed, title to the Gymnasium Property would revert by operation of law to the Estate of Pauline R. Thayer. Therefore, I would highly recommend preserving the property as Mrs. Thayer's will provided or gain permission from the Legislature to change the use prior to any attempt to convey the Gymnasium Property or change its use.

If you have any questions, please do not hesitate to call me. Thank you for your attention to this matter.

Very truly yours,



Daniel R. Perkins, Esq.

Exhibit A

Estate of Pauline Thayer, Town Lancaster
Case 115143

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12. My executor and any trustee or ~~any~~ trustees under this will or any codicil shall be chargeable only for such moneys, stocks, funds and securities as each shall actually receive, and each such executor or trustee shall be accountable only for his own acts, receipts, neglects or defaults and not for those of any other trustee, nor for any banker, broker, or other person with whom trust moneys or securities may be deposited nor for the loss in value of any stocks or securities may be deposited nor for the loss in value of any stocks or securities unless the same shall happen through his or their own wilful default. If any stocks, bonds or other securities are retained or purchased by my trustee or trustees at a premium above their par value, or are wasting securities, the trustee or trustees may if he or they see fit to do so regard the whole of the interest or dividends received on such securities as income; and generally what expenses, commissions or charges shall be charged to income and what to capital, and what sums or property received shall be deemed capital and what income shall be determined by my trustee or trustees.

Codicil.

1. I give to Town of Lancaster all the real estate leased to the Nathaniel Thayer Playground Asso. by me by lease dated 19 Dec. 1912, Book 2016 Page 426, together with the Gymnasium Bldg., the furniture, fixtures and other outfit of personal property used therewith at the time of my death (except, however, the bldg. known as the Old Inn and certain land adjoining and subject to a certain right of way appurtenant thereto, all as specifically devised hereafter by this codicil) to be used by the said town for the purposes of providing a proper and adequate recreation and play ground center for the inhabitants of the Town of Lancaster or other succeeding municipality which shall contain within its boundaries the major portion of the Town of Lancaster. This property is to be always known as the Nathaniel Thayer Playground in memory of my late husband.
2. I devise to the Lancaster Social Service Asso. a Mass. corp. and its successors and assigns forever the following described parcel of land:

A certain parcel of land in said Lancaster with the bldgs. thereon containing about 16,440 sq.ft. of land and shown on a plan entitled "Plan of Land on Harvard Street in Lancaster, Mass. surveyed for Pauline R. Thayer" dated 31 Aug. 1934, by Parker, Bateman and Chase, C.E. to be recorded,

over

Westerly by other land of the donor 101.14ft.

Also a right of way for all usual purposes over the following described parcel of land in said Lancaster, namely a parcel bounded:

Easterly by the premises hereinbefore described and devised to the donee 101.14 ft.

Northerly by said Harvard St. 46.95 ft.

Westerly by land now or formerly of J.E. Thayer 101.14 ft.

Southerly by other land of the donor 46.95 ft.

Said right of way shall be appurtenant to the devised premises and shall be ~~in common~~ in common with the devisee of the land given to the Town of Lancaster by paragraph 1 of this codicil.

3. I give and appoint from the property over which I have power of appointment under the will of my late husband, \$5000. to Pauline Revere Thayer, dau. of Duncan Forves Thayer and Priscilla McKim.

4. Out of my own property I give to Mrs. Frederic Winthrop the sum of \$5000. to be distributed by her in her absolute discretion to and among such employes of the Chilton Club as she may desire.

I hope that she will be guided by a memorandum which I may leave as to the method of distribution.

5. Any legacy given or appointed to a minor by my will or by this codicil shall be paid over to the Old Colony Trust Company to hold the same in trust to apply all or any part of the income thereof to the maintenance, education and support of such minor until he or she shall reach the age of 21 years, adding any unexpired income to principal, and to pay over the principal and all accumulations to such child when he or she shall reach the age of 21 years. In the case of the death of any such child under the age of 21 years, the trust fund shall become a part of such child's estate.

Richard W.
Label W.

