

## SETTLEMENT AGREEMENT

THIS AGREEMENT entered this \_\_\_ day of October, 2015, between: (1) Greendale Avenue Venture, LLC, c/o Mill Creek Residential Trust, LLC, 15 New England Executive Park, Burlington, Massachusetts 01803 (the "Applicant") and (2) the Town of Needham, a Massachusetts Municipal Corporation, acting by and through its Board of Selectmen and Zoning Board of Appeals, having a usual address of 500 Dedham Avenue, Needham, Massachusetts 02492 (the "Town").

WHEREAS, on or about April 12, 2013, the Applicant submitted with the Needham Zoning Board of Appeals (the "Board") a comprehensive permit application pursuant to G. L. c. 40B, §§ 20-23 seeking the construction of three hundred (300) rental residential units in five (5) structures, on property consisting of approximately 6.02 acres located at 592 and 744 Greendale Avenue in Needham (the "Property");

WHEREAS, the Board commenced a public hearing on the application for the original project on May 23, 2013, and continued the hearing for eight (8) sessions before closing the hearing on December 19, 2013;

WHEREAS during the course of the public hearing process, the Applicant submitted revised plans reducing the number of units from three hundred (300) to two hundred and sixty-eight (268) rental units (the "Proposed Project");

WHEREAS, on December 19, 2013, the Board issued a decision purporting to approve a comprehensive permit for the Applicant, with conditions, including a condition requiring the Proposed Project to be reduced to one hundred and eight (108) units;

WHEREAS, the Applicant appealed the Board's decision to the Housing Appeals Committee (the "HAC Appeal"), contending, among other things and in the alternative, that the Proposed Project had been constructively granted; the Board's decision on the Proposed Project was a de facto denial; or that the conditions imposed rendered the Proposed Project uneconomic;

WHEREAS, the Board denied the Applicant's claims;

WHEREAS the Applicant brought a Preliminary Motion seeking a ruling that the Applicant's comprehensive permit application had been constructively granted or constructively denied;

WHEREAS the HAC denied the Applicant's Preliminary Motion, ruling that the comprehensive permit had not been constructively granted or constructively denied;

WHEREAS, the Applicant and the Board have negotiated a proposed resolution for a revised project (the "Revised Project") consisting of one hundred and thirty-six (136) units, ten percent (10%) of which will be three-bedroom units;

WHEREAS, the Board and the Applicant have agreed to file a Joint Motion for Stay and Remand in the HAC Appeal to request that the Housing Appeals Committee stay the HAC Appeal and issue an Order of Stay and Remand in the form attached hereto as Exhibit A, staying the HAC Appeal and remanding the matter to the Board, such remand to be conducted pursuant to the terms and conditions contained herein;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Upon the execution hereof, the parties shall cause their counsel to execute and file in the HAC Appeal a Joint Motion for Stay and Remand, in the form attached hereto as Exhibit B. Upon the HAC's approval of the Joint Motion for Stay and Remand, the parties shall comply with the terms of the order issued pursuant thereto, along with the terms of this Agreement.
2. Among other things, the Joint Motion for Stay and Remand shall request that the HAC remand the project at issue in the HAC Appeal to the Board and require the Board to open a public hearing on the matter subject to the following procedures:
  - a. At present, a public hearing on remand is scheduled to commence on October 20, 2015, with a second session tentatively scheduled for November 10, 2015.
  - b. In connection with and pursuant to the proposed remand, the Applicant shall present the Board, as well as the Town Engineer, the Town DPW Director and the Town Fire Department with plans for the Revised Project (the "Plans") that depict a one hundred and thirty-six (136) unit development, substantially consistent with the Site Plan Rendering dated September 22, 2015 prepared by Tetra Tech, a copy of which is attached hereto as Exhibit C. As of the date of this Agreement, the Applicants' Engineers and Town Staff have already met to review and discuss the Plans. Based on those discussions, Applicant is revising the Plans and will submit revised Plans to the Town Engineer by October 19, 2015.
  - c. The Plans presented and as may be revised shall be of a sufficient detail to allow the Board, as well as the Town Engineer, Fire Department and DPW to evaluate whether the proposed design is acceptable; and to determine whether the Revised Project is generally consistent with local needs. Issues to be reviewed include, but are not limited to, drainage, storm water management, internal traffic circulation, parking and emergency access. Prior to October 28, 2015, the Town Engineer, Fire Department and DPW will indicate in writing or via email whether or not the Plans, as may be further revised in accordance with the cooperative review discussed below, are acceptable, and, if not, what improvements are still required.
  - d. The Applicant's technical team and the Town's above-referenced staff and the Board agree to work cooperatively with each other in a good faith effort to resolve any issues that may be apparent or which may arise in the review of the Revised Project, as shown on the Plans, as may be revised. In the event that the Applicant

and the Town's technical staff, as aforesaid, are unable to reach agreement on the technical matters, the Applicant, may at its option, submit a written notice, by no later than October 30, 2015, to the Board (with a copy to the Board's Special Counsel) and the HAC terminating the remand proceedings, at which point, the stay of the HAC Appeal shall be lifted and the currently pending HAC Appeal shall resume with the first day of hearing on December 15, 2015. Alternatively, the Applicant may, at its option, proceed with the remand process, notwithstanding any disagreement with the Town's staff on technical matters.

- e. In the event that the Board determines that the Revised Project, as may be further revised during the hearing, is consistent with local needs, the Applicant and the Board shall use good faith efforts to cooperate in the draft a final decision for an approval of the Revised Project. The Board, via its Chairman and Town Counsel, will prepare a draft decision, which such draft will be supplied to the Applicant for its review.
- f. The Board will timely provide the required public notice of the public hearing on the Revised Project so that the Board's public hearing on the Revised Project shall commence no later than October 20, 2015. The subject of the hearing shall be the Revised Project as shown on the Plans, as the same may be amended and agreed to as a result of the above-referenced review by technical staff. The hearing shall terminate no later than December 1, 2015, unless the parties agree to an extension.
- g. The Board's decision on remand ("Remand Decision") shall be filed with the Needham Town Clerk no later than December 8, 2015.
- h. The Housing Appeals Committee shall retain jurisdiction over this matter and the pending HAC Appeal shall be stayed during the remand process.
- i. If the Remand Decision is not issued by the Board and filed with the Town Clerk within the time set forth above, the Revised Project, as may be further revised pursuant to agreement of the Applicant and the Board, shall be deemed constructively approved and the HAC shall forthwith issue a decision (the "HAC Decision") in such form as the HAC deems appropriate, approving the Revised Project as shown on the Plans, as may have been further revised by agreement between the Town and the Applicant as aforesaid, and the HAC Decision so issued shall become the decision in this matter, subject to all rights of appeal by any third party with sufficient standing, the Board and the Town hereby waiving any right either may have to appeal from the HAC Decision so issued.
- j. If the Board timely issues a Remand Decision, but (i) the Applicant is dissatisfied with any of the conditions of the Remand Decision due to conditions that either materially alter the Revised Project or materially increase the cost of constructing the same, or (ii) if any state legislation is enacted that would require certain areas on the Site to be maintained undisturbed or vegetated or would otherwise adversely impact the Revised Project or require changes to it, the Applicant may terminate the remand and resume the HAC proceedings by sending written notice

(the "Notice") to the Board and the HAC within 20 days of the filing of such Remand Decision with the Town Clerk. Upon any such Notice, the HAC stay shall be lifted so that the Board, the Applicant and the Intervener may proceed to litigate the HAC Appeal before the Housing Appeals Committee with all of their claims and defenses preserved and as if the Remand Decision or the HAC Decision had never been issued. The Notice contemplated under this paragraph is not intended to be, and may not be construed as an Appeal of the Remand Decision or the HAC Decision but, rather is intended to be and can only be construed as a Notice to lift the existing stay and resume the HAC Appeal.

- k. In order to preserve its rights in the event that a third party (including but not limited to the Intervener) should appeal the Remand Decision or HAC Decision, the Applicant may also preemptively send the Notice to the HAC as outlined in the preceding paragraph, even though the Remand Decision is otherwise acceptable to the Applicant. Such Notice is not intended to be, and may not be construed as an Appeal of the Remand Decision or HAC Decision but, rather can only be construed as a Notice to lift the existing stay and resume the HAC Appeal. In such event, if a third party does not file an appeal of the Remand Decision or HAC Decision within twenty days from the filing thereof with the Town Clerk, the Applicant shall withdraw its Notice, thereby accepting an otherwise acceptable Remand Decision or HAC Decision which shall be the operative decision and, in such case, the HAC Appeal shall be dismissed. If a third party does file an appeal (the "Third Party Appeal"), the Applicant agrees to further stay the HAC proceeding. The Applicant shall forthwith file a Motion to Dismiss on standing or other grounds. The stay shall be in effect until the presiding trial court issues a decision on said Motion to Dismiss. The Town agrees to cooperate and support such Motion to Dismiss. If the Motion to Dismiss is granted, and the Court's ruling to grant the Motion to Dismiss is not appealed, the Applicant shall withdraw its Notice, thereby accepting the Remand Decision or HAC Decision which shall become the operative decision, as aforesaid. If the Motion to Dismiss is not granted, or is granted but the order granting the Motion to Dismiss is appealed, the Applicant may, at its option lift the stay by providing written notice (the "Motion to Dismiss Notice") to the HAC and the Board within twenty (20) days of such denial of the Motion to Dismiss, or within twenty (20) days of an appeal of the grant of the Motion to Dismiss so that the Board, the Applicant and the Intervener may proceed to litigate the HAC Appeal before the Housing Appeals Committee with all of their claims and defenses preserved and as if the Remand Decision or the HAC Decision had never been issued. If the Applicant does not issue such Motion to Dismiss Notice and, instead chooses to defend said appeal, the Notice shall be deemed withdrawn and the Remand Decision or HAC Decision shall be the operative permit and the HAC Appeal shall be dismissed.
- l. In the event that the Applicant does not send a Notice to the HAC within twenty days from the filing of the Remand Decision or HAC Decision, as aforesaid, the Remand Decision or the HAC Decision as the case may be, shall be the operative Comprehensive Permit decision and the present HAC Appeal shall be dismissed.

3. In connection with the Revised Project, the Applicant shall be allowed, at its expense, to relocate the Town sewer and Town sewer easement, which shall be shown on the Plans. Such relocation shall be accomplished by the Applicant's donation of a new sewer easement and the Selectmen's written grant of permission to construct the Project in the location of the existing easement. To the extent any other municipal approvals are required for the relocation of the Town sewer and Town sewer easement, such approvals shall be granted as part of the amended comprehensive permit to be issued by the Board. Once the new sewer line is constructed, the Applicant shall convey to the Town an easement in the relocated easement area and ownership of the sewer facilities in the easement area.
4. There currently exists approximately 80 feet of vegetation between the I-95/Route 128 edge of pavement and the Site's northeastern property line. Applicant agrees to provide, either through planting and/or preservation of existing vegetation, an approximately 20-footwide vegetative buffer on the Project Site and along the northeastern property line of the Site as shown on the Plans for the Revised Project. The Applicant further agrees that no Project building will be constructed within fifty (50) feet of such vegetative buffer (for a total of 150 feet from Route 128 to the nearest building), although above ground parking areas, drainage facilities or other improvements may be constructed within that 50-foot area but outside of the 20-foot buffer area described above. Subsurface utilities and drainage facilities and other improvements may be constructed within the 20-foot buffer area.
5. The Applicant agrees that the Revised Project Plans will depict all permanent utilities for the Revised Project to be located underground.
6. The Town agrees that, upon the execution of this Agreement, it will request that its local legislators cease to promote any legislation that is inconsistent with the Revised Project and, further, that, in the event that the Revised Project is approved as aforesaid and not appealed by the Applicant, the Town shall request that such legislators cease to promote any legislation that is inconsistent with the Revised Project as approved by the Board or the HAC.
7. The parties agree that the various deadlines herein express their best estimate of the time periods to be required in order to complete the tasks contemplated hereunder. The parties agree that, should unforeseen circumstances arise and cause delays, they will agree use best efforts to agree to revised deadlines.
8. This Agreement is a Massachusetts Contract and may be enforced only by a Massachusetts court of competent jurisdiction.
9. Any amendments to this Agreement shall only be made in writing and upon agreement by all parties to this Agreement.
10. This Agreement may be signed in multiple counterparts.

*[signatures on next page]*

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of October, 2015.

TOWN OF NEEDHAM  
ZONING BOARD OF APPEALS

GREENDALE AVENUE VENTURE, LLC

By: \_\_\_\_\_

By: 

Its: \_\_\_\_\_  
Hereunto duly authorized

Its: Senior Managing Director  
Hereunto duly authorized

TOWN OF NEEDHAM  
BOARD OF SELECTMEN

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Hereunto duly authorized

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of  
October, 2015.

TOWN OF NEEDHAM  
ZONING BOARD OF APPEALS

GREENDALE AVENUE VENTURE, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Hereunto duly authorized

Its: \_\_\_\_\_  
Hereunto duly authorized

TOWN OF NEEDHAM  
BOARD OF SELECTMEN

By: *[Handwritten Signature]*

Its: *Town Manager*  
Hereunto duly authorized

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of  
October, 2015.

TOWN OF NEEDHAM  
ZONING BOARD OF APPEALS

GREENDALE AVENUE VENTURE, LLC

By: Jon D. Schreiber  
Its: Chairman  
Hereunto duly authorized

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Hereunto duly authorized

TOWN OF NEEDHAM  
BOARD OF SELECTMEN

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Hereunto duly authorized