

DEVELOPMENT COVENANTS
PROPOSED PUD B-1 ZONING FOR THE MAXPAC SITE

This Development Covenant is made this _____ day of _____, 2007 by and between 56 CLYDE STREET ACQUISITION, LLC and 61 CLYDE STREET ACQUISITION, LLC, Massachusetts limited liability companies, both with a usual address of 20 Park Plaza, Suite 468, Boston, MA 02116 (collectively, the “Developer”), and the CITY OF SOMERVILLE, a Massachusetts municipal corporation with usual address of 93 Highland Avenue, Somerville, MA 02143 (“City”).

BACKGROUND

WHEREAS, the Developer owns the land and building known as 55-61 Clyde Street, Somerville, MA and has a binding agreement to purchase the land and building known as 56 Clyde Street, Somerville, MA; and

WHEREAS, the above-mentioned properties are shown on City of Somerville Assessor’s Map #33 attached hereto as Exhibit A, as Lots #A-24, #A-25, #A-26, #A-27, and #A-28, (collectively such parcels, minus 2,500 square feet at the corner of Warwick and Clyde Streets, are referred to herein as the “Property”); and

WHEREAS, the Developer wishes to construct a 199-unit residential development (the “Project”) at the Property; and

WHEREAS, the Property’s current zoning does not allow for construction of the Project; and

WHEREAS, the Developer wishes the City to rezone the Property to a PUD B-1 District as set forth in a proposed amendment to the Somerville Zoning Ordinance attached hereto as Exhibit B (the “Rezoning”); and

WHEREAS, there have been many community meetings and the Developer has made certain promises regarding the Project in order to alleviate neighborhood concerns if the Rezoning were to be adopted; and

WHEREAS, the City wishes to memorialize the Developer’s promises in the form of these Covenants;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer, for itself, its successors and assigns and affiliated entities, and the City hereby covenant and agree as follows:

1. The Project shall consist of no more than 199 residential units. Up to 65 units (with no more than 110 bedrooms) shall be located at the Warwick/Clyde Street edge of the Property. Up to 134 units shall be located in the middle of the Property and at the Lowell Street edge of the Property. All parking shall be located on the Property and at least 51% of the parking shall be covered.

2. A ramped roadway (the "Ramp") extending down into the Property from Lowell Street shall be the only means of access and egress for the 134 units in the middle and at the Lowell Street edge of the Property. The 65 units (with no more than 110 bedrooms) at the Warwick/Clyde Street edge of the Property shall have such means of access and egress as is approved by the City of Somerville Planning Board and Department of Traffic and Parking. The condominium documents shall prohibit cut-through traffic (except for emergency vehicles) from Lowell Street to Warwick and Clyde Streets, and the site design shall incorporate such physical impediments between the Warwick/Clyde Street edge of the Property and the middle of the Property as are effective to prevent cut-through traffic and acceptable to the City of Somerville Fire Department.

3. In the application for Special Permit with Site Plan Review for each construction phase described in this section, the Developer shall include a construction mitigation plan acceptable to the Planning Board (in coordination with the Inspectional Services Department and Department of Traffic and Parking) with the goal of minimizing inconvenience to the surrounding neighborhoods. Construction of the Project shall be phased as follows:

a. Phase 1 shall consist of the construction of up to 65 residential units (with no more than 110 bedrooms) at the Warwick/Clyde Street edge of the Property. Phase 1 is estimated to take 18-24 months. The Developer has applied for and obtained preliminary approval from the Massachusetts Bay Transportation Authority (through Transit Realty Associates) to use the undeveloped portion of the Community Path between Lowell and Cedar Streets for access and egress of construction vehicles during Phase 1 (with the proviso that such use shall not interfere with or delay the City of Somerville's construction of the permanent Community Path between Lowell and Cedar Streets anticipated to commence in the Spring of 2009). At a minimum, the Developer shall leave the Community Path in the same or better condition as the Path is in as of the date of this Covenant.

b. Phase 2 shall consist of two parts.

(1) Phase 2-A shall consist of the construction of the Ramp, including the Lowell Street vehicular ramp and any new building foundations and utilities or other improvements required to be installed as part of the development's final design (as ultimately approved by the City of Somerville during the Special Permit with Site Plan Review process).

During Phase 2-A, all construction vehicles shall access the site via Warwick Street using the Developer's land adjacent to the Community Path; and construction vehicles shall exit the site making a right-hand turn onto Warwick Street and a left-hand turn onto Clyde Street. Vehicular construction access shall be restricted to the Ramp commencing immediately upon completion of the Ramp to a safe, passable level. Phase 2-A is anticipated to take between 6 to 8 months.

(2) Phase 2-B shall consist of the construction of approximately 65 residential units and associated parking. Commencement of Phase 2-B's building structures (other than Ramp-related site work activities and foundations completed during Phase 2-A), shall not begin prior to the completion of the Ramp to a safe, passable level. Phase 2-B is estimated to take 12-16 months

c. Any additional phases shall consist of the construction of the remaining residential units, and access/egress for construction vehicles shall be solely via the Ramp.

4. The Developer has secured and shall keep current a permit for the Ramp from the Massachusetts Highway Department ("MHD"). The Developer shall continue to comply with the state roadway permit process (which has included numerous meetings with MHD engineering staff over the past two years) to ensure that the Ramp meets all state standards for site lines and public safety. The Developer shall keep the City and the neighborhood informed as to the process. The Developer shall make diligent efforts to ensure that MHD officials are available to explain the engineering and safety aspects of the Ramp as part of the public approval process.

5. The Developer shall donate \$220,000 to the City to implement the traffic mitigation/improvement plan ("Traffic Plan") attached hereto as Exhibit C, which was developed by the City's Traffic and Parking Department after numerous public meetings and a traffic impact study by the Developer. The money shall be donated as follows: the money for the improvements on the Clyde and Warwick side shall be donated at the issuance of a building permit Phase 1 and the remaining money shall be donated at the issuance of a building permit for Phase 2-B. At 100% occupancy of the Phase 1, the Developer shall conduct traffic and speed counts on Cedar Street to determine whether actual traffic volumes and speeds are consistent with the anticipated impacts of Phase 1. If Phase 1 results in any change in level of service at intersections on Cedar Street beyond the estimates of the Developer's original traffic study, then the Developer and the City shall work together in good faith to address the problems. At 100% occupancy of the entire Project, the Developer shall conduct traffic and speed counts on Lowell Street to determine whether actual traffic volumes and speeds are consistent with the anticipated impacts. If occupancy of the entire Project results in any change in level of service at intersections on

Lowell Street beyond the estimates of the Developer's original traffic study, then the Developer and the City shall work together in good faith to address the problems.

6. Upon the issuance of a Special Permit with Site Plan Review for Phase 1, the Developer shall donate the sum of \$20,000 to the City to be used for various community benefits in the discretion of the Mayor, provided the use is suitable for funds originating from a charitable trust. In addition, the Developer shall provide the following community benefits part of the Project: (a) Usable Open Space in excess of the City's zoning requirements that adheres to the design guidelines developed by the neighborhood; (b) landscape improvements on the Property alongside the Community Path; (c) a landscape screening buffer for the benefit of properties on the other side of the railroad tracks; (d) a public sidewalk complying with all applicable codes along the Warwick Street side of the Property; (e) public access to the Community Path via the Ramp; and (f) if feasible, construction of an additional link to the Community Path from the Project that is usable by the public in addition to the Project's owners. The Developer reserves the right on behalf of future inhabitants of units in the Project to take reasonable measures to ensure public health and safety, including the regulation of bicycles and dogs.

7. The Developer shall not sell the Project or any part of the Project to a nonprofit entity exempt from real estate taxes without the prior written permission of the City, which may, in the sole discretion of the City, be conditioned upon the non-profit entity's entering into a satisfactory Payment in Lieu of Taxes (PILOT) Agreement with the City.

8. This Covenant shall be null and void if the City of Somerville Board of Aldermen fail to adopt the Rezoning, or if the Planning Board fails to approve the PUD Preliminary Master Plan, or the Special Permit with Site Plan Review for Phase 1, or if any appeal is filed in connection with any of the foregoing and the City and the Developer do not prevail on appeal.

9. Any notice given hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges prepaid; by overnight delivery service with receipt; or by hand delivery to the Parties at the addresses set forth below:

if to the City: Mayor Joseph A. Curtatone
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

John G. Gannon, Esq.,
City Solicitor, Law Department
Somerville City Hall

93 Highland Avenue
Somerville, MA 02143

Anne M. Thomas, Esq.
Special Counsel, Law Department
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

if to the Developer: Mr. Stephen Smith
3 Concord Avenue, #32
Cambridge, MA 02138

Mr. Darin Samaraweera
KSS Realty Partners
20 Park Plaza Suite 471
Boston MA 02116

Mr. Edward B. Tobin
KSS Realty Partners
20 Park Plaza Suite 467
Boston MA 02116

Henry Rosen, Esq.
Choate Hall & Stewart
Two International Place
Boston, MA 02110

Richard G. DiGirolamo, Esq.
424 Broadway
Somerville, MA 02145

10. Upon the Developer's request, the City shall furnish a statement in recordable form as to the status of any matter pertaining to this Covenant, including, without limitation, acknowledgements that (or to the extent which) the Developer is in compliance with its obligations hereunder.

SIGNATURE PAGE FOLLOWS

EXECUTED UNDERSEAL on the day and year first written above.

DEVELOPER:
56 Clyde Street Acquisition, LLC
61 Clyde Street Acquisition, LLC

CITY OF SOMERVILLE

By:
Master Clyde Street Acquisition, LLC,
Manager of 56 Clyde Street Acquisition, LLC
Manager of 61 Clyde Street Acquisition, LLC

By: _____
Joseph A. Curtatone
Its: Mayor

By:
K.S.S. Investment, LLC,
Manager of Master Clyde Street
Acquisition, LLC

By: _____
Stephen Smith
Manager, K.S.S. Investment, LLC

Approved as to Form:

John G. Gannon, City Solicitor

and
Darin S. Samaraweera
Manager, K.S.S. Investment, LLC

and _____
Henry M. Rosen
Manager, K.S.S. Investment, LLC

EXHIBIT A
ASSESSOR'S MAP #33
(See Exhibit B- Attachment A)

EXHIBIT B
REZONING PROPOSAL

ORDINANCE # _____

DRAFT 1/25/07

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF SOMERVILLE
WITH RESPECT TO ARTICLE 6 “ESTABLISHMENT OF ZONING DISTRICTS,” ARTICLE 7 “PERMITTED
USES,” AND ARTICLE 16 “PLANNED UNIT DEVELOPMENT.”**

Be it ordained by the Board of Aldermen, in session assembled, as follows:

WHEREAS, there exist sites in the City that are either vacant, in a derelict condition, or are being used by nonconforming uses or by existing uses that are constraining the development potential of a site; and

WHEREAS, there are locations in the City where major upgrades to the existing public transportation network are scheduled, or locations where public transportation is already readily accessible; and

WHEREAS, there exist sites in the City that could support medium to higher density residential developments, and other compatible uses;

THEREFORE, be it enacted as follows:

AMENDMENTS TO ARTICLE 6

Amend 6.1.20:
Currently reads:

6.1.20 Planned Unit Development Overlay District B (PUD-B)

Proposed amendment:

6.1.20 Planned Unit Development Overlay District B & Planned Unit Development Overlay District B-1 (PUD-B & PUD-B1)

Amend 6.1.20.B:

Currently reads:

B. Standards and Guidelines

A Planned Unit Development shall be allowed by Special Permit with Site Plan Review in PUD-B Overlay Districts and shall be regulated by the requirements of Section 16. PUD-B Districts shall be overlay districts on the zoning map. For any land within a PUD-B overlay district, a developer may choose to conform either to all the controls which govern the base district(s) or to all the PUD development controls and processes.

The Planning Board shall serve as the Special Permit Granting Authority in the PUD-B Overlay District.

Proposed amendment:

B. Standards and Guidelines

A Planned Unit Development shall be allowed by Special Permit with Site Plan Review in PUD-B **and PUD-B1** Overlay Districts and shall be regulated by the requirements of Section 16. PUD-B **and PUD-B1** Districts shall be overlay districts on the zoning map. For any land within a PUD-B **or PUD-B1** overlay district, a developer may choose to conform either to all the controls which govern the base district(s) or to all the PUD development controls and processes.

The Planning Board shall serve as the Special Permit Granting Authority in the PUD-B **and PUD-B1** Overlay Districts.

AMENDMENTS TO ARTICLE 7

Amend Section 7.11 “Table of Permitted Uses” by inserting a new PUD-B1 zoning district. The existing PUD-B permitted use column would be merged with the new PUD-B1 zoning district column to form one column. All existing uses permitted under the existing PUD-B column would be permitted in the PUD-B/PUD-B1 column.

AMENDMENTS TO ARTICLE 16

Amend 16.2:

Currently reads:

A PUD shall be permitted only in a Planned Unit Development B Overlay District or in the ASMD. In addition, all land included in the proposed PUD must be contiguous and/or separated only by streets, public or private ways. Except as modified by Section 6.4 of this Ordinance, PUD-A requirements apply in the ASMD. Refer to Section 6.4 for more information on the ASMD and PUD-A.

Proposed amendment:

A PUD shall be permitted only in a Planned Unit Development B Overlay District, **a Planned Unit Development B-1 Overlay District**, or in the ASMD. In addition, all land included in the proposed PUD must be contiguous and/or separated only by streets, public or private ways. Except as modified by Section 6.4 of this Ordinance, PUD-A requirements apply in the ASMD. Refer to Section 6.4 for more information on the ASMD and PUD-A.

Amend 16.5.1. and 16.5.2.:

All references in Sections §16.5.1 and §16.5.2 to “PUD-B” must have the words “and PUD-B1” inserted immediately afterwards.

Amend 16.5.3.

Currently reads:

In reference to the provisions of Article 7 of this Ordinance, when a specific use is permitted within a zoning district only within the context of a PUD, said permitted PUD use shall comply with the following stipulations:

- 1) the use(s) shall not exceed forty percent (40%) of the total PUD intensity, as measured by floor area ratio or lot area per dwelling unit, whichever is applicable;
- 2) the use(s) shall not occupy more than forty percent (40%) of the site area, defined as the total PUD lot area exclusive of the PUD minimum landscape area requirement and exclusive of any roads and parking designed within the PUD to serve permitted uses other than or in addition to the use(s) in question.

Proposed amendment:

In reference to the provisions of Article 7 of this Ordinance, when a specific use is

permitted within a zoning district only within the context of a PUD, said permitted PUD use shall comply with the following stipulations:

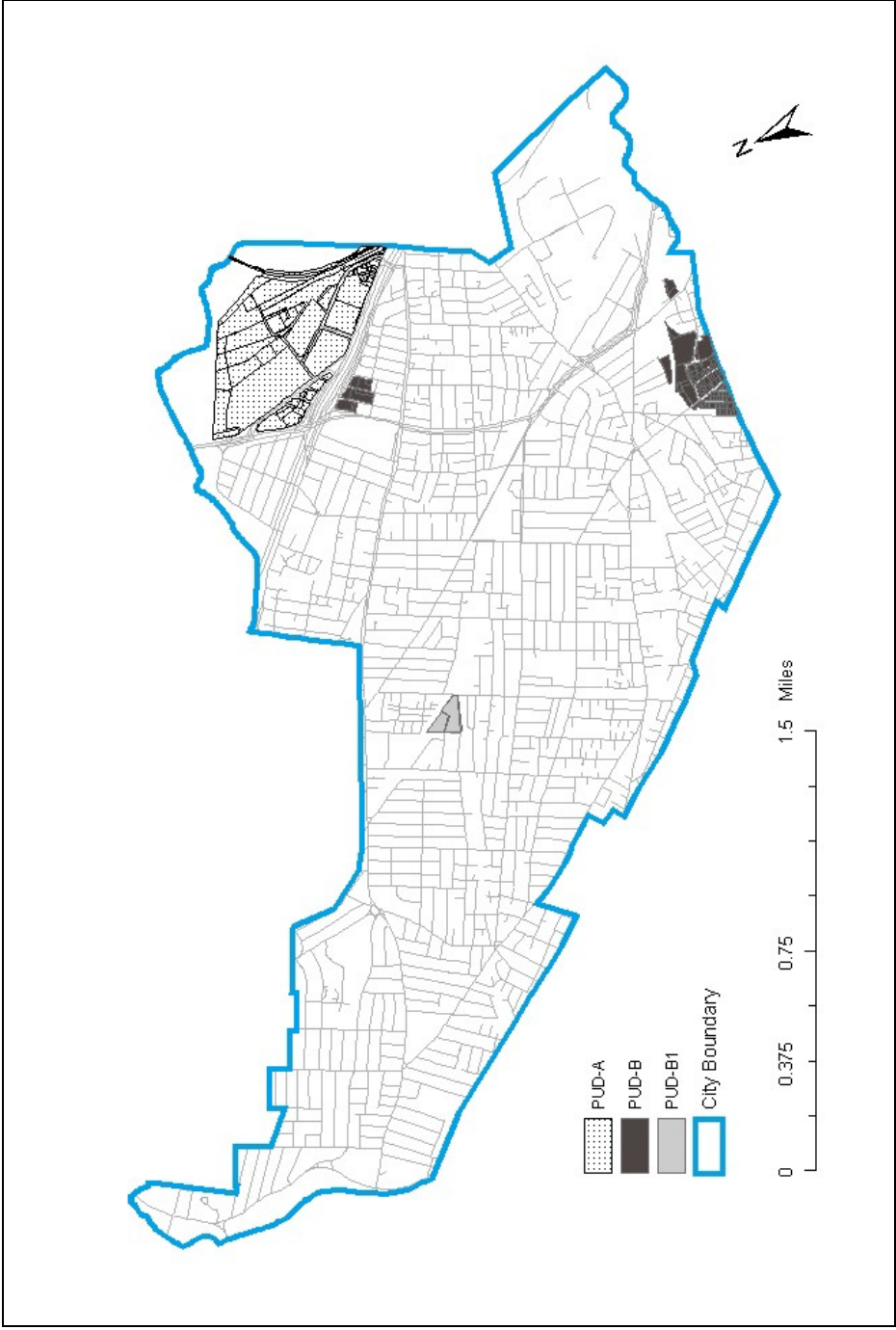
- 1) the use(s) shall not exceed forty percent (40%) of the total PUD intensity, as measured by floor area ratio or lot area per dwelling unit, whichever is applicable;
- 2) the use(s) shall not occupy more than forty percent (40%) of the site area, defined as the total PUD lot area exclusive of the PUD minimum landscape area requirement and exclusive of any roads and parking designed within the PUD to serve permitted uses other than or in addition to the use(s) in question.

In the PUD-B1 district, a PUD with a residential component that exceeds these stipulations is permitted without requiring a waiver under §16.5.4.

ARTICLE 16: PLANNED UNIT DEVELOPMENT (PUD)

ATTACHMENT A

PLANNED UNIT DEVELOPMENT (PUD) OVERLAY DISTRICT



ATTACHMENT A (CONTINUED)

PARCELS IN THE PUD-B1 OVERLAY DISTRICT (MAP/BLOCK/LOT)

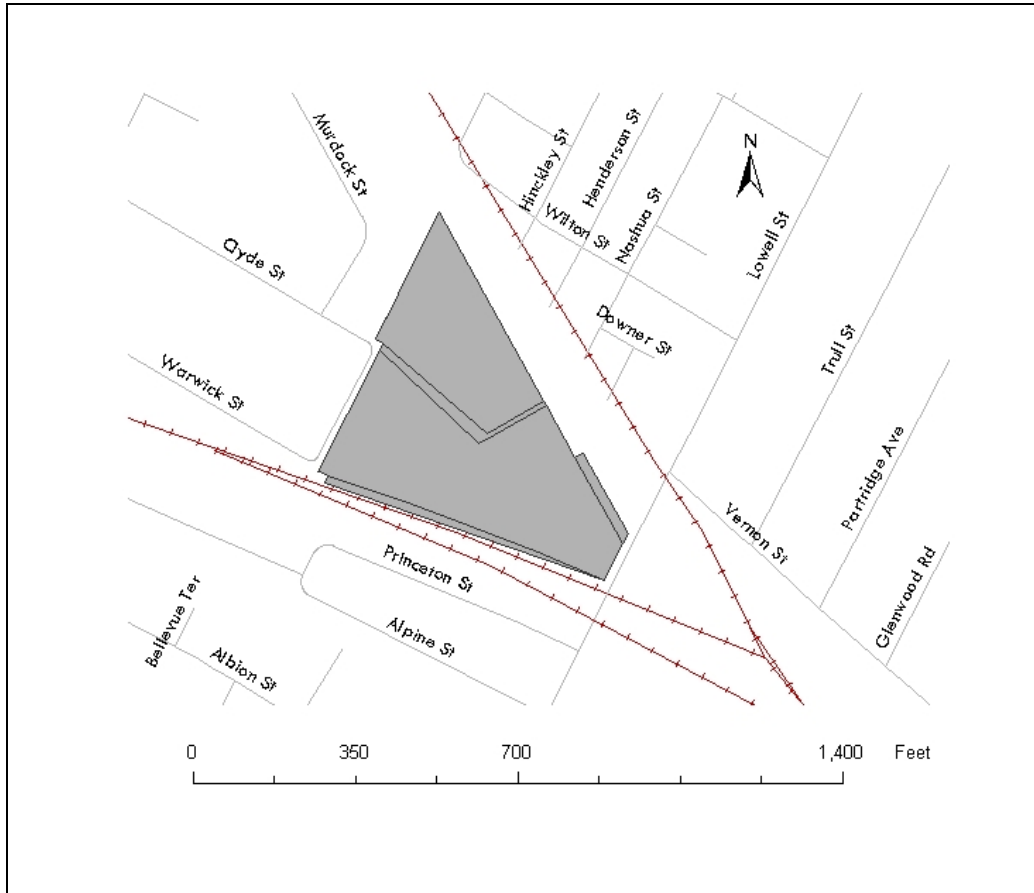
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33-A-25

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**EXHIBIT C
TRAFFIC MITIGATION
(TO COME)**