

199-99(2)

MC14

Amendment to Restrictive Covenant

The undersigned, Leo Kahn, Trustee of the KF II Nominee Trust u/d/t dated June 3, 1985 and recorded with the Middlesex South District Registry of Deeds at Book 16204, Page 110 (hereinafter "KF II") hereby imposes the following Amendment to the Restrictive Covenant, attached, which was recorded in the Middlesex South District Registry of Deeds Book 19779, Page 191 (the "Recorded Restrictive Covenant"), attached to this Amendment as Exhibit "A".

The restrictions and all other conditions and terms set forth in the Recorded Restrictive Covenant remain in full force and effect, except that the reference to "Special Permit #162-88" in paragraph 2 is deleted by this Amendment and is replaced with "Special Permit #199-99(2), dated August 9, 1999, a copy of which is attached to this Amendment as Exhibit "B".

IN WITNESS WHEREOF, KF II has caused this Instrument to be executed under seal this 1<sup>st</sup> day of September, 1999.

KF II NOMINEE TRUST

*Leo Kahn*  
By: Leo Kahn  
Trustee as aforesaid

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September 1, 198899

Then personally appeared the above-named Leo Kahn, and acknowledged the foregoing instrument to be the free act and deed of KF II Nominee Trust, before me

*Janice M. McPherson*  
Notary Public  
My Commission Expires: 6/23/06

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CITY CLERK  
NEWTON, MA 02159

ORIGINAL REFERENCE REQUESTED  
BOOK 19779 PAGE 191

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Restrictive Covenant

The undersigned, Donald E. Paulson, trustee of the KF II Nominee Trust u/d/t dated June 3, 1985 and recorded with the Middlesex South District Registry of Deeds at Book 1624, Page 110 (hereinafter "KF II") hereby imposes the following restrictions upon the property (the "Property") commonly known as Heartland Plaza with a street address off California Street, Los Angeles Street and Allison Street located in Newton and Watertown, Middlesex County, Massachusetts, more fully described on Exhibit A attached hereto.

The restrictions hereinafter set forth are intended to operate as covenants running with the Property to the benefit of and enforceable by the City of Newton, and is executed in conjunction with Special Permit # 162-88, a copy of which is attached as Exhibit B.

The present availability of parking as shown on the Plans referenced in the Special Permit, Exhibit B, shall not be altered by KF II. If any development, including but not limited to demolition, reconstruction, rehabilitation or new construction, but expressly not including maintenance and repairs in the ordinary course, occurs on the Property that involves solely that portion of the Property in Watertown, Massachusetts, KF II will notify the City of Newton in writing through its Planning Department prior to the intended development. In no event shall the above-mentioned development alter the number of legal parking stalls provided on the Property in accordance with the Special Permit, Exhibit B. Nor shall such legal parking stalls be available for use or to satisfy the parking requirements for any such future development.

The City of Newton shall have the right to enforce these covenants and restrictions by imposing conditions when there is any other required approval of proposed construction in Newton, Massachusetts or by denying approval of proposals if they do not conform to the terms of this Covenant.

These covenants and restrictions shall be enforced by any appropriate proceeding at law or in equity against KF II or any other person or persons violating or attempting to violate any covenant or restriction herein, either to restrain violation thereof or to recover damages. The terms of this covenant may also be enforced against the Property to enforce any lien or encumbrance created by these covenants and restrictions.

Invalidation of any portion of this Restrictive Covenant by judgment or court order shall in no way affect

16.00

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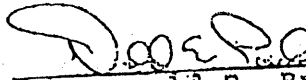
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~~819779 P172~~

any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, KF II has caused this instrument to be executed under seal this 24<sup>th</sup> day of August, 1988.

KF II NOMINEE TRUST


  
By: Donald E. Paulson  
Trustee as aforesaid

COMMONWEALTH OF MASSACHUSETTS

August 24, 1988

Middlesex, ss.

Then personally appeared the above-named Donald E. Paulson, and acknowledged the foregoing instrument to be the free act and deed of KF II Nominee Trust, before me.

  
Notary Public  
My Commission Expires: 12/8/89

~~B 1 9 7 7 9 P 1 7 3~~

## EXHIBIT A

The land with the buildings thereon situated on California Street, Los Angeles Street and Allison Street in Newton, Middlesex County, Massachusetts and on California Street and Watertown Street in Watertown, Middlesex County, Massachusetts, being shown as (i) parcels 1 to 8 inclusive, and (ii) the parcel shown as "now or formerly Ruth Shelman," on a plan entitled "Building Location Plan, Newton and Watertown, Mass.," scale 40 feet to an inch, dated June 25, 1963 by Joseph Selwyn, C.E., recorded with the Middlesex South District Registry of Deeds in Book 10402, Page 347, said land being bounded and described as follows:

- NORTHERLY by California Street, by two courses, four hundred two and 89/100 (402.89) feet and one hundred nine and 33/100 (109.33) feet;
- NORTHEASTERLY by land now or formerly of Bourque et al, Walsh, Slammin et al, Thiesing, McDonnell, and Mesbit et al; four hundred one and 95/100 (401.95) feet;
- SOUTHEASTERLY by land now or formerly of Sawyer et ux, by two courses, one hundred eight and 90/100 (108.90) feet and eighty-four and 35/100 (84.35) feet;
- NORTHEASTERLY by land shown on said plan as lot 3, two hundred eighty-four and 52/100 (284.52) feet;
- SOUTHEASTERLY by Watertown Street by four courses, one hundred fifty-two and 21/100 (152.21) feet, sixty (60) feet, forty (40) feet, and seventy-eight and 73/100 (78.73) feet;
- SOUTHWESTERLY by land shown on said plan as Lot A, one hundred seven (107) feet;
- SOUTHEASTERLY by said land shown on said plan as Lot A, seventy-one and 99/100 (71.99) feet;
- SOUTHWESTERLY by land now or formerly of Hughes or of French, by two courses, one hundred eighty-four and 55/100 (184.55) feet and one hundred fifty-six and 57/100 (156.57) feet more or less;
- SOUTHEASTERLY by said land formerly of Hughes or French, one hundred fifty (150) feet;
- SOUTHERLY by land now or formerly of Sheridan, one hundred nine (109) feet;
- SOUTHWESTERLY by land formerly of Faxon, one hundred eighty-nine and 50/100 (189.50) feet;

~~B 1 9 7 7 9 P 1 7 4~~

EXHIBIT A (Cont'd)

SOUTHEASTERLY by land now or formerly of The Roman Catholic Archbishop of Boston, three hundred eighty-two and 95/100 (382.95) feet;

SOUTHERLY by said last mentioned land, thirty-six and 15/100 (36.15) feet;

WESTERLY by land of the City of Newton, ninety-eight and 3/100 (98.03) feet;

NORTHERLY by the end of Allison Street, forty and 4/100 (40.04) feet;

NORTHWESTERLY by land of Costanza, Blakeney, Bonacci, Murdock and Mirabito, three hundred eighty-three and 15/100 (383.15) feet;

NORTHWESTERLY again but more westerly by land of said Mirabito, of Booth and by land now or formerly of Fisher or Volante, one hundred ninety-nine and 52/100 (199.52) feet;

SOUTHWESTERLY by said land now or formerly of Fisher and Volante, one hundred twenty-six and 69/100 (126.69) feet;

WESTERLY by Los Angeles Street, sixty (60) feet;

NORTHERLY by land now or formerly of Magazzu or Pouliot, one hundred forty-one and 83/100 (141.83) feet; and

NORTHWESTERLY by said land of Magazzu and Pouliot, one hundred twenty-five and 48/100 (125.48) feet.

20,128 (35)  
4/26/85 (caf)