

2641
2-
Crisp, Barrett & Uchida, PLLC
2 Pillsbury Street, Suite 502
Concord, NH 03301-3549

Book 3054 Page 1046

**DECLARATION OF COVENANTS AND
RESTRICTIONS ON THE USE OF LAND**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this 13 day of March, 2008, by SUSAN A. WHITNEY, an individual with an address of 37 Penacook Street, County of Merrimack, State of New Hampshire, by and through her attorney-in-fact, Bradley R. Whitney under power of attorney dated June 20, 2005 (hereinafter the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is owner of certain real property located at the southeast corner of Whitney Road and U.S. Highway 4 (Hoit Road) in the Village of Penacook, City of Concord, New Hampshire, said property identified as land consisting of two parcels identified on the City of Concord tax maps as Map P27, Block 2, Lots 18 and 19, owned by the Declarant by deeds of Arthur E. Cummings dated February 1, 1972, and recorded in the Merrimack County Registry of Deeds at Book 1123, Page 26, and of Dorothy S. Ingerson, dated May 20, 1969, and recorded in the Merrimack County Registry of Deeds at Book 1053, Page 10 (hereinafter the "Premises"), and;

WHEREAS, the Declarant is seeking to rezone a portion of the Premises, consisting of approximately 9.603 acres, from its current zoning, that is, the Industrial Zoning (IN) District to an Urban Commercial (CU) Zoning District (the "Commercial Parcel"), said parcel being described more fully at Schedule A of this Declaration; and

WHEREAS, such rezoning is generally consistent with the planning for the area, as set forth in a current draft of the City of Concord Master Plan; and

WHEREAS, the Declarant desires to limit and restrict the types of uses to which the Commercial Parcel can be put, due to the location, size, and nature of the Commercial Parcel, assuming that the Commercial Parcel is rezoned, as described above, and;

WHEREAS, the Declarant desires that such limitations and restrictions inure to and be established for the benefit of the City of Concord, New Hampshire (hereinafter the "City"),



assuming that the Premises are rezoned, as described above.

NOW THEREFORE, Declarant declares that the Commercial Parcel described at Schedule A to this Declaration is and shall be held, transferred, leased, encumbered, conveyed, improved, and/or occupied, subject to the covenants and restrictions hereinafter set forth, which are intended to create mutual and equitable servitudes upon the Premises, and to create a privity of contract and estate between the Declarant, its successors and assigns, and the City and operate as restrictive covenants, running with the land, for the benefit of the City as follows:

1. PERMITTED USES; FLOOR AREA LIMITATIONS: All principal uses otherwise permitted on land in the Urban Commercial (CU) Zoning District, are hereby permitted on the Premises; except those uses set forth in Section 2 of this Declaration, and provided further that certain uses otherwise permitted in the CU Zoning District shall be subject to the following further conditions:

- a. ~~Service uses~~ provided that such service uses occupy no more than 8000 square feet of floor area under Use Category D of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- b. ~~Offices of health care practitioners, including clinics and outpatient health care, and medical or dental laboratories~~, provided that such health care and laboratory uses occupy no more than 8000 square feet of floor area under Use Category E of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- c. ~~Sales of goods and merchandise within an establishment~~, provided such establishment does not occupy more than 8000 square feet of floor area, and with no outdoor storage of inventory under Use Category H of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- d. ~~Restaurants which may or may not have drive-through service~~, provided such restaurant use does not occupy more than 8000 square feet of floor area, under Use Category I of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.

Notwithstanding the foregoing, ~~the gross floor area of all uses on the Premises shall not exceed 50,000 square feet.~~ The term "floor area", as used in this paragraph, shall mean the total gross area on all floors in a building as measured to the outside surfaces of exterior walls, excluding crawl spaces, garages, carports, breezeways, attics without floors, open porches, balconies and terraces. See Zoning Ordinance, Glossary, "Floor Area" (adopted November 29, 2001)

2. PROHIBITED USES: The following uses, principal or accessory, otherwise permitted on land in the Urban Commercial (CU) Zoning District or under the City of Concord Zoning Ordinance, as amended through the date of recordation of this instrument (the "Zoning Ordinance"), are prohibited on the Commercial Parcel:

- a. Any residential principal uses under Use Category A of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- b. Adult day care facilities, non-residential post secondary schools or colleges, social service centers, monasteries and convents, churches, synagogues and places of religious worship, libraries and museums, fraternal or social organizations or clubs, under Use Category B of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- c. Concert halls or indoor theaters under Use Category C of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- d. Lodging and meeting facilities under Use Category G of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- e. Motor Vehicles Sales and Service uses with the exception of the retail sale of gasoline and car washes, under Use Category J of the Table of Principal Uses, Section 28-2-4(j) of the Zoning Ordinance.
- f. Outdoor display and sales of merchandise accessory to a principal non-residential use, under Accessory Use Category B of the Table of Accessory Uses, Section 28-2-4(k) of the Zoning Ordinance.

3. DECLARATION OF RELIEF: It is recognized and acknowledged that future circumstances, including future development of the area, cannot be predicted with any certainty, and that the prohibition of certain uses or adherence to certain guidelines on the Commercial Parcel may constitute a hardship or be incompatible with then-existing planning policies, master plans, or zoning or other land use ordinances at some future date. In the event that the Declarant, its successors, assigns, and/or subsequent owners, grantees, or transferees of the Premises desire to employ a use or waive a guideline which is otherwise prohibited or required by this Declaration, the Declarant may petition the City Council for the City of Concord (hereinafter the "City Council") for relief from all or a portion of these covenants and restrictions, provided that in the instance of an amendment to the permitted uses, the use is otherwise permitted by right or special exception under the zoning district(s) then governing the Premises. This provision shall not be construed to alter or limit any other approvals needed to establish or implement such a use from the City of Concord Planning Board, Zoning Board or Adjustment, or other such board or agency with jurisdiction over the Premises or proposed use.

4. TERM: This Declaration shall remain in full force and effect for a period of thirty (30) years following the date of execution, after which time it shall be void, and without further force and effect. Nothing herein shall be construed to prohibit the City Council from otherwise amending or repealing this Declaration, in whole or in part, prior to its expiration with the written consent of the Declarant.

5. NOTICES: Any notice sent to the owner(s) of the Commercial Parcel under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of each person who owns all or any portion of the Commercial Parcel, as shown by the records of the Merrimack County Registry of Deeds at the time of the mailing.

6. SEVERABILITY: Invalidation of any one of these covenants and restrictions by a judgment or court order shall in no way affect any other provisions, which will remain in full force and effect.

7. AUTOMATIC TERMINATION: Notwithstanding the foregoing, in the event that the Declarant is unsuccessful in rezoning the Commercial Parcel to the Urban Commercial (CU) Zoning District, these covenants and restrictions shall terminate and be of no further force and effect, upon the recordation of an affidavit executed by the Declarant, or its duly authorized representative, certifying to the unsuccessful rezoning effort. Said affidavit shall be conclusive proof of the failure of the rezoning request, and parties inspecting title to the Premises shall be entitled to rely upon the same. The affidavit shall not require execution by the City inasmuch as the Declarant intends to have such covenants and restrictions inure to and for the benefit of the City only in the event of such successful rezoning, as set forth in the preamble to this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on the date set forth hereinabove.

SUSAN A. WHITNEY or
BRADLEY R. WHITNEY under a power of
attorney dated June 20, 2005, and recorded in the
Merrimack County Registry of Deeds at Book 2959
Page 779.

Jane L. Powell

Witness

Bradley R. Whitney

Attorney in fact under Power
of Attorney dated June 20, 2005

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack

The foregoing instrument was acknowledged before me by Susan A. Whitney/Bradley R. Whitney, on this 13th day of March, 2008.



Kimberly H. Davis

KIMBERLY H. DAVIS, Notary Public
My Commission Expires October 22, 2008

SCHEDULE A

LEGAL DESCRIPTION

A certain parcel of land located at the intersection of Whitney Road and Hoit Road, in the Village of Penacook, City of Concord, County of Merrimack, State of New Hampshire, being bounded and described as follows:

Beginning at a granite bound with cap found, on the easterly sideline of Whitney Road, said point being the northwest corner of the lot herein described;

Thence running South 79E 37' 53" East, a distance of 410.21 feet to a concrete bound with drilled hole found;

Thence running North 88E 49' 54" East, a distance of 569.09 feet to a point;

Thence turning and running South 01E 10' 06" East, a distance of 447.03 feet to a point;

Thence turning and running South 88E 49' 54" West, a distance of 792.71 feet to a point on the easterly sideline of said Whitney Road;

Thence turning and running along Whitney Road North 26E 57' 21" West, a distance of 361.20 feet to a granite bound with cap found;

Thence following a curve to the right along said Whitney Road, having a radius of 317.00 feet, a distance of 208.68 feet to the point of beginning.

Containing 9.603 acres.

MERRIMACK COUNTY RECORDS

Kath L. Gray CPO, Register