

Bk: 42346 Pg: 243



Bk: 42346 Pg: 243 Doc: REBT
Page: 1 of 27 03/30/2004 11:53 AM

27 pgs
/

**AFFORDABLE HOUSING RESTRICTION II
411-429 NORFOLK STREET CONDOMINIUM**

WHEREAS, David Aposhian ("Aposhian"), as Trustee of the Somerville Housing Group Trust II w/d/t dated November 19, 1999, recorded with the Middlesex County South District Registry of Deeds ("Deeds") on September 12, 2002 in Book 36380 at Page 552, having a usual address of P.O. Box 436, Somerville, MA 02143 (the street address being 561 Windsor Street, Unit B-404, Somerville, MA 02143, created Phase I ("Phase I") of the 411-429 Norfolk Street Condominium ("Condominium") by Master Deed ("Master Deed") dated September 24, 2002, recorded with said Deeds on September 25, 2002 in Book 36507 at Page 069; and

WHEREAS, in connection with Phase I of the Condominium, Aposhian granted an Affordable Housing Restriction to the City of Somerville dated September 4, 2002, recorded on September 25, 2002 as Instrument #388 in Book 36507 at Page 166; and

WHEREAS, Aposhian reserved the right to amend said Master Deed to add additional phases to the Condominium and make revisions in connection therewith; and

WHEREAS, Aposhian transferred the aforementioned rights by Assignment dated September 24, 2002, recorded with said Deeds on October 8, 2002 in Book 36651 at Page 035, to David Aposhian as Trustee of the 429 Norfolk Street Trust w/d/t dated September 24, 2002 recorded with the Middlesex South Registry of Deeds on October 8, 2002 in Book 36651 at Page 031, with a usual address of P. O. Box 436, Somerville, MA 02143 (the street address being 561 Windsor Place, B-404, Somerville, MA 02143 (the "Grantor" herein); and

WHEREAS, the Grantor has created Phase II of the Condominium by a First Amendment to the Master Deed dated August 18, 2003, recorded on August 18, 2003 as Instrument #1585, with amended Master Deed Plans recorded as Plan #782-1584, by a Second Amendment to Master Deed dated November 19, 2003 recorded on November 20, 2003 as Instrument #698 and a Third Amendment to Master Deed dated December 19, 2003 and recorded herewith:

NOW THEREFORE, the Grantor hereby subjects Phase II of the Condominium, more particularly described in Exhibit A attached hereto (the "Property"), to this Affordable Housing Restriction ("Restriction") for the benefit of the City of Somerville, a Massachusetts body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, with a usual address of 93 Highland Avenue, Somerville, Massachusetts 02143 ("City" or "Grantee"), and covenants and agrees with the City that the Property shall be subject, in perpetuity, to this Restriction.

1. Governing Law.

The Grantor and the City intend and agree that this Affordable Housing Restriction shall be an "affordable housing restriction" as that term is defined in M.G.L. 184, s.31, with the benefit of s. 32, and used in M.G.L. c. 184, ss.26, 31, 32 and 33. The Grantor and the City hereby covenant that this Affordable Housing Restriction shall run with the land and shall be binding upon and enforceable against the Grantor, and its successors and assigns; and notwithstanding the lack of privity of estate, and/or other statutes or rules of law which may impose time limitations on such restrictions, this Affordable Housing Restriction shall inure to the benefit of

for 429 Norfolk Street, Somerville
Units 1, 3, 8 + 9

Anne M. Thomas, Esq.
City Hall - OHCO
93 Highland Street
Somerville, MA 02143

Bk: 42346 Pg: 244

and be enforceable by the City and its successors and assigns, in perpetuity. Each and every instrument of conveyance subsequent to the date hereof shall expressly state that it is subject to this Affordable Housing Restriction, provided that the absence of such statement shall not affect its validity and enforceability.

2. Zoning Requirement/Purpose of Restriction.

The zoning decision (as amended) attached hereto as **Exhibit B** granted a special permit to construct fifty (50) units of housing consisting of two six unit buildings and two nineteen unit buildings comprising Phase I and Phase II (sometimes referred to as "Stage I and Stage II") the 411-429 Norfolk Street Condominium. Under the applicable provisions of the Inclusionary Housing Section of the Somerville Zoning Ordinance, the Grantor is required to provide 12.5%, or six, units of affordable housing. The Grantor has agreed to provide a total of ten (10) units of affordable housing at the 411-429 Norfolk Street Condominium. The memorandum of the Housing Director outlining the Grantor's plan for providing the affordable units is attached hereto as **Exhibit C**.

The purpose of this Affordable Housing Restriction is to ensure that four (4) condominium units in Phase II of the project shall be occupied in perpetuity as affordable housing units ("Affordable Units"). All obligations of the Grantor under this Restriction shall end upon the sale of the four Affordable Units to Income Eligible Families as provided herein, provided that nothing herein shall affect Grantor's agreement to provide another eight affordable units in a later phase of the project.

3. Terms of Affordability.

Unless otherwise agreed by the City, a written amendment to this Affordable Housing Restriction recorded with the Middlesex South District Registry of Deeds, the Affordable Units shall be:

- i) owner-occupied condominium units;
- ii) restricted for sale at an affordable price to income eligible families; and
- iii) occupied by such families as their principal residence on a year-round basis.

a. Designation of Affordable Units. The Affordable Units are hereby designated as the Property listed on **Exhibit A** hereto.

h. Affordable Price Defined.

The initial sale price for each Affordable Unit shall not exceed the Affordable Price set forth in **Exhibit D** attached hereto. For each subsequent sale, the Affordable Price shall be determined in conjunction with the City, so that the total estimated annual costs for mortgage principal and interest, utilities, real estate taxes, private mortgage insurance, homeowner's insurance, and common area fees do not exceed thirty-five (35%) of the Annual Income of an Income Eligible Family, as defined in Subsection "c" below.

Bk: 42346 Pg: 245

c. Income Eligible Family Defined.

A "Family" is defined as an individual, or two or more persons related by blood, marriage or adoption, living together as a single housekeeping unit and occupying one dwelling unit; or a group (but not more than four) or pair of individuals, not so related, but living together as a single housekeeping unit. "Annual income" shall be the anticipated total income from all sources received by all members of the Family over the age of eighteen, including members temporarily absent. Without limiting the generality of the foregoing, Annual Income includes net income from assets.

Unit #1 and Unit #3 shall be restricted for sale to a Family whose Annual Income does not exceed 80% of the Area Median Income (AMI) for the Boston Metropolitan Statistical Area based on family size, as determined annually by the U.S. Department of Housing and Urban Development ("HUD") or, if rented rather than sold, shall be restricted for rental to a Family whose Annual Income does not exceed 50% of AMI based on family size, as determined annually by the U.S. Department of Housing and Urban Development ("HUD").

Unit #8 and Unit #9 shall be restricted for sale to a Family whose Annual Income does not exceed 110% of the Median income for the AMI based on family size, as determined annually by HUD or, if rented rather than sold, shall be restricted for rental to a Family whose Annual Income does not exceed 80% of AMI based on family size, as determined annually by the U.S. Department of Housing and Urban Development ("HUD").

The AMI income limits in effect at the time of execution of this Affordable Housing Restriction are attached hereto as Exhibit E. A Family meeting the applicable foregoing requirements shall be deemed an "Income Eligible Family".

d. Principal Residence Requirement. An Affordable Unit may not be subleased. It must be occupied as the year-round principal residence of the Income Eligible Family Owning such Unit.

e. Condition of Units/Property. The Affordable Units shall be kept in good repair and maintained in a safe and sanitary condition, in full compliance with state and local law.

f. Family Size/Number of Bedrooms. The City reserves the right to withhold approval of an otherwise Income Eligible Family for occupancy of a particular Affordable Unit if the Family size is less than 1.0 persons per bedroom or greater than 1.5 persons per bedroom.

g. Periods of Temporary Noncompliance.

1) Over-income Families: A Family which was Income Eligible at the time of purchase shall not be in violation of this Affordable Housing Restriction as a result of an increase in income during its period of ownership, provided that (x) any subsequent transfer of the Affordable Unit by such Family is to an Income Eligible Family; and (y) if the transfer is by sale, it is at an Affordable Price; and (z) that such transfer is in all respects in compliance with the terms of this Affordable Housing Restriction.

2) Inherited Units: In the case of an Affordable Unit which has been transferred by descent or devise to a non-Income Eligible Family, the City shall determine, on a case by case basis, the period of time within which such Affordable Unit must be resold to an Income

Bk: 42346 Pg: 246

Eligible Family at an Affordable Price; provided, however, that in no case shall the period of time be less than nine (9) months from the date of death of the transferor.

h. Restrictions against Encumbrances. Following the initial conveyance of each Affordable Unit, except for the first mortgage granted in connection with the initial conveyance of each Affordable Unit, no Affordable Unit may be mortgaged or otherwise encumbered without the prior written consent of the City. The purpose of this section is to ensure that no Affordable Unit is encumbered with monetary obligations exceeding the then current Affordable Price for such Unit.

4. Marketing/Income Certification.

The Grantor shall be responsible for marketing the Affordable Units in accordance with a marketing plan approved by the Housing Division of the City of Somerville Office of Housing and Community Development ("OHCD"). OHCD shall be responsible for certifying that the proposed purchaser is an Income Eligible Family. Each time an Affordable Unit is sold, the City shall re-evaluate the income eligibility of the purchaser and the affordability of the price and certify that the Affordable Unit is being sold to an Income Eligible Family at an Affordable Price.

5. NonDiscrimination.

The Grantor shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin, source of income, status as a holder of a Section 8 or other voucher or certificate, or any other basis prohibited by law in the marketing, sale, use or occupancy of any Affordable Units.

6. Changes to Affordable Units.

The Grantor shall not demolish any Affordable Units or reduce the quantity or size of the Affordable Units without the prior written consent of the City (provided however, that Grantor shall have the right to demolish any part of the Affordable Units in connection with the restoration of the Property following a casualty).

7. Right of First Refusal.

If the Grantor or any subsequent owner of an Affordable Unit ("Owner") desires to sell, dispose of, or otherwise convey an Affordable Unit, said Owner shall so notify the City in writing ("Owner's Notice"). The Owner's Notice shall include (i) a copy of the Owner's deed; (ii) a copy of any recorded mortgage(s); and (iii) the Owner's proposed sale price, which shall not exceed an Affordable Price as defined in Paragraph 3b herein or, at the City's sole discretion, such other affordable price acceptable to the City of Somerville as may be consistent with then current Inclusionary Housing provisions of the Somerville Zoning Ordinance. The Owner's Notice shall be accompanied by a written appraisal of the fair market value of such Affordable Unit (assuming it to be free of all restrictions set forth herein) prepared by a qualified real estate appraiser, using professional appraisal standards acceptable in Massachusetts. The City shall have thirty (30) days following the giving of the Owner's Notice to respond in writing that the City or a designee of the City (including without limitation, a nonprofit entity such as the Somerville Housing Authority or Somerville Affordable Housing Trust Fund) intends to purchase the Affordable Unit at the proposed sale price; and a Closing shall occur no later than ninety (90) days thereafter ("Closing Period"). The conveyance of the Affordable Unit to the

Bk: 42346 Pg: 247

City or its designee shall be by Quitclaim Deed conveying good and clear record and marketable title, and shall otherwise conform to the standard terms of a then current Greater Boston real Estate Board's ("GBREB") standard form purchase and sale agreement for condominiums, or the then commonly used successor standard form if the GBREB standard form no longer exists.

If the City or its designee does not elect to purchase the Affordable Unit within the Closing Period, then the Owner shall proceed to sell such Unit at an Affordable Price to an Income Eligible Family in accordance with Paragraph 3 of this Affordable Housing Restriction. Any sale made in violation of this Affordable Housing Restriction shall be null and void. A certificate of compliance issued by the City and recorded at the Middlesex South District Registry of Deeds shall be conclusive evidence that the City's resale restrictions have been complied with.

8. Enforcement/Effective Date of Restriction.

The Grantor hereby authorizes the City to file or record any notices or instruments appropriate to ensure the enforceability of this Affordable Housing Restriction, and the Grantor, on behalf of itself and its successors and assigns, appoints the City as its attorney-in-fact to execute, acknowledge and deliver any such notices or instruments on behalf of the Grantor. Without limiting the foregoing, the Grantor agrees to execute any reasonable instruments upon the reasonable request of the City. This Affordable Housing Restriction shall be effective and shall begin to run as of the date of execution hereof, and to the extent that enforceability depends upon the approval of governmental officials, such approval shall relate back to the date of execution.

9. Rights and Remedies of the City.

The City shall have the right to enter upon the Affordable Units with reasonable advance notice to an Affordable Unit Owner in order to verify compliance with this Affordable Housing Restriction. If such Affordable Unit Owner is not in compliance, the City shall give the Affordable Unit Owner written notice to that effect, stating what must be done to restore compliance. If the said Affordable Unit Owner fails to bring the Affordable Unit into compliance within the time period specified in the written notice, the City shall have the right to bring an action for specific performance to compel such compliance; to bring an action for monetary damages sufficient to compensate the City for the loss of the Affordable Unit; to seek reimbursement for costs and attorney's fees; and/or take such other action or actions and seek such other remedy or remedies as may be available to the City. The City may avail itself of any and all of the foregoing remedies and shall be under no obligation to make an election.

10. Rights of Mortgagees.

Notwithstanding anything to the contrary contained elsewhere in this Affordable Housing Restriction, but subject to the provisions of this section, if the holder of a mortgage on an Affordable Unit is a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender, and such holder acquires title to an Affordable Unit through a foreclosure sale or by acceptance of a deed in lieu of foreclosure, or a bona fide purchaser (other than the mortgagor-in-foreclosure) acquired title through a foreclosure sale, this Affordable Housing Restriction shall lapse and shall be of no further force or effect.

Bk: 42346 Pg: 248

If any Affordable Unit is sold at foreclosure for a price in excess of the total sum which the holder is entitled to recover pursuant to the terms of the mortgage, 100% of such excess shall be paid to the City in consideration for the loss of the value and benefit of the Affordable Housing Restriction. At the holder's request, the City shall indemnify the holder against loss or damage resulting from any claim based on payment of such excess, provided the holder gives the City prompt notice of the claim and an opportunity to defend such claim. To the extent that the Grantor possesses any interest in any monies payable to the City hereunder, the Grantor hereby assigns its interest in such amount to said holder for payment to the City/Grantee.

11. Notice.

Written notices shall be given by telegram; or by federal express, express mail, or any other nationally recognized overnight delivery service; or by telecopier, provided a copy is sent by first class mail, postage prepaid.

To the City Addressed to:

Housing Director
Office of the Housing and Community Development
50 Evergreen Avenue
Somerville, MA 02145
FAX: 617-666-8035

With copies to:

City Solicitor
Law Department
City Hall
93 Highland Avenue
Somerville, MA 02143
FAX: 617-776-8847

and

Planning Director
Planning Department
City Hall
93 Highland Avenue
Somerville, MA 02143
FAX: 617-625-0722

and

To the Grantor addressed to:

David Aposhian, Trustee of 429 Norfolk Street Trust
P.O. Box 436
Somerville, MA 02143
FAX: 617-629-3015;

Bk: 42346 Pg: 249

and

To the Grantor's successors in title to the Unit Owner named in the Unit Deed at the address set forth on the Unit Deed.

Any change in the foregoing shall be given by fifteen (15) days prior written notice. Notice shall be deemed to have been given on the earlier of (i) the date of actual receipt, or (ii) the date of tender of delivery by one of the above prescribed methods.

12. Waiver

Nothing contained in this document shall limit the rights of the City to release or waive, from time to time, in whole or in part, any or all of the rights, restrictions, covenants, or agreements contained herein with respect to the Affordable Units. Any such release or waiver must be made in writing executed by the Mayor.

13. Severability.

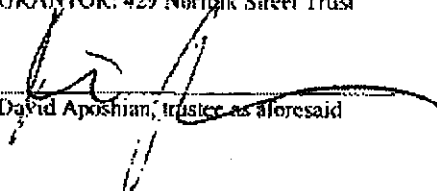
If any provision of this Affordable Housing Restriction, or its application to any person or circumstance is held to be invalid or unenforceable, the remaining provisions, or the application of such provision to persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby, and every other provision and application shall be valid and enforceable to the fullest extent permitted by law.

14. Successors and Assigns.

References to the Grantor and the City shall be deemed to include their successors and assigns, whether specifically so stated or not.

EXECUTED as a sealed instrument this 26 day of March, 2004.

GRANTOR: 429 Norfolk Street Trust


David Aposhian, trustee as aforesaid

Bk: 42346 Pg: 250

Middlesex ss.

COMMONWEALTH OF MASSACHUSETTS

March 26, 2004

Then personally appeared the aforementioned David Aposhian, trustee of 429 Norfolk Street Trust, and acknowledged this Affordable Housing restriction to be his free act and deed, as trustee, before me, a notary public.

Nancy B. Hayward
Notary Public - Nancy B. Hayward II
My commission expires: 10/8/04


Bk: 42346 Pg: 251

CITY OF SOMERVILLE
ACCEPTANCE AND APPROVAL

The City of Somerville hereby accepts the grant of the foregoing Affordable Housing Restriction and, by co-signing below, the Housing Director of the City's Office of Housing and Community Development hereby approves this Affordable Housing Restriction as meeting the Inclusionary Housing requirements of the City of Somerville Zoning Ordinance.

GRANTEE: CITY OF SOMERVILLE


Joseph A. Curtatone, Mayor

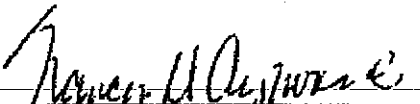

Philip Ercolini, Housing Director
Office of Housing and Community
Development

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

March 26 2004

Then personally appeared the above-named Joseph A. Curtatone, Mayor and acknowledged this instrument to be her free act and deed and the free act and deed of the City of Somerville, before me, a notary public.

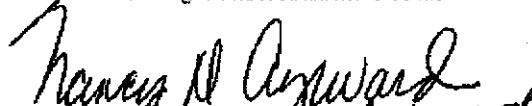

Notary Public Nancy B. Ayward
My commission expires: 10/8/04

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

March 26 2004

Then personally appeared the above-named Philip Ercolini, Housing Director of the Office of Housing and Community Development, and acknowledged this instrument to be his free act and deed, before me, a notary public.


Notary Public Nancy B. Ayward
My commission expires: 10/8/04

Bk: 42346 Pg: 252

EXHIBIT A

429 Norfolk Street – Unit #1
3-bedroom unit
handicapped accessible
approximately 906 s.f. on the first floor

429 Norfolk Street – Unit #3
1-bedroom unit
handicapped accessible
approximately 520 s.f. on the first floor

429 Norfolk Street – Unit #8
1-bedroom unit
approximately 402 s.f. on the second floor

429 Norfolk Street – Unit #9
1-bedroom unit
approximately 390 s.f. on the second floor

The above units are more fully described in the Master Deed of the 411-429 Norfolk Street Condominium dated September 24, 2002 and recorded in the Middlesex South District Registry of Deeds on September 25, 2002 as Instrument No. 386 in Book 36507 at Page 069, as amended by a First Amendment to Master Deed dated August 18, 2003, recorded with said Deeds on August 18, 2003 as Instrument #1585 with Plan #782-1584, by a Second Amendment to Master Deed dated November 19, 2003 recorded on November 20, 2003 as Instrument #698 and a Third Amendment to Master Deed dated December 19, 2003 and recorded herewith.

Bk: 42346 Pg: 253

REGISTRY OF DEEDS OFFICE
SOMERVILLE, MA



SEP 11 P 3:52

CITY OF SOMERVILLE, MASSACHUSETTS

PLANNING BOARD

DOROTHY A. KELLY GAY
MAYOR

STAFF

KRISTEN A. LEVESQUE, *EXECUTIVE DIRECTOR*
EAMON McCILLIGAN, *SENIOR PLANNER*
PETER MAURO, *JUNIOR PLANNER*
FREDERICK J. LUND, *DRAFTSMAN*

MEMBERS

LINDA BOHAN
JOSEPH FAVALORO
ELIZABETH MORONEY
JAMES KIRYLO
KEVIN PRIOR, *CHAIRMAN*

September 5, 2002

Mr. David Aposhian, Owner

Somerville Housing Group, Applicant
PO Box 436
Somerville, MA 02143

Via:
Ms. Margo Grossberg
PO Box 436
Somerville, MA 02143

RE: "Union Place" Planned Unit Development (PUD) - Minor Revision

The Applicant, Somerville Housing Group, seeks approval of a minor revision to the previously approved Affordable Housing Restriction in the Preliminary Master Plan for the Planned Unit Development (PUD) application known as "Union Place." The Applicant is also seeking approval of a minor revision to the previously approved Affordable Housing Restriction for Phase I of the "Union Place" PUD, Planned Unit Development B (PUD-B) Zoning District.

Dear Mr. Aposhian:

At its regular meeting on September 5, 2002, the Planning Board heard the above-referenced case. Based upon the materials submitted, public comments, and the Staff recommendations, the Board voted **UNANIMOUSLY (5-0)** to approve the requested minor revisions to the previously approved Preliminary Master Plan for the Planned Unit Development (PUD) application known as "Union Place," and Phase I of the "Union Place" PUD.

In conducting its analysis, the Board found:

Bk: 42346 Pg: 254

Mr. David Aposhian
 Minor Revision to Affordable Housing Restriction

CITY CLERK'S OFFICE
 S. EVANSVILLE, MA P 2

200 SEP 11 P 3: 53
 1) Previous Approval of Residential Units: On September 25, 2000, the Planning Board approved the preliminary master plan for the PUD known as Union Place. This plan included the following breakdown of residential uses all off which were to be rented:

84 Webster Avenue:

- 24 artist live/work studios

85 Webster Avenue:

- 13 studios
- 11 2-BR units
- 3 3-BR units [actually should be 2 3-BR units as per application stamped in City Clerk's office on August 1, 2000]

411-429 Norfolk Street:

- 26 studios
- 18 2-BR units
- 8 3-BR units

2) Inclusionary Housing Obligation: The same September 25, 2000 approval also gave the following breakdown of affordable units that were to be designated:

84 Webster Avenue:

- no units

85 Webster Avenue:

- 7 studios

411-429 Norfolk Street

- 3 studios
- 8 3-BR units

An agreement reached by the former Housing Director, Andrea Shapiro, and the Applicant, on August 8, 2000 indicated that four of the three bedroom units at Norfolk Street would be rented at 80% AMI and four would be rented at 50% AMI. Of the ten studio units at Webster Avenue and Norfolk Street, seven would be rented at 80% AMI and three would be rented at 50% AMI.

3) Current Proposal: The Applicant has since needed to change the form of ownership of the units at Norfolk Street from rental to condominium in order to obtain financing for the rest of the project. In addition, the Applicant and the City have found it difficult to market and sell the 3 bedroom units. Therefore, the Applicant is requesting a revision to the originally approved inclusionary housing plan. The revision would provide for the following:

411-429 Norfolk Street – Stage One

- 3 studio units

Bk: 42346 Pg: 255

Mr. David Aposhian
Minor Revision to Affordable Housing Restriction

SC 11-0111-NA P: 9

Of these units, all three studios would be sold at 80% AMI. One 3-BR would be sold at 80% AMI, and the other two 3-BR units would be sold at 50% AMI.

SEP 11 P 3: 53

411-429 Norfolk Street – Stage Two

- 3 3-BR units
- 2 1-BR units

Of these units, the developer will execute a separate affordable housing restriction setting forth rental restrictions applicable in perpetuity. One 3-BR and one 1-BR unit would be rented to 80% AMI, and the rest at 50% AMI.

85 Webster Avenue

- 1 3-BR unit
- 7 studio units

Of these proposed units, it is the Board's understanding that the Applicant would provide for the 3-BR unit and three of the studios to be rented at 50% AMI and for the remaining four studios to be rented at 80% AMI.

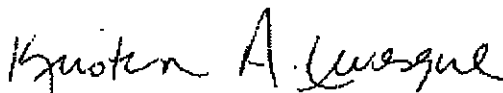
Decision:

Based upon the above findings and information supplied by the OHCD Housing Director and OHCD Special Counsel, as well as the Staff recommendations, the Planning Board voted UNANIMOUSLY (5-0) to APPROVE the requested MINOR REVISIONS to the Preliminary Master Plan and Phase I for the Planned Unit Development Project known as Union Place.

The Board found that the requested change from rental to home ownership units for Phase I, Stage I were necessary in order to enable the Applicant obtain financing and continue with the other phases of the project. The type of ownership of the units did not alter the intent of the original approval or agreement. In addition, the Applicant and the City have found it difficult to market and sell the 3 bedroom units, therefore the Board found that the requested changes in unit counts and number of bedrooms were also consistent with the intent of the original approval.

In addition, the proposed changes do not propose any new general type of use beyond those approved initially, does not increase the building ground coverage, floor area ratio or residential density of the PUD, does not decrease any specified area regulations or enumerated parking ratios, nor substantially change access, circulation, or infrastructure on or adjacent to the site.

Sincerely,



Kristen A. Levesque
Executive Director

Bk: 42346 Pg: 256

Mr. David Aposhian
Minor Revision to Affordable Housing Restriction

RECORDS OFFICE
LENSVILLE, MA

Cc: - Eamon McGilligan, Senior Planner
Stephen Post, Executive Director, OHCD
Dharmena Downey, OHCD Housing Director
Anne Thomas, Special Counsel, OHCD
Lisa L. Mead, City Solicitor
Dava Felch, Assistant City Solicitor
Joseph Latronica, Superintendent of Inspectional Services Division

LENSVILLE P 3:53

Bk: 42346 Pg: 257

**EXHIBIT C
AFFORDABLE HOUSING IMPLEMENTATION PLAN**

[REDACTED]

[REDACTED]

[REDACTED]

Bk: 42346 Pg: 258

Affordable Housing Implementation Plan

Agreement made this 16 day of MARCH, 2004 by the Owners and Ground Lessee ("Owner") described below, with a usual address of P.O. Box 436, Somerville, MA 02143 (the street address being 561 Windsor Place, B-404, Somerville, MA 02143), and the Director of the Housing Division of the City of Somerville Office of Housing and Community Development ("Housing Director") with a usual address c/o the OHCD Housing Division, 50 Evergreen Avenue, Somerville, MA 02145. The Owner has been granted a special permit with site plan review under Article 13 of the Somerville Zoning Ordinance ("Ordinance") for the Development described below. This Agreement is intended to serve as the "Implementation Plan" referred to Article 13, §13.3.1 of the Ordinance. Any change in the special permit with site plan review that would affect the number of affordable housing units required to be provided in connection with the Development shall require an amendment to this Agreement.

Development:

The Development is a Planned Unit Development ("PUD") known as "Union Place" with five separate residential buildings at 411, 419, 421, 429, and 432 Norfolk Street, Somerville, MA 02143 (432 Norfolk Street is also known as 85 Webster Avenue), plus a sixth building consisting of a garage including office and/or residential units (to be determined) at 481 Columbia Street (also known as 84 Webster Avenue), Somerville, MA 02143. The total number of residential units for which the Developer has received a PUD permit is 102 Units, of which 18 units will be affordable units. The total number of units that are fully permitted for construction are the 85 units located at 411, 419, 421, 429, and 432 Norfolk Street. The breakdown of 85 units among the five residential buildings is as follows:

411 Norfolk Street:	19 units
419 Norfolk Street:	6 units
421 Norfolk Street:	6 units
429 Norfolk Street:	19 units
432 Norfolk Street:	<u>35 units</u>
Total	85 units

The buildings at 411, 419-421, and 429 Norfolk Street comprise the 411-429 Norfolk Street Condominium (the "Condominium"), a Massachusetts condominium subject to G.L. c. 183A, created by Master Deed dated September 24, 2002, recorded with the Middlesex South District Registry of Deeds on September 25, 2002 as Instrument #37. This Condominium is Phase I of the PUD and it has been constructed in two stages. Stage I, consisting of two buildings, one at 411 Norfolk Street and one at 419-421 Norfolk Street, has been completed. Of the 31 units constructed during Stage I, 27 units have been sold, including the required six Affordable Units [namely, Units #411-1B (studio), #411-1D (studio), #411-2E (3 bdrm), #419-421-1B (studio), #411-2D (3 bdrm), and 411-2J (3 bdrm)]. The 4 units that were not sold were transferred to the trust described in the "Owner" section below and are being rented as of the date of hereof. Stage II of the Condominium, consisting of a third building at 429 Norfolk Street, is currently at substantial completion and is being marketed for sale.

Bk: 42346 Pg: 259

The garage (not including any residential or commercial space) at 481 Columbia Street is complete. The residential building at 432 Norfolk Street is under construction.

Name and Address of Owners and Ground Lessee:

At the time of filing the Condominium master deed and the original affordable housing restriction referred to herein at the bottom on page 3, the Grantor and Owner of all 31 Units at the Condominium was David Aposhian, as Trustee of Somerville Housing Group Trust II, under Declaration of Trust dated November 19, 1999, recorded with said Deeds on September 12, 2002 as Instrument #37.

Title to the four unsold units that were part of Stage I (namely, Unit 411-2A, 411-2C, 411-4G, and 419-421-1A) and title to all of the units at 429 Norfolk Street that comprise Stage II of the Condominium are now in David Aposhian, as Trustee of the 429 Norfolk Street Trust, under Declaration of Trust dated September 24, 2002, recorded with said Deeds on October 8, 2002, as Instrument #1017.

The Owner of 432 Norfolk Street (also known as 85 Webster Avenue) is David Aposhian, as Trustee of Somerville Housing Group Trust I, under Declaration of Trust dated June 30, 1999, recorded with the Middlesex South District Registry of Deeds on June 30, 1999 in Book 30369 at Page 379. For the Owner's title to 432 Norfolk Street, see deed of Joseph M. Weisberg, Trustee of Elm Realty Trust, dated June 30, 1999, recorded with said Deeds on June 30, 1999 in Book 30369 at Page 389.

The Ground Lessee of the land underlying the garage at 481 Columbia Street is David Aposhian as Trustee of Somerville Housing Group Trust III, under Declaration of Trust dated June 23, 1999, filed with the Middlesex South Registry District of the Land Court as Document No. 1132214. A Notice of Lease dated January 25, 2000, with an expiration date of February 28, 2055, was recorded with said Deeds on February 29, 2000 in Book 31171 at Page 556 and filed as with said Registry District as Document No. 1132213.

The mailing address of all three of the above-named trusts is 561 Windsor Street, Somerville, MA 02143.

Affordable Units:

The Owners are required to provide a total of 11 affordable units ("Affordable Units") under the Somerville Zoning Ordinance and have agreed to provide in excess of that amount, namely a total of 18 affordable units, as follows:

411 Norfolk Street: (5) Affordable Units

- o (2) 3-bedroom townhouses sold to families at or below 110% AMI
- o (1) 3-bedroom townhouse sold to a family at or below 80% AMI
- o (2) studios sold to families at or below 80% of AMI

DWA

Bk: 42346 Pg: 260

419-421 Norfolk Street: (1) Affordable Unit

- o studio sold to a family at or below 80% of AMI

429 Norfolk Street: (4) Affordable Units

- o (1) 3-bedroom flat, fully accessible on 1st floor, to be rented to a family at or below 50% of Area Median Income ("AMI") or sold to a family at or below 80% of AMI.
- o (1) 1-bedroom flat, fully accessible on 1st floor, to be rented to a family at or below 50% of AMI or sold to a family at or below 80% of AMI.
- o (2) 1-bedroom flats on 2nd floor, to be rented to families at or below 80% of AMI or sold to families at or below 110% of AMI.

432 Norfolk Street: (8) Affordable Units

- o (1) 3-bedroom flat, fully accessible on 1st floor, to be rented to a family at or below 50% of AMI or sold to a family at or below 80% of AMI.
- o (1) 2-bedroom flat, fully accessible on 1st floor, to be rented to a family at or below 50% of AMI or sold to a family at or below 80% of AMI.
- o (2) 1-bedroom flats, fully accessible on 1st floor, to be rented to families at or below 50% of AMI or sold to families at or below 80% of AMI.
- o (1) 2-bedroom flat on 2nd Floor, to be rented to a family at or below 80% of AMI or sold to a family at or below 110% of AMI.
- o (2) 1-bedrooms flats on 2nd Floor, to be rented to families at or below 80% of AMI or sold to families at or below 110% of AMI.
- o (1) 1-bedroom flat on 3rd Floor, to be rented to a family at or below 80% of AMI or sold to a family at or below 110% of AMI.

Affordable Housing Restrictions:

In General: The Implementation Plan shall form the basis of, and shall be attached as an Appendix to, an Affordable Housing Restriction governing the Affordable Units *in perpetuity* which shall be prepared by counsel for the City of Somerville, approved in writing by the Mayor and the Housing Director, and recorded or filed with the Middlesex South District Registry of Deeds or Land Registration Office. In the case of a building which is not a condominium, the Affordable Housing Restriction shall be recorded or filed with said Deeds when the certificate of occupancy is issued for the building. In the case of a condominium, the Affordable Housing Restriction shall be recorded or filed immediately after the Master Deed and Condominium Trust and before recording of the first Unit Deed. Mortgagees shall agree to abide by the terms of the Affordable Housing Restriction.

For this Development: The six (6) Affordable Units required to be provided at 411 and 419-421 Norfolk Street have already been constructed and sold and an Affordable Housing Restriction governing said Units was recorded with the Middlesex South District Registry of Deeds on September 25, 2002 as Instrument #388. A First Amendment to said Affordable Housing Restriction governing the four (4) Affordable Units to be provided at 429 Norfolk Street shall be recorded with said Deeds prior to issuance of any certificate of occupancy for 429 Norfolk Street. 432 Norfolk Street is a separate property owned by a different trust; and therefore, a new

DM

Bk: 42346 Pg: 281

Affordable Housing Restriction for the eight (8) Affordable Units to be provided at 432 Norfolk Street shall be recorded and/or filed with said Deeds prior to the issuance of any certificate of occupancy for 432 Norfolk Street.

Additional Fractional Obligation:

In General: Where the number of Affordable Units required under the Somerville Zoning Ordinance results in a fraction of less than .5, a fractional cash payment shall be made. The cash payment shall be calculated in the manner set forth in Article 13 of the Ordinance.

For this Development: No cash payment is required.

Unit Finishes:

The Owner has submitted to OHCD a schedule of standard finishes for market rate units and shall construct the Affordable Units using the same standard finishes. If the standard finishes on the market rate units are changed, the City reserves the right to require the new finishes be incorporated into the Affordable Units. The Owner warrants and represents to the City that the affordable units have the same finishes, fixtures and appliances as the market rate units insofar as ADA requirements allow.

Appurtenant Interests/Amenities:

Affordable Units shall have the same appurtenant interests and/or amenities as market rate units, including without limitation, indoor parking spaces, balconies, private yard space and storage areas.

Certificates of Occupancy:

No certificates of occupancy shall be issued for any market rate units in the Development until all of the required Affordable Units have obtained certificate of occupancy, or bonding or other equivalent security arrangements have been made which are satisfactory to the Housing Director and the Special Permit Granting Authority.

Tenant Relocation Plan:

In General: In cases where a Development will include the temporary or permanent relocation of existing tenants, the Owner will be required to submit a Tenant Relocation Plan for approval by the Housing Director which includes the name, address, and telephone number of each affected tenant, a copy of such tenant's lease or rental agreement, the location and cost of alternative housing, the construction schedule, the estimated duration of the relocation if temporary, the relocation costs to be paid by the Developer, the notification to be sent to the tenant regarding the relocation, and any other information reasonably requested by the Housing Director.

For this Development: This is a new Development with no existing tenants and a Tenant Relocation Plan is not required.

Bk: 42346 Pg: 262

Sales Prices for Affordable Units:

Prior to marketing "for sale" Affordable Units, OHCD will provide the Owner with a sales price worksheet which the Owner shall complete and sign. Upon written notification by the Owner to OHCD that marketing activities may commence, OHCD will calculate a final sales price which reflects then current and confirmed data. The final sales price will be based on the most current HUD Boston Area Median Income adjusted for family size, and current mortgage interest rates, property taxes, and insurance costs estimated by OHCD, and a monthly common area condominium fee estimated by the Owner. The Owner will provide verification to OHCD of the component costs making up the common area fee. If there is a material change in the common area fee prior to the closing, OHCD reserves the right to recalculate the sales price.

Rental Prices for Affordable Units:

The maximum rent limits for families at or below 80% of AMI shall be the then current "High HOME Rent" published annually by the U.S. Department of Housing and Urban Development adjusted for family size. The maximum rent for families at or below 50% of AMI shall be the then current "Low HOME Rent" published annually by the U.S. Department of Housing and Urban Development adjusted for family size. The current 50% and 80% AMI rents for 429 and 432 Norfolk Street are as shown on the Summary Sheets attached hereto. Affordable Units may be rented to tenants with a Section 8 voucher at the maximum rent allowed under the Section 8 program, provided the tenant Family's share of the rent is no greater than thirty percent of its Adjusted Income, less an allowance for utilities and services (excluding telephone), if any, paid by the tenant.

Marketing of Affordable Units:

OHCD will bear the primary responsibility for marketing "for sale" Affordable Units. Marketing efforts will be targeted to income eligible Families who live or work in the City of Somerville. Marketing activities conducted by OHCD will include publication of criteria as to sufficient income, credit status, residency status and down payment requirements. The Affordable Units will be marketed through the following media:

- Direct mail to OHCD's database of approximately 110 local organizations and agencies and approximately 200 homebuyer graduates.
- Newspaper advertising in the Somerville Journal (twice), Somerville News (once), El Mundo (twice), and the Bay State Banner (twice).
- A notice on the City of Somerville's cable television channel.
- Inter-departmental e-mails to Somerville municipal employees.
- Flyers distributed within the neighborhood of the Affordable Units.

Prior to OHCD's instituting any marketing efforts, the Owner shall pay to OHCD the sum of \$2,500 to cover the cost of advertising. The cost of the above-mentioned activities will not

out

Bk: 42346 Pg: 263

exceed \$2,500. However, if any additional marketing activities or the re-marketing of a Unit or Units are required, the Owner will be required to pay the cost of such additional activities.

In addition to OHCD's marketing efforts, the Owner may market the Affordable Units independently at the Owner's sole cost and expense.

Eligible Families:

Families must be certified by OHCD as income eligible and must, in addition, either live or work in the City of Somerville.

Buyer Selection and Certification Process:

- The marketing materials will include notice of a deadline for the submission of Initial Applications.
- OHCD will review each *Initial Application* and notify each applicant of initial eligibility or ineligibility [Note: all applicants deemed initially ineligible will have 5 business days to appeal to the Housing Director, and information on the appeal process will be provided at time of notification.]
- OHCD and the Owner will conduct a joint *Information Session* for applicants deemed initially eligible. The session will include information on the property, individual units, and the construction schedule. The Owner shall provide copies of a Master Deed, Condominium Trust and Bylaws, and Master Deed Plans (all of which shall have been reviewed prior to the Information Session by OHCD's attorney). OHCD shall provide copies of an Affordable Housing Restriction and details on the City's Income Certification process.
- When a representative condominium unit is substantially complete, OHCD and the Owner will schedule a property walk-through for initially eligible applicants.
- Initially eligible applicants must obtain pre-approvals from a bank or other conventional lending institution with rates, terms, and conditions deemed reasonable by OHCD in consultation with the Owner. OHCD may, if it deems necessary, establish a deadline for the obtaining of pre-approvals, which deadline shall be communicated to applicants.
- OHCD and the Owner will schedule a LOTTERY drawing for all initially eligible applicants who have obtained acceptable pre-approvals. OHCD will conduct the lottery.
- The City will perform a Final Income Certification on the *Selected Applicants* and will notify the Owner to proceed with the execution of a Purchase and Sale Agreement.

Tenant Selection and Certification Process: Following establishment of final rental prices:

- The Owner must contact the Somerville Housing Authority to obtain a list of tenants on the Housing Authority's waiting list, which tenants shall be given priority in the order in

Duf

Bk: 42346 Pg: 264

which they appear on the Housing Authority's list. OHCD shall provide assistance to the Owner in dealing with the Housing Authority if the Owner so requests.

- The Owner shall be entitled to conduct tenant related reference and background checks conforming to State and Federal Fair Housing Laws and in a manner consistent with all other market rate units and the Owner's customary practices.
- The Owner shall notify the City as to the chosen tenant.
- The tenant shall complete a tenant application to certify income. The City will conduct income certification in conformance with the United States Housing and Urban Development ("HUD") HOME guidelines.
- Rent adjustments are allowed annually in conformance with HUD's HOME guidelines and shall be calculated by OHCD during the annual rent and income review.
- If the Owner wishes the assistance of the OHCD Housing Division with the marketing of rental units, the Owner may pay \$2,500 as provided in the section above entitled "Marketing of Affordable Units" and OHCD will undertake the same effort as would be made in the case of "for sale" Units.

Monitoring:

"For Sale" Affordable Units: The City will verify annually that any "for sale" Affordable Unit is occupied on a year-round basis as the eligible family's principal residence.

"For Rent" Affordable Units: The City will verify annually the tenants' income eligibility, the Owner's compliance with rent restrictions, and permitted rent increases. OHCD will notify the Owner in all cases of non-compliance or tenant ineligibility. The Owner shall notify OHCD of any tenant turnover in Affordable Units and shall obtain OHCD's approval for any new tenant in advance of such tenant's moving into the Affordable Unit.

General Conditions:

The Owner will extend to the buyer of a "for-sale" Affordable Unit, a warranty identical to the warranty for the market rate units against all defects in materials and labor for (1) one year from the date that ownership transfers, a copy of which was provided to OHCD on March 16, 2004.

The Owner will provide OHCD and the tenant(s) of an Affordable Unit, the contact name and telephone number of the management entity responsible for collection of rent and maintenance of the building.

The Owner will allow the City reasonable access during construction and during marketing.

SIGNATURE PAGE FOLLOWS

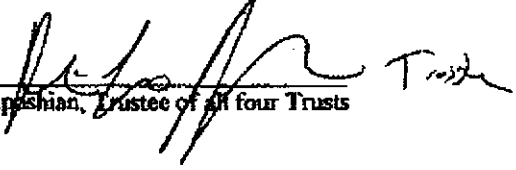
DA

7

Bk: 42346 Pg: 265

EXECUTED UNDER SEAL on the day and year first written above.

**OWNERS AND GROUND LESSEE: SOMERVILLE HOUSING GROUP TRUST I,
SOMERVILLE HOUSING GROUP TRUST II, SOMERVILLE HOUSING GROUP
TRUST III, and 429 NORFOLK STREET TRUST**

By:  Trustee
David Apshian, Trustee of all four Trusts

**HOUSING DIRECTOR: CITY OF SOMERVILLE OFFICE OF HOUSING AND
COMMUNITY DEVELOPMENT**

By: 
Philip Ercolini, Director
OHCD Housing Division

Bk: 42348 Pg: 266

**EXHIBIT D
AFFORDABLE PRICES**

Unit #1 (3-bedroom for sale to Household at 80% of median income):	\$163,000
Unit #3 (1-bedroom unit for sale to Household at 80% of median income):	\$126,000
Unit #8 (1-bedroom unit for sale to Household at 110% of median income):	\$174,000
Unit #9 (1-bedroom unit for sale to Household at 110% of median income):	\$174,000

Bk: 42346 Pg: 267

EXHIBIT E
MEDIAN INCOME LIMITS
(attach 2004 income limits)

[REDACTED]

[REDACTED]

[REDACTED]

HOUSING PROGRAM INCOME LIMITS

PMSA BOSTON, MA FY2004 MEDIAN FAMILY INCOME \$82,600

HOUSEHOLD SIZE	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person	Each Additional Person
----------------	----------	----------	----------	----------	----------	----------	----------	----------	------------------------

HWAP, WAP & LIHEAP

250% of Poverty* effective 04/01/02	\$17,960	\$24,240	\$30,520	\$36,800	\$43,080	\$49,360	\$55,640	\$61,920	\$6,280
--	----------	----------	----------	----------	----------	----------	----------	----------	---------

30% MEDIAN INCOME-CDBG	\$17,350	\$19,850	\$22,350	\$24,850	\$26,800	\$28,800	\$30,750	\$32,750	see footnote 2
-------------------------------	----------	----------	----------	----------	----------	----------	----------	----------	----------------

30% MEDIAN INCOME-HOME	\$16,550	\$19,400	\$21,800	\$24,250	\$26,200	\$28,100	\$30,050	\$32,000	see footnote 2
-------------------------------	----------	----------	----------	----------	----------	----------	----------	----------	----------------

30% (HOME) effective 03/07/02
Extremely Low Income (CDBG) effective 01/28/04
Income Targeting Standard (Sec. 8) effective 01/28/04

50% MEDIAN INCOME-CDBG	\$28,950	\$33,100	\$37,200	\$41,350	\$44,850	\$47,950	\$51,250	\$54,800	see footnote 2
-------------------------------	----------	----------	----------	----------	----------	----------	----------	----------	----------------

50% MEDIAN INCOME-HOME	\$28,300	\$32,300	\$36,350	\$40,400	\$43,650	\$46,850	\$50,100	\$53,350	see footnote 2
-------------------------------	----------	----------	----------	----------	----------	----------	----------	----------	----------------

Very Low Income (HOME) effective 03/07/02
Low Income (CDBG) effective 01/28/04
Very Low Income (SEC. 8) effective 01/28/04

60% MEDIAN INCOME-HOME	\$33,960	\$38,760	\$43,620	\$48,480	\$52,380	\$56,220	\$60,120	\$64,020	see footnote 2
-------------------------------	----------	----------	----------	----------	----------	----------	----------	----------	----------------

60% (HOME) effective 03/07/02

80% MEDIAN INCOME-CDBG	\$46,300	\$52,950	\$59,550	\$66,150	\$71,450	\$76,750	\$82,050	\$87,350	see footnote 2
-------------------------------	----------	----------	----------	----------	----------	----------	----------	----------	----------------

80% MEDIAN INCOME-HOME	\$43,850	\$50,100	\$56,400	\$62,650	\$67,850	\$72,650	\$77,650	\$82,700	see footnote 2
-------------------------------	----------	----------	----------	----------	----------	----------	----------	----------	----------------

Low Income (HOME) effective 03/07/02
Low / Mod (CDBG) effective 01/28/04
Low / Mod (SEC. 8) effective 01/28/04

110% MEDIAN INCOME	\$63,690	\$72,820	\$81,840	\$90,970	\$98,230	\$105,490	\$112,750	\$120,120	see footnote 2
---------------------------	----------	----------	----------	----------	----------	-----------	-----------	-----------	----------------

Somerville Affordable
Housing Trust Fund effective 01/28/04

MHFA 1-2 persons: \$85,300 3+ persons: \$92,700

effective

Footnote 1: 9 person household is \$60,648, 10 person household is \$61,039. Max. income thereafter is \$51,336 regardless of size.
Footnote 2: 140% of 4 person household is a 9 person household; add 8% for each additional person thereafter; round to nearest \$50

operson@norma@mla.ms

revised 02/04/04



Bk: 42346 Pg: 269

Return to: Anne M. Thomas Esq.
City Hall - OHCD
93 Highland Ave.
Salem, MA 02143