

FEDERLE LAW

January 22, 2016

Jeff Levine
Planning and Urban Development Director
City of Portland
Portland, ME 04101

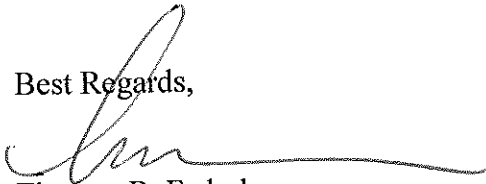
RE: Luminato Condominium Inclusionary Zoning Plan

Dear Jeff:

Enclosed please find the Inclusionary Zoning Plan of Luminato Condominiums, LLC. Our intention is to follow this next week with our Site Plan and Subdivision application. Please indicate what else you may need to consider our Inclusionary Zoning Plan and prepare it for review by the Planning Board.

Currently we have pending with the city a building permit application to relocate a deck on 100 Federal Street. If there is anything that we can do to further the approval of that application, please advise as we are eager to complete that task.

Best Regards,



Thomas B. Federle

To: Jeff Levine, Director of Planning, City of Portland Planning Department
From: Luminato Condominium, LLC
Date: January 22, 2016

RE: Inclusionary Zoning Plan of Luminato Condominium, LLC

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Pursuant to the City of Portland Code of Ordinances Section 14-484 through 14-488 (the "Inclusionary Zoning Ordinance" or "IZO") and consistent with the proposed Inclusionary Zoning Implementation Guidelines (the "Draft Regulations"), Luminato Condominium, LLC ("Luminato") hereby submits the following IZO plan to demonstrate the manner in which Luminato will comply with the IZO.

I. The Luminato IZO Plan

Luminato will be developing a 26 unit market rate condominium project located at 167 and 169 Newbury Street. Luminato intends to place affordability covenants restricting 2 existing off-site market rate dwelling units containing 4 bedrooms located at 42 Hampshire Street. 42 Hampshire Street is located adjacent to, and within the same Census Block of, the Luminato project. 42 Hampshire Street will be deeded to Community Housing of Maine ("CHOM") with two dwelling units restricted by deed covenant. CHOM will administer a rental program for the workforce units in compliance with the IZO. The workforce rental units will be priced affordably, as set forth in the IZO, for eligible tenants earning at or below 100% of the area median income (AMI).

The structure located at 42 Hampshire Street consists of three two-bedroom dwelling units, each of approximately 1,000 square feet, stacked in the "triple decker" style. While the structure is sound and the units are generally in good shape, Luminato is developing a rehabilitation plan, as set forth below. The rehabilitation plan relates to elements of individual units and the building that need updating or are nearing the end of their expected life cycle and may soon need replacement or maintenance.

II. The Inclusionary Zoning Ordinance and the Draft Regulations.

The purpose of the Inclusionary Zoning Ordinance is "to ensure that housing developments over a certain size provide a portion of workforce housing units...." **IZO Sec. 14-487(a).** *Luminato will be providing workforce housing units.*

At least 10% of the units in a project shall meet the definition of workforce housing unit for sale or for rent. **IZO Sec. 14-487(d).** The number of workforce housing units required in a project is rounded down to a whole number if the project developer is providing units. **IZO Sec. 14-487(d).** "For example, a project

creating 26 units of housing would be required to provide two (2) workforce units.” **Draft Regulations, at page 1.** A fractional value is included only where a developer chooses to pay a fee-in-lieu of providing workforce units. **IZO Sec. 14-487(d).** *As in the example used in the Draft Regulations, Luminato is creating 26 units of housing and is providing 2 workforce units.*

Workforce units need not be the same size as other units in the development but the number of bedrooms in such units, either on-site or off-site, shall be 10 percent of the total number of bedrooms in the development. **IZO Sec. 14-487 (e)(3).** For purposes of this section, “every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.” **IZO Sec. 14-487 (e)(3).** *Luminato has (16) 1-bedroom units each of which is less than 800 SF in size. Thus, per the IZO this counts as 16 bedrooms. Luminato has (7) 2-bedroom units four of which are less than 1200 SF in size and therefore count as two bedrooms. The other three two-bedroom units are less than 1600 SF and count as three bedrooms. Therefore, the 7 two-bedroom units count as 17 bedrooms. Luminato has (3) 3-bedroom units each of which is between 1600 and 2000 SF. Thus, per the IZO this counts as 12 bedrooms for a total of 45 bedrooms (16+17+12=45). Luminato satisfies the 10% bedroom requirement by providing workforce housing units consisting of 4 bedrooms.*

For projects providing at least 10% but less than 25% of its units as workforce units, the term of the affordability covenants burdening the workforce units is that term which is the longest term permitted by law. **IZO Sec. 14-487 (e)(7).** *Neither the IZO nor the Draft Regulations set forth, or opine, on the term which is the longest term permitted by law. In perpetuity can be a stifflingly long period of time. Circumstances may change with the centuries and public policy may change with them. CHOM’s experience with affordability covenants is that 50 years is a very long yet possibly appropriate term of the covenant. Accordingly, we propose a covenant that will run for 50 years.*

Development fees for an eligible project shall be reduced by 10% for projects containing at least 10% but less than 15% of its units as workforce units. **IZO Sec. 14-486.** The planning division shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. **IZO Sec. 14-486.** Finally, the planning board shall make its best efforts to give priority in scheduling to any plans or applications required for an eligible project, without impairing the thoroughness of its review. **IZO Sec. 14-486.**

A developer may satisfy the workforce unit requirement by providing units off-site through the restriction of existing market rate units. **Draft Regulations, at page 12.** Off-site units must be in the same Census Block or within 1500 feet of the project triggering the creation of the workforce units. *42 Hampshire Street meets this requirement.*

Off-site units must be comparable or larger in size and bedroom count to the average units being created within the associated project. *The workforce housing units in 42 Hampshire average 1000 SF and consist of two bedrooms each, the units in Luminato average 941 SF and average 1.5 bedrooms each, and therefore the workforce units are, on average, larger than the units and bedroom count in the new development.*

The workforce units must not be run-down or show signs of substantial wear and deterioration relating to heating systems, appliances, plumbing, roofing, siding, flooring, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. *The units in 42 Hampshire Street will meet this standard of quality. Luminato has presented a rehabilitation plan below.*

III. Workforce Units Management Plan

Luminato will partner with the Community Housing of Maine (CHOM) to own, manage and administer the workforce units. CHOM is a 23-year old, Maine 501(c)3 corporation, headquartered in Portland. CHOM has developed 70 housing projects, with 654 units, in 23 different communities, housing more than 1,000 individuals. CHOM has also developed an additional 9 projects, with 49 units, for others.

Operating on the belief that housing, together with support services, provides stability, fosters dignity and respect, and transforms lives, CHOM works with an extensive network of service provider partners, property managers, and maintenance personnel statewide.

All of the units owned and operated by CHOM are subject to income restrictions, and verification and reporting requirements. CHOM's in-house asset management group handles leasing, tenant qualification, reporting and related functions, and has maintained occupancy in CHOM-owned apartments at 97% or better statewide for more than 5 years.

CHOM will manage 42 Hampshire Street in the same way it manages all the rest of the apartments in its portfolio. When the units turn over, CHOM will use its existing communications network to reach out to prospective tenants for the workforce housing units, will use its existing leasing and income qualification documentation to determine that potential tenants are income eligible, will impose its leasing requirements (including periodic income recertification) on the tenants who live there, and will make available all the same resources and support network that the tenants of other CHOM-owned properties enjoy.

CHOM will ensure that the two workforce units in 42 Hampshire are rented to tenants that meet the City's income limits – 100% of adjusted median income, that the

households meet the Eligible Household definition in the IZO Guidelines and that the workforce units at 42 Hampshire abide by all other requirements of the IZO and its regulations.

IV. Rehabilitation Plan for 42 Hampshire Street

A. General Building

1. Luminato will inspect general building items for code compliance and condition. Prior to occupancy of the units as workforce units, Luminato will make improvements as required and prepare a reserve analysis for future required improvements. Items to be covered are:
 - a. Roof
 - b. Siding
 - c. Landscape/hardscape
 - d. Common areas
 - i. Paint
 - ii. Floorcoverings
 - e. Electrical
 - f. Heating
 - g. Plumbing
 - h. Windows

B. Individual Units

1. Replace appliances as necessary
2. Replace kitchen countertops as necessary
3. Replace kitchen cabinets as necessary
4. Sand and refinish hardwood floors
5. Replace vinyl flooring
6. Replace bathroom fixtures as necessary
7. Replace electrical fixtures and associated wiring as necessary.

V. Conclusion

In conclusion, Luminato is pleased to have proposed a condominium project that succeeds in providing workforce housing units consistent with the IZO and Draft Regulations. Luminato looks forward to putting these workforce units into the Portland housing marketplace.