

# Middlesex South Registry of Deeds Electronically Recorded Document

This is the first page of this document - Do not remove

---

## Recording Information

Document Number	: 30773
Document Type	: <i>Rest</i>
Recorded Date	: February 24, 2010
Recorded Time	: 03:40:10 PM
Recorded Book and Page	: 54330 / 542
Number of Pages(including cover sheet)	: 16
Receipt Number	: 1097826
Recording Fee	: \$75.00

**Middlesex South Registry of Deeds  
Eugene C. Brune, Register  
208 Cambridge Street  
Cambridge, Massachusetts 02141  
617/679-6310**

15 pages

**HISTORIC PRESERVATION RESTRICTION**

This Historic Preservation Restriction is made this 19<sup>th</sup> day of January, 2010 by and between Newton Highlands Station LLC of 18 Station Avenue, Newton, Massachusetts 02461 (hereinafter "Grantor") and the City of Newton, a Massachusetts municipal corporation (hereinafter the "City") acting through the Newton Historical Commission (the "Commission"), with a mailing address of 1000 Commonwealth Avenue, Newton, Massachusetts 02459.

**WITNESSETH:**

**WHEREAS**, the Grantor is the owner of certain real property located at 18 Station Avenue in the City of Newton, Commonwealth of Massachusetts by deed dated March 31, 2008 and recorded with the Middlesex South District Registry of Deeds in Book 50999, Page 278, which property is more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property"); and

**WHEREAS**, the Property includes land (the "Land") surrounding the railroad station building (the "Building") originally designed by Shepley, Rutan and Coolidge, the successor firm to H. H. Richardson; and

**WHEREAS**, the Property was listed in the National Register of Historic Places on June 3, 1976; and

**WHEREAS**, the Land which is the subject of this Historic Preservation Restriction was originally landscaped by the firm of Frederick Law Olmsted ("Olmsted"); and

**WHEREAS**, the Olmsted-designed landscape features of the Land were historically removed and/or altered at the turn of the twentieth century at the time of grade level changes of the Boston and Albany Railroad; and

**WHEREAS**, the Land stands as a significant historic feature of the Property, and provides a significant historic setting for the building on the Property; and

**WHEREAS**, the significant historic character-defining landscape features of the Land include, but may not be limited, to the topographic gradients of the site from Station Avenue to the MBTA track level, the naturalistic rock outcrops north of the Station Building on the Property, the established pedestrian walkways, and the historic fencing along Station Avenue and the walkways; and

**WHEREAS**, the Grantor proposes to maintain, preserve and renovate the Land and its character-defining landscape features by utilizing a landscape plan consistent with the historic landscape design, all in accordance with the following plans:

18 Station Avenue, Newton, MA  
Deed Ref: Book 50999, Page 278

Landscape plans entitled "Newtonville Station" dated November 26, 2007 signed by Charles R. Kattman, Landscape Architect consisting of the following:

- (1) Sheet 1 entitled "Landscape Plan";
- (2) Sheet 2 entitled "Site Development Plan";
- (3) Sheet 3 entitled "Site Details"

hereinafter collectively referred to as the "Approved Plans"; and

**WHEREAS**, the Grantor also proposes to utilize the Building for professional offices, which Building will not be bound by this historic preservation restriction; and

**WHEREAS**, the City is authorized to accept historic preservation restrictions to protect property significant in national and state history and culture under the provisions of M.G.L. Chapter 184, Sections 31, 32 and 33 (hereinafter "the Act"); and

**WHEREAS**, the Grantor and the City recognize the architectural, historic and cultural values and significance of the Land, and have the common purpose of conserving and preserving it; and

**WHEREAS**, the grant of a preservation restriction on the land by the Grantor to the City will assist in preserving and maintaining the Land and its architectural, historic and cultural features for the benefit of the people of the City of Newton, the Commonwealth of Massachusetts, and the United States of America; and

**WHEREAS**, to that end, the Grantor desires to grant to the City, and the City desires to accept, a preservation restriction in gross in perpetuity on the Land pursuant to the Act; provided, however, that upon sale of the Property, all of the Grantor's obligations under this restriction shall terminate and be transferred to the Grantor's successors and assigns;

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to M.G.L. Chapter 184, Sections 31, 32 and 33, the Grantor does hereby voluntarily grant and convey unto the City this preservation restriction (hereinafter the "Restriction") in gross in perpetuity over the Land on the Property.

1. **PURPOSE**

1.1 **Purpose.**

It is the purpose of this Restriction to assure the continued architectural and historical integrity of the Land surrounding the Building, and to prevent any changes, other than the maintenance described below, to the Land that will significantly impair or interfere with the Land's architectural integrity.

**2. GRANTOR'S COVENANTS**

**2.1 Covenant to Maintain.**

The Grantor agrees at all times to maintain the landscape, lawns and plantings on the Land surrounding the Building in good appearance. It is the Grantor's intent that the Land and the immediate setting of the Building on the Property shall be maintained in a physical appearance and composition that is as close to its original appearance and composition as is reasonably possible. The Grantor's obligation to maintain the Land shall require replacement, and maintenance by the Grantor whenever necessary to preserve the landscape, lawn and plantings in good, healthy condition. Subject to the casualty provisions of paragraphs 6 and 7, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction of the Land whenever necessary in accordance with The Secretary of Interior's Standards for The Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

**2.2 Prohibited Activities.**

The Land or any part thereof shall not be disturbed (by affirmative action or through neglect or failure to maintain) except as provided in paragraphs 7 and 8, below. Nothing shall be erected on the Land which would impair the purpose of this restriction.

**3. GRANTOR'S CONDITIONAL RIGHTS**

**3.1 Conditional Rights Requiring Approval by the City.**

Without the prior express written approval of the City, which approval may not be unreasonably withheld but which may be subject to such reasonable conditions as the City in its discretion may determine, the Grantor shall not make any changes to the Land, including the alteration of, partial removal of, or construction on the Land. Activities by the Grantor to maintain the Land which are not intended to change the appearance of the Land and which are intended to be performed in accordance with the provisions of section 2.1, above, shall not require the prior approval of the City. The Grantor shall not undertake substantial permanent topographical changes to the Land without the prior express written approval of the City.

**3.2 Review of Grantor's Requests for Approval.**

The Grantor shall submit to the City for the City's approval of those conditional rights set out at paragraph 3.1 one copy of information (including plans, specifications and designs) identifying the proposed activity with reasonable specificity. In connection therewith, the Grantor shall also submit to the City a timetable for the proposed activity sufficient to permit the City to monitor such activity. Within forty-five (45) days of receipt of the City's receipt of any plan or written request for approval hereunder, the City shall certify in writing that (a) it

approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the City shall provide the Grantor with written suggestions for modification or a written explanation for the City's disapproval. Any failure by the City to act within forty-five (45) days of receipt of the Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the City of the plan or request as submitted and to permit the Grantor to undertake the proposed activity in accordance with the plan or request submitted.

**4. STANDARDS FOR REVIEW**

In exercising any authority created by the Restriction to inspect the Land, to review any alteration or maintenance, or to review casualty damage or to approve reconstruction of the Land following casualty damage, the City shall apply the Secretary's Standards.

**5. GRANTOR'S RESERVED RIGHTS**

**5.1 Grantor's Reserved Rights Not Requiring Further Approval by the City.**

Subject to the provisions of paragraphs 2.1, 2.2 and 3.1, above, the following rights, uses and activities of or by the Grantor on, over or under the Property are permitted by this Restriction and by the City without further approval by the City:

(a) the right to engage in all those activities and uses that: (i) are permitted by governmental statute or regulation; and (ii) are not inconsistent with the Purpose of this Restriction;

(b) the right to maintain the Land strictly according to the Secretary's Standards, provided that the Grantor uses in-kind materials, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance of the Land. Changes in appearance or materials from that existing prior to the maintenance requires the prior approval of the City in accordance with the provisions of paragraphs 3.1 and 3.2, above.

**6. CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

**6.1 Casualty Damage or Destruction.**

In the event that the Land or any part thereof shall suffer major damage or destruction by fire, flood, windstorm, hurricane, earth movement or other casualty, the Grantor shall notify the City in writing within fourteen (14) days of the damage or destruction or such reasonable time thereafter, depending upon the circumstances of the damage or destruction, such notification including what, if any, emergency work has already been completed. No reconstruction of any type, other than temporary emergency work to prevent further damage to the Land and to protect public safety, shall be undertaken by the Grantor without the City's prior written approval, which approval shall not be unreasonably withheld or delayed.

Within ninety (90) days of the date of damage or destruction, if required by the City, the Grantor at its expense shall submit to the City a written report prepared by a qualified restoration landscape architect who is acceptable to the Grantor and the City, which report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Land; and
- (c) a report of such restoration work necessary to return the Land to the condition existing as of the date hereof.

**7. REVIEW AFTER CASUALTY, DAMAGE OR DESTRUCTION**

If, after reviewing the report provided in paragraph 6, above, the Grantor and the City agree that the purpose of the Restriction will be served by such restoration, the Grantor and the City shall establish a schedule under which the Grantor shall complete the restoration of the Land in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to the Grantor.

If, after reviewing the report, the Grantor and the City agree that restoration of the Land is impractical or impossible, or agree that the purpose of the Restriction would not be served by such restoration, the Grantor may, with the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, alter or construct new improvements on the Land. The Grantor and the City may then agree to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and paragraph 18, below, hereof.

If, after reviewing the report, the Grantor and the City are unable to agree that the purpose of the Restriction will or will not be served by such restoration, the matter may be referred by any party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts' arbitration statute then in effect.

**8. INSURANCE - Intentionally deleted.**

**9. INDEMNIFICATION; TAXES**

**9.1 Indemnification.**

The Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense the City, its agents, directors, officers and employees, or independent contractors, from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Land; the presence or release in, on

or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury, death or other damage occurring on or about the Property; unless such injury, death or damage is caused by the City or any agent, director, officer, employee or independent contractor of the City. In the event that Grantor is required to indemnify the City pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

**9.2. Taxes.**

The Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges which may become a lien on the Property unless the Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, the City is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition or lien asserted against the Property. The City may make such payment according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale or forfeiture. Such payment if made by the City shall constitute a lien on the Property.

**10. ADMINISTRATION AND ENFORCEMENT**

**10.1 Written Notice.**

Any notice which either the Grantor or the City may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: by certified mail, by hand delivery or by recognized commercial overnight courier;

if to Grantor:                      Dr. Leonard H. Strauss  
   18 Station Avenue  
   Newton, MA 02461

if to the City:                        Newton Historical Commission  
   1000 Commonwealth Avenue  
   Newton Centre, MA 02459

Each party may change its address set forth herein by a notice to such effect to the other party.

**11. EVIDENCE OF COMPLIANCE**

Upon request by the Grantor, the City shall promptly furnish the Grantor with certification that, to the best of the City's knowledge, the Grantor is in compliance with the obligations of the Grantor contained herein or that otherwise evidences the status of this Restriction to the extent of the City's knowledge thereof.

**12. INSPECTION**

With the consent of the Grantor, representatives of the City shall be permitted at reasonable times to inspect the Land at the convenience of the Grantor and the City. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

**13. THE CITY'S REMEDIES**

The City may, after thirty (30) days' prior written notice to the Grantor, institute suit(s) to enjoin any violation of the terms of this Restriction by ex parte, temporary, preliminary and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Land to the condition and appearance that existed prior to the alleged violation. The City shall also have available all legal and other equitable remedies to enforce the Grantor's obligations hereunder.

In the event that the Grantor is found to have violated any of its obligations, the Grantor shall reimburse the City for any reasonable costs or expenses incurred in connection with the City's enforcement of the terms of this Restriction, including court costs and attorney's, architectural, engineering and expert witness fees.

In the event that the Grantor is required to reimburse the City pursuant to the terms of this paragraph, the amount of such reimbursement, until discharged, shall constitute a lien on the Property.

Exercise by the City of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

**14. NOTICE FROM GOVERNMENT AUTHORITIES**

The Grantor shall deliver to the City copies of any notice of violation or lien relating to the Property received by the Grantor from any government authority within five (5) days of receipt by the Grantor. Upon request by the City, Grantor shall promptly furnish the City with evidence of the Grantor's compliance with such notice or lien where compliance is required by law.



**15. BINDING EFFECT; ASSIGNMENT**

**15.1 Runs with the Land.**

Except as provided in paragraphs 7, above, and 17, below, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Restriction shall extend to and be binding upon the Grantor and the City, their respective successors in interest and all persons hereafter claiming under or through the Grantor and the City, and the words the "Grantor" and the "City" when used herein shall include all such persons. Any right, title or interest herein granted to the City also shall be deemed granted to each successor and assign of the City and each such following successor and assign thereof, and the word the "City" shall include all such successors and assigns.

The Grantor agrees to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which the Grantor transfers any interest in all or a portion of the Property.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations and covenants contained in this Restriction shall be inserted by the Grantor, by express reference, in any subsequent deed or other legal instrument by which the Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part hereof, including by way of example and not limitation, a lease of all of the Property, but excluding any lease with a term of fewer than one (1) year.

**15.2 Assignment.**

The City may convey, assign or transfer this Restriction to a unit of federal, state or local government or to a similar local, state or national organization that is a "qualified organization" that qualifies under the Act as an eligible donee whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out as a condition of the transfer. The Grantor shall give prior written approval of such conveyance, assignment or transfer by the City, such approval not to be unreasonably withheld.

**16. RECORDING AND EFFECTIVE DATE**

The Grantor shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of Middlesex County. The Grantor and the City intend that the restrictions arising under this Restriction take effect on the day and year this instrument is recorded in the land records of Middlesex County.

17. **EXTINGUISHMENT**

The Grantor and the City hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Land in a manner consistent with the purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but are not limited to, partial or total destruction of the Land resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction and shall meet the requirements of the Act for extinguishment. In the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property), the proceeds of such sale shall be paid to the Grantor, after satisfaction of all prior claims, if any, by the mortgagees/lenders.

18. **CONDEMNATION**

If all or any part of the Property is taken under the power of eminent domain by public, corporate or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, the Grantor and the City shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. Such recovered proceeds shall be paid to the Grantor, after satisfaction of all prior claims, if any, by the mortgagees/lenders.

19. **INTERPRETATION**

The following provisions shall govern the effectiveness, interpretation and duration of the Restriction:

- (a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Land shall not apply in the construction or interpretation of this Restriction, and this instrument shall be interpreted broadly to effect its purpose and the transfer of rights and the restrictions on use herein contained.
- (b) This instrument may be executed in multiple counterparts, one of which shall be recorded with the Land records of Middlesex County and another may be retained by the City. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern.
- (c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect

the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit the Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, the Grantor promptly shall notify the City of such conflict and shall cooperate with the City and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

20. AMENDMENT

If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, the Grantor and the City may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction or the status of the City under the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Land and the purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic and open space values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the land records of Middlesex County. Nothing in this paragraph shall require the Grantor or the City to agree to any amendment or to consult or negotiate regarding any amendment.

This Restriction reflects the entire agreement of the Grantor and the City. Any prior or simultaneous correspondence, understandings, agreements and/or representations are null and void upon execution hereof, unless set out in this instrument.

IN WITNESS WHEREOF, the Grantor and the City have set their hands this

19<sup>th</sup> day of January, 2010.

THE GRANTOR:  
Newton Highlands Station LLC

By: [Signature]  
Leonard Strauss, Manager

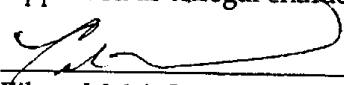
THE CITY:  
City Of Newton

By: [Signature]  
Donald Lang, Chairman  
Newton Historical Commission

APPROVED:

  
\_\_\_\_\_  
Setti D. Warren, Mayor

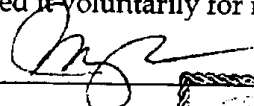
Approved as to legal character and form:

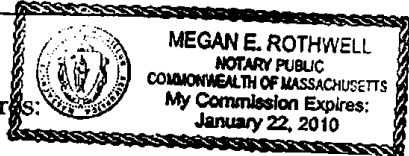
  
\_\_\_\_\_  
Eileen M. McGettigan  
Assistant City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 19<sup>th</sup> day of January, 2010, before me, the undersigned notary public, personally appeared the above-named Leonard H. Strauss, Manager as aforesaid, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
\_\_\_\_\_  
Notary Public  
My Commission expires:

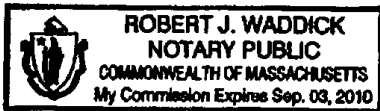


COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 9<sup>th</sup> day of February, 2010, before me, the undersigned notary public, personally appeared the above-named Setti D. Warren, Mayor as aforesaid, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
\_\_\_\_\_  
Notary Public  
My Commission expires:



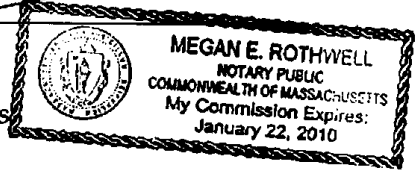
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 21<sup>st</sup> day of January, 2010, before me, the undersigned notary public, personally appeared the above-named Donald Lang, Chairman as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

*[Handwritten Signature]*

Notary Public  
My Commission expires



APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION  
COMMONWEALTH OF MASSACHUSETTS

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that the foregoing preservation restriction has been approved pursuant to Massachusetts General Laws Chapter 184, Section 32.

Massachusetts Historical Commission

By: *Brona Simon*  
Brona Simon  
Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 22<sup>nd</sup> day of February, 2010, before me, the undersigned notary public, personally appeared the above-named Brona Simon, Executive Director and Clerk as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose as Executive Director and Clerk of the Massachusetts Historical Commission.

*Nancy Maida*

Notary Public  
My commission expires: *January 19, 2012*

**SCHEDULE OF EXHIBITS**

- A. Legal Description of 18 Station Avenue, Newton, MA
- B. Subordination Agreement

**EXHIBIT A  
LEGAL DESCRIPTION**

The land together with the buildings thereon now known as and numbered 18 Station Avenue, Newton, Middlesex County, Massachusetts, more particularly described in a deed to the Grantor recorded with the Middlesex South District Registry of Deeds in Book 50999, Page 278.

**EXHIBIT B  
SUBORDINATION AGREEMENT**

The Village Bank, with a principal place of business located at 307 Auburn Street, Newton, Massachusetts 02466, holder of the following mortgage and security interest from Leonard H. Strauss, D.M.D., P.C., of 18 Station Avenue, Newton, Massachusetts 02461:

Mortgage and Security Agreement dated June 14, 2007, in the original principal amount of Three Hundred Forty-Four Thousand Eight Hundred and 00/100 (\$ 344,800.00) Dollars, recorded with the Middlesex South District Registry of Deeds in Book 49617, Page 542 and a Collateral Assignment of Leases and Rents dated June 14, 2007 and recorded with said Deeds in Book 49617, Page 556

does hereby subordinate the lien of said mortgage and security interest and the notes and claims secured thereby to a Historic Preservation Restriction dated January 19, 2010 and recorded herewith, from Newton Highlands Station LLC to the City of Newton, its successors and/or assigns, just as if said mortgage and security interest had been dated, executed, acknowledged, delivered and recorded after the Historic Preservation Restriction.

IN WITNESS WHEREOF, The Village Bank has caused its seal to be hereto affixed and these presents to be signed in its name and behalf by Andrew Franklin, its Vice President, this \_\_\_\_\_ day of January, 2010.

The Village Bank

By: \_\_\_\_\_

Andrew Franklin

Its: Vice President

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

On this \_\_\_\_\_ day of January, 2010, before me, the undersigned notary public, personally appeared Andrew Franklin, Vice President as aforesaid, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires: