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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF COMMUNITIES AND DEVELOPMENT
HOUSING APPEALS COMMITTEE

GREENDALE AVENUE VENTURE, LLC,)
Applicant,)
)
)
v.)
) No. 2014-02
JON D. SCHNEIDER, JONATHAN D.)
TAMKIN and HOWARD S. GOLDMAN,)
as they are and constitute the TOWN OF)
NEEDHAM BOARD OF APPEALS,)
Respondents.)

**APPLICANT GREENDALE AVENUE VENTURE, LLC'S
MOTION FOR LEAVE TO AMEND ITS INITIAL PLEADING**

Pursuant to 760 CMR §§ 56.06(4)(d), applicant Greendale Avenue Venture, LLC (“Greendale”) moves for leave to amend its Initial Pleading in this matter and presents its proposed First Amended Initial Pleading as Exhibit A hereto. As grounds for this motion, Greendale states as follows:

1. The regulations governing this appeal expressly provide that leave to file amendments to any pleadings may be allowed in the discretion of the Presiding Officer. 760 CMR §§ 56.06(4)(d).
2. Greendale seeks to amend its Initial Pleading to more clearly set forth the issues it will present and the relief it is seeking in this matter.
3. As set forth in the First Amended Initial Pleading attached hereto, Greendale seeks three forms of relief, which it seeks in the alternative.
4. First, Greendale seeks a ruling by the Committee that the decision the Board

purported to make on Greendale's application for a comprehensive permit (the "Application") was not a decision at all and cannot be the final action of the Board by the express terms of the Board's purported decision. Accordingly, Greendale will seek a ruling that the Application has been constructively granted by reason of the Board's failure to take final action on the Application within the statutorily prescribed time.

5. Second, and alternatively, should the Committee find that the Application has not been constructively granted, Greendale seeks a ruling that the decision is a *de facto* denial and a ruling that the burdens of proof in this matter will be those applicable to a denial and not an approval with conditions.

6. Finally, again in the alternative, should the Committee find that the Application has not been constructively granted and also that the decision is not a *de facto* denial, Greendale will seek a ruling that certain of the conditions are legally untenable and must be stricken and that other conditions or the conditions in the aggregate make the proposed project uneconomic.

7. Greendale requests that the leave to amend its Initial Pleading be granted so that the issues Greendale wishes to present to the Committee and the relief Greendale seeks can be clearly framed for the Committee and for the parties.

8. Greendale submits that allowing the amendment will not prejudice any party as the Initial Pleading was only recently filed and the Conference of Counsel has not taken place. On the contrary, a clear statement of the issues that Greendale will present

and the relief it seeks will only serve the Committee's and the parties' interests and the interests of a clear, orderly and efficient administrative process.

Respectfully submitted,

GREENDALE AVENUE VENTURE, LLC,

By its attorneys,



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Dated: February 27, 2014

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party *and email* by mail ~~(by hand)~~ on 2/27/14

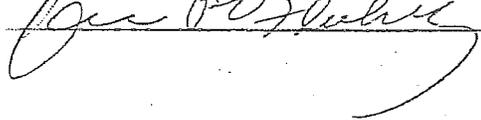


EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF COMMUNITIES AND DEVELOPMENT
HOUSING APPEALS COMMITTEE

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**FIRST AMENDED INITIAL PLEADING OF
GREENDALE AVENUE VENTURE, LLC**

Pursuant to M.G.L. c. 40B, § 22 and 760 CMR §§ 56.06, applicant/petitioner Greendale Avenue Venture, LLC (“Greendale”) appeals from the decision (the “Decision”) of the Town of Needham Board of Appeals (the “Board”) dated December 19, 2013 purporting to approve with conditions a comprehensive permit (the “Comprehensive Permit”) for a multifamily housing development (the “Project”). Greendale’s application for a Comprehensive Permit sought approval of a 300-unit rental Project. During the course of the hearings on Greendale’s application, Greendale reduced the size of the Project to 268 units of rental housing. The Decision purports to approve the Comprehensive Permit, but arbitrarily and unreasonably reduces the number of units to 108 units of rental housing—a reduction of the proposed Project by almost 60 %.

In the first instance, the Decision is not by its own terms the Board’s final action and therefore it is not a decision at all. In effect, the Decision is an effort by the Board unilaterally to grant itself an extension of time to an undetermined future date to act on

the Application. This purported action is in derogation and violation of the statutory timelines by which a board must render a decision on a comprehensive permit application. The fact that the "Decision" is not the final action of the Board on the Application is clear from the language of the Decision itself and certain of the "conditions" that the Board has purported to impose, including but not limited to Condition 4. Those conditions purport to require Greendale to completely redesign the project, create from scratch and file a new set of plans with the Board which new plans will then be the subject of a new public hearing after which the Board will vote to approve or deny those plans. Accordingly, as no decision has in fact been rendered on the Application within the statutorily required time and as the Board has purported unilaterally to extend to an indefinite future date its final action on the Application, the HAC should rule that Greendale's Application has been constructively granted.

Alternatively, Greendale submits that the Decision should be treated as a *de facto* denial of the Application as there was no legally tenable basis for the required reduction of 60 % of the proposed units, and because by this arbitrary unit reduction and other conditions the Board purports to require Greendale to completely redesign the Project and to submit the redesigned Project for further public hearing and a subsequent decision by the Board. The Board's effective denial of the Project as proposed by Greendale was not reasonable or consistent with local needs. The Decision should be vacated and the Committee should order the Board to issue a Comprehensive Permit substantially in accordance with the application submitted by Greendale.

Alternatively, should the Committee rule that there has not been a constructive grant of Greendale's Application or that the Decision is not in effect a denial of the Application, but is an approval with conditions, Greendale submits that certain of the thirty-seven conditions imposed by the Board render the project uneconomic or are not otherwise legally tenable and therefore are not consistent with local needs and should be stricken from the Decision. In further support of this appeal, Greendale states as follows:

PARTIES

1. Applicant/petitioner Greendale is a limited liability company organized under the laws of Delaware. Greendale maintains a place of business c/o Mill Creek Residential Trust LLC at 15 New England Executive Park, Burlington, MA 01803.

2. Respondents John D. Schneider, Jonathan D. Tamkin and Howard S. Goldman were, at all relevant times, the members of the Board of Appeals of the Town of Needham (the "Board"). The Board and its members have a business address of Needham Public Services Administration Building, 500 Dedham Avenue, Needham, MA 02492.

STATEMENT OF PRIOR PROCEEDINGS

3. By application to the Board dated April 12, 2013 (the "Application") Greendale sought a Comprehensive Permit pursuant to M.G.L. c. 40B, § 21, *et seq.* ("Chapter 40B") in connection with its proposal to construct and develop 300 units of multifamily rental housing (the "Project") on 6.02 acres of land located at 692 and 744

Greendale Avenue, Map 18, Parcels 42, 43 and 44 in Needham, Massachusetts (the "Property"). The Property is improved with two single family homes.

4. Following due notice under the Open Meeting Law, M.G.L. c. 39, §§ 23A-23B and M.G.L. c. 40A, §11, the public hearing regarding the Application was opened on May 23, 2013. The public hearing continued over seven (7) evenings on June 20, 2013, July 18, 2013, September 19, 2013, October 17, 2013, November 13, 2013, November 21, 2013 and was concluded on December 19, 2013 at which the Board rendered its oral decision on the Application.

5. The Board's written decision (the "Decision) purporting to approve the Application subject to thirty-seven conditions was submitted to the Needham Town Clerk's Office on January 23, 2014. A copy of the Decision is attached hereto as **Exhibit A** in accordance with 760 CMR 56.06.

JURISDICTION AND STANDING

6. Greendale satisfies the jurisdictional requirements for this appeal set forth in 760 CMR 56.05(9)(b) in that it is the applicant and has been granted the Comprehensive Permit by the Board subject to certain conditions which Greendale contends constitute an effective denial of the permit or, alternatively, which render the Project uneconomic or are otherwise unreasonable or legally untenable.

7. Greendale also satisfies the requirements for this appeal in that (1) it has obtained a Project Eligibility Letter ("PEL") which provides *prima facie* evidence that it has satisfied the requirements of 760 CMR 56.04(1), and insofar as Greendale has

represented to the Board that the Project will be pursued through a limited dividend organization within the meaning of G.L.c. 40B, §21 and 760 CMR 56.04 and the PEL it received requires that Greendale take title through a limited dividend entity; (2) the Project at issue is eligible for funding as evidenced by the PEL; and (3) Greendale “controls” the site at issue as that term is used in 760 CMR 56.04(1)(c) in that Greendale has entered into a Purchase and Sale Agreement for acquisition of the site from its current owners, which Purchase and Sale Agreement remains in full force and effect.

8. The Town of Needham has not met any of the statutory minima or other criteria set forth in G.L.c. 40 B, §20 or 760 CMR 56.03 for low and moderate income housing, including the statutory minima of 10% affordable housing. As of April 30, 2013, Needham had an affordable housing percentage of 7.6% as determined by the Subsidized Housing Inventory maintained by the Department of Housing and Community Development. Needham’s failure to satisfy the statutory minimum for affordable housing constitutes compelling evidence that the need for affordable housing outweighs any local concerns that could be raised in objection to the Project.

OBJECTIONS TO THE DECISION

9. The Decision is not a decision or final action of the Board by its own express terms and conditions, which, among other things, purports to require Greendale to prepare an entirely new set of plans for a 108-unit development, present those plans to the Board, submit those plans to further public hearing, after which the Board will vote to approve or deny those plans. Accordingly, by the express terms of the purported

Decision, the Board has not taken final action on the Application, but has purported to postpone final action to an indefinite future date. Greendale was not asked to nor did it agree to any such extension of the public hearing. Moreover, notwithstanding the express requirement that a further public hearing on new plans take place, the Board purported to close the public hearing on December 19, 2013. Accordingly, the Board had 40 days from that date to take final action on the Application and render its decision. That time has passed. Accordingly, the Application has been constructively granted and the Decision is a nullity.

10. To the extent the HAC would rule that there has been final action by the Board on the Application and that there has not been a constructive grant of the Application, the Decision should be deemed a *de facto* denial of the Application, and not an approval with conditions.

11. The Decision is unreasonable not consistent with local needs, because, among other things:

(a) At present, Needham does not meet the statutory *minima* set forth in G.L. c. 40 B, §20 or 760 CMR 56.03 for low and moderate income housing, and the Decision, which arbitrarily and unreasonably reduces the Project from 268 units to 108 units and purports to require Greendale to completely redesign the Project and return to the Board for further public hearing on the redesigned Project, is in effect a denial of the Application for the Project which is unreasonable and not consistent with local needs in

light of the compelling evidence of the need for more affordable housing in Needham and the region; or, alternatively

(b) To the extent the HAC would consider the Decision an approval with conditions and not a *de facto* denial, the conditions and requirements of the Decision in the aggregate make the construction of the Project uneconomic and are not consistent with local needs, or, are otherwise unreasonable or legally untenable. Greendale objects to the following conditions and requirements:

Condition 1: The number of units shall not exceed 18 units per acre for a total project not to exceed 108 units. The unit size and mix shall be consistent with the unit size and mix set forth in the applicant's plans filed on September 17, 2013.

Greendale Objects to this condition because the reduction of units is arbitrary, unreasonable and legally untenable, or, alternatively, either by itself or in conjunction with other conditions, renders construction of the project uneconomic.

Condition 2: The project shall include parking of not less than 1.7 spaces per unit as proposed in the plans filed September 17, 2013. It may include a pool and a clubhouse and shall include appropriate open space for snow storage and a play area for children.

Greendale objects to this condition because the term "appropriate open space" is vague and undefined and sets no intelligible standard for compliance. Greendale objects to this condition because the requirement of a play area for children is unreasonable in light of the location of the project, the unit mix and the nature of the anticipated residents. Such conditions make the Project uneconomic to the extent they would provide the Board with

the right to negate the Comprehensive Permit. Such conditions make the Project uneconomic to the extent they will make the Project incapable of being financed.

Condition 3: The project shall include units along Greendale Avenue that do not exceed the height limit for the District and shall comply with the 30 foot front setback requirement. Buildings to the rear may be up to four stories so long as they are designed and situated such that not more than 2 1/2 stories are above the elevation of Greendale Avenue.

Greendale objects to this condition because the limits on height and setback together with other conditions render the Project uneconomic and improperly require a fundamental redesign of the Project.

Condition 4: Plans for the revised project must be approved by the Board after a public hearing. Project plans must have requisite detail to assess compatibility with generally accepted standards for engineering and site development and should contain the information set forth in the plans filed during the hearing. Peer review may be required to address issues that were unresolved in the Board's hearings or new issues created by the modified plans.

Greendale objects to this condition as an improper condition subsequent to the extent it purports to require the developer to fundamentally redesign the project and appear in the future before the Board for approval of the redesigned Project or otherwise seek from the Board further discretionary review and approval. Greendale also objects to this condition to the extent it is in excess of the Board's authority and purports to impose requirements on Greendale which go beyond those normally imposed on similarly situated developers and entail more than the appropriate approvals by town official who customarily review

and approve such plans. Such conditions also make the Project uneconomic to the extent they would provide the Board with the right to negate the Comprehensive Permit at a later public hearing which in turn makes the Project incapable of being financed.

Condition 5: The project, as revised, shall include mitigation measures to deal with air pollution from the nearby highway. Windows facing Route 128 and not separated by a building shall not be capable of being opened. The pool will be located so that air pollution from the highway is blocked by a building or located more than 300 feet from the highway. The owner of the building shall be responsible for maintenance of air filters in any air conditioning or filtration system and shall change or clean the filters on a regular basis no less frequently than as recommended by the manufacturer.

Greendale objects to this condition to the extent it is vague, unintelligible and legally untenable in purporting to require unspecified "mitigation measures to deal with air pollution from the nearby highway." Greendale also objects to this condition to the extent it requires that certain windows in the Project shall not be capable of being opened. This condition is unreasonable and would adversely impact the marketability of certain units, thereby making the Project uneconomic. Greendale further objects to the conditions regarding the pool which are unreasonable and vague in purporting to require location of the pool so that "air pollution from the highway is blocked by a building or...more than 300 feet from the highway," and where there are no local regulations or ordinances that would impose such a requirement and where the Town has not imposed such a condition on similarly situated developers or property owners. Such conditions make the Project uneconomic to the extent they would provide the Board with the right to

negate the Comprehensive Permit which in turn makes the Project incapable of being financed.

Condition 6: The project shall comply with the HUD noise guidelines set forth in 24 CFR 51, as they may be revised or amended. Prior to the issuance of a building permit, the applicant shall submit a plan for noise abatement that is approved by the Building Commissioner. Prior to the issuance of an occupancy permit, the applicant shall submit a noise study confirming that abatement measures have reduced interior noise levels to 45 db or less within each apartment and that noise level at the outdoor pool does not exceed 65 db.

Greendale objects to this condition as beyond the power of the Board to impose to the extent it purports to impose on Greendale as a condition for the Comprehensive Permit requirements that are not established by any local bylaw or ordinance and to the extent that the condition's requirement of a "noise abatement" plan and noise study are imposed without reference to any set of standards or procedures established by local bylaw or ordinance and to the extent the condition purports to give the Building Commissioner absolute discretion to deny an occupancy permit where no local ordinance or bylaw would create such discretion or power in the Building Commissioner. Such conditions also make the Project uneconomic to the extent they would provide an official other than the Board with the right to negate the Comprehensive Permit and in turn make the Project incapable of being financed.

Condition 7: The applicant shall grant an easement to the Town for the continuation of the trail at the Route 128 side of the property that connects the trail over the adjacent Town parkland in a form acceptable to Town Counsel. The applicant shall provide access to

the trail for residents of the project in a manner approved by the Town Engineer.

Greendale objects to this condition as an improper condition subsequent to the extent it reserves to the absolute discretion of Town Counsel and the Town Engineer matters which could result in a claim that Greendale has not fulfilled conditions of the Comprehensive Permit and provides no standards by which to measure and confirm Greendale's fulfillment of the conditions. Such conditions also are unreasonable in that they could result in the exposure of Greendale to liability from third parties and would require Greendale to incur the cost of insurance against such liability. The conditions are also unreasonable in that they appear to require Greendale to make its Property available to the public for recreation when other conditions in the Decision purport to state that it is unhealthy for persons to be on the Property due to its proximity to the alleged noise and air pollution emanating from I-95. Such conditions make the Project uneconomic to the extent they would provide an official other than the Board with the right to negate the Comprehensive Permit and, in turn, would make the Project incapable of being financed.

Condition 8: The applicant shall pay for the design and installation of a signal light at the intersection of Greendale with Bird Street and Rybury Hillway. The Town engineer shall determine if the light is a red light or a pedestrian crossing light. The design and plans shall be approved by the Town Engineer. The light shall be installed and operable prior to the issuance of the first occupancy permit for the project.

Greendale objects to this condition to the extent that state approvals and agreements with abutting landowners not under Greendale's control may be necessary to satisfy the condition as written. Accordingly, the condition, which appears to impose requirements which are beyond the power of Greendale to effect, is legally untenable. Greendale also objects to the condition to the extent it purports to give Town Engineer the absolute and unfettered right to reject the plans and to rescind or negate the Comprehensive Permit. Such condition makes the Project uneconomic to the extent it imposes the full cost of the light on Greendale and to the extent it would provide an official other than the Board with the right to negate the Comprehensive Permit, and, in turn, make the Project incapable of being financed.

Condition 11: All utilities on the site shall be underground.

Greendale objects to this condition as unreasonable due to the fact that temporary utilities, e.g. utilities needed during the construction of the Project, are typically located above ground.

Condition 12: Prior to the issuance of a building permit, the applicant will obtain the approval of a landscape plan by the Board at a public hearing.

Greendale objects to this condition as an improper condition subsequent in that it purports to require a further public hearing and approval by the Board. Such condition makes the Project uneconomic to the extent it would provide the Board with the right to negate the Comprehensive Permit at a future public hearing and, in turn, makes the Project incapable of being financed..

Condition 13: Prior to the issuance of a building permit, the applicant will obtain the approval of a site plan, drainage plan, storm water control plan, road layout and grading plan and a lighting plan by the Town Engineer. To the maximum extent possible, all stormwater shall be infiltrated on site. Unless the Town Engineer concludes there is no danger of overflow water spilling on to Route 128, the applicant must obtain an easement for such overflow from the Commonwealth of Massachusetts or responsible agency thereof.

Greendale objects to this condition as an improper condition subsequent to the extent it purports to require a complete redesign of the Project and a subsequent approval of the redesigned Project by the Town Engineer. Greendale also objects to the extent that the condition states that to the maximum extent "possible" storm water shall be infiltrated on site when DEP regulations require on-site infiltration to the maximum extent "practicable." Greendale further objects to the condition as unreasonable and legally untenable to the extent that the condition appears to provide the Town Engineer with unfettered discretion without reference to any standard to determine that there is a danger of overflow spilling onto Route 128 and to negate the Comprehensive Permit if he so finds. Such condition makes the Project uneconomic to the extent it would provide an official other than the Board with the right in effect to negate the Comprehensive Permit in the future, and, in turn, makes the Project incapable of being financed.

Condition 14: Prior to the issuance of a building permit, the applicant shall obtain approval of its final plans from MassHousing and enter into a Regulatory Agreement, Monitoring Agreement and Deed Restriction for the affordable units in a form approved by MassHousing. Prior to the issuance of a building permit, executed and recorded copies of these agreements shall be filed with the Board.

Greendale objects to this condition as legally untenable because MassHousing does not approve final plans and does not enter into a Monitoring Agreement or Deed Restriction for rental projects such as the Project. Accordingly the condition purports to impose a requirement that is impossible to satisfy and is therefore legally untenable. Such condition makes the Project uneconomic to the extent it would impose a condition which is impossible to satisfy and, thereby, a basis to negate the Comprehensive Permit, which, in turn, makes the Project incapable of being financed..

Condition 15: Prior to the issuance of a building permit, the applicant shall file seven sets of plans for the project stamped by a registered engineer, and approved by MassHousing as final plans, together with a narrative indicating any changes from plans previously submitted to the Board. The final plans shall be consistent with the plans previously approved by the Board (or, if not approved by the Board by the HAC or a court rendering a final judgment). If the Chairman of the Board determines that the filed final plans are not consistent with prior approved plans, he shall decide whether the changes are substantial. If not substantial, he may approve the plans. The Chairman shall notify the applicant with 20 days if the changes are approved. If not, the Board shall hold a public hearing within 30 days of the Chairman's determination to consider the changes and shall issue a decision within 40 days of the termination of the hearing.

Greendale objects to this condition to the extent it is legally untenable in requiring MassHousing's approval of the final plans, which is not something MassHousing will do and therefore sets out a condition which is beyond the power of the applicant to fulfill. Such condition also makes the Project uneconomic to the extent it would be a basis to

negate the Comprehensive Permit, which, in turn, makes the Project incapable of being financed. Greendale further objects to the extent the condition provides for a determination of substantial change in a manner that is inconsistent with 760 CMR 56.05(11).

Condition 16: No building permit will be issued until the Building Commissioner receives a letter from the Chairman of the Board that the conditions of paragraphs 4, 7, and 12 through 15 have been fulfilled.

Greendale objects to this condition because it makes the issuance of a building permit conditional upon satisfaction of other objectionable or legally untenable conditions as set forth above in Greendale's objections to conditions 4, 7 and 12 through 15.

Condition 17: Twenty five percent of the units shall be designated permanently as affordable units pursuant to a Regulatory Agreement and Deed Restriction approved by MassHousing, which Deed Restriction shall be recorded with each deed for the project or any portion thereof.

Greendale objects to this condition which is impossible to fulfill because, as noted above, MassHousing will not approve a Deed Restriction for a rental project and therefore the condition is legally untenable. Such condition also makes the Project uneconomic to the extent it would provide the Board with the right to negate the Comprehensive Permit, which in turn would make the Project incapable of being financed.

Condition 18: The applicant will make a good faith effort to obtain local preference in the marketing of the affordable units to the maximum extent allowable. Marketing plans, once approved by DHCD, will

be submitted to the Board. In the event the Board requests changes in the local preference or marketing plans, the applicant will work with the Board and use its best efforts to obtain approval of requested changes. In the event the changes are not approved, the applicant may proceed in accordance with the plans approved by DHCD.

Greendale objects to this condition as unreasonable and legally untenable because it is the Town's burden, not Greendale's burden, to provide to MassHousing the justification for any local preference and it is MassHousing that needs to approve any local preference. Such condition also makes the Project uneconomic to the extent it would provide the Board with the right to negate the Comprehensive Permit, which in turn would make the Project incapable of being financed.

Condition 19: All water, sewer, drain connection and street occupancy permits will be issued by the Public Works Department, subject to the usual fees and plan requirements, and shall not be issued pursuant to the Comprehensive Permit process.

Greendale objects to this condition to the extent it assumes that other objectionable conditions are valid and proper and to the extent that it purports to place the grant of local permits outside of the 40B process and reserve to officials other than the Board the right to approve local permits that should be granted as part of the 40B process subject only to the payment of usual fees.

Condition 24: The landscaping shall be in accordance with the landscape plan approved by the Board and shall be maintained by the owner in good condition. Any tree or plant material that dies or becomes diseased shall be replaced by the owner.

Greendale objects to this condition to the extent it assumes that other objectionable conditions are valid and proper.

Condition 25: The owner of the project shall be responsible for snow removal and waste disposal. The owner shall implement the following maintenance plan with such changes as may be approved by the Town Engineer:

- a. Parking lot sweeping twice per year after the snowmelt and in the fall;
- b. Catch basin cleaning and inspection twice per year in the spring and the fall;
- c. Oil/gas separators in the drainage system to be inspected monthly and cleaned four times per year, once in each season.

Greendale objects to this condition to the extent it imposes a condition subsequent of the approval by the Town Engineer and could provide a basis to negate the Comprehensive Permit if such approval is not obtained and to the extent that the approval of Town Engineer is not subject to any standards or criteria.

Condition 26: No changes may be made to any approved plans unless the Board's Chairman determines the changes are not substantial or the Board approves the changes after such notice and hearing as the Board in its sole discretion shall deem appropriate.

As noted above in Greendale's objection to Condition 15, Greendale objects to this condition as legally untenable and beyond the power of the Board to the extent it conflicts with the provisions of 760 CMR 56.05(11).

Condition 27: Prior to the issuance of an occupancy permit, the applicant shall establish compliance with the public education requirements regarding storm water stipulated under the NPDES Storm Water Phase II Program.

Greendale objects to this condition as unreasonable and beyond the purview of the Board in that it relates to a state requirement that is not a local concern.

Condition 28: Prior to the issuance of an occupancy permit, the applicant shall file three wet stamped copies of the following with the Board: (a) An as-built plan supplied by the engineer of record certifying that the project was built according to the approved documents submitted to the Board and Department of Public Works. The as-built plan shall show all structures, all finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements in their true relationship to the lot lines for all on-site and off-site construction. In addition, the as-built plan shall show the final location, size, depth, and material of all public and private utilities on the site and their points of connection to the individual utility, and all utilities which have been abandoned. In additions to the engineer of record, the as-built plan shall be certified by a Massachusetts Registered Land Surveyor; (b) [a] statement by the registered professional engineer of record certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements on-site and off-site, have been constructed to the standards of the Town of Needham Department of Public Works and in accordance with the approved plans for the project.

Greendale objects to this condition to the extent it is unreasonable and impractical in requiring the entire Project to be completed prior to occupancy permits being issued for any part thereof. Large developments such as the Project are often completed and occupied in phases or stages. Requiring the entire Project to be completed and complete as built-plans created before occupancy permits issued will make the Project uneconomic. Greendale also objects to the condition to the extent it purports to require compliance with Town of Needham standards as opposed to Project Plans and would appear to

provide an official with the ability to negate the Comprehensive Permit and is therefore an improper condition subsequent that, in turn, makes the Project incapable of being financed.

Condition 29: Prior to the issuance of an occupancy permit, the Building Commissioner shall receive a written statement from the Town Engineer approving the signal light at Bird Street.

Greendale objects to this condition for reasons stated above with respect to Condition 8.

Condition 30: No building may be occupied or parking lot used prior to the issuance of an occupancy permit by the Building Commissioner. The Building Commissioner, in his discretion, may issue one or more certificates for temporary or partial occupancy of a building or use of parking lots prior to the completion of the entire project if he determines that such occupancy or use will be safe and that he has adequate assurance that the project will be completed. In connection with any temporary or partial permit, the Building Commissioner may require that a bond be filed with the Board in an amount not less than 135% of the value of the unfinished work on the project.

Greendale objects to this condition as unreasonable and legally untenable to the extent it purports to restrict use of parking lot areas and buildings before completion of the entire project. Use of parking areas will be necessary to construct the project. Certificates of Occupancy for buildings that have been completed prior to the completion of the entire project can and should be issued. This condition will make the Project uneconomic.

Greendale further objects to the requirement that a bond in the amount of 135% of the value of the unfinished Project be posted prior to any use of parking lot areas as this too

would pose an undue financial burden on the Greendale which would make the Project uneconomic.

Condition 31: ...The Board does not grant the other waivers requested by the applicant including, without limitation, no waiver of Zoning By-Law section 4.2.1 as to front setback or sections 5.1.1 and 5.1.1.7 as to the design requirement for parking or the General By-Law Section 3.6.1.1 requiring that fire lanes be 18 feet in width.

Greendale objects to this condition to the extent that the failure to grant requested and necessary waivers contributes to making the Project uneconomic.

Condition 32: All signs shall be subject to approval by the Board in connection with approval of a revised plan

Greendale objects to this condition as an improper condition subsequent to the extent it calls for approval of signage at a later date and "in connection with" revised plans and assumes that Greendale is obligated to completely redesign the Project and return to the Board at a later date and seek the Board's approval of those new plans for a substantially and fundamentally different Project.

Condition 33: Ownership of the project shall remain in one entity.

Greendale objects to this condition because it is beyond the power of the Board and vague. Such condition also makes the Project uneconomic to the extent it would provide the Board with the right to negate the Comprehensive Permit and, in turn, makes the Project incapable of being financed.

Condition 34: This permit is issued to the applicant and may not be transferred or assigned without the consent of the Board, such consent not to be unreasonably withheld. The transferee/assignee must demonstrate to the Board that it possesses the requisite experience and

management team to manage a large mixed income project. Prior to substantial completion of the project, a transfer may be made only upon written approval of the subsidizing agency.

Greendale objects to this condition as legally untenable because it conflicts with the applicable regulations at 760 CMR 56.05(12)(b). Such condition also makes the Project uneconomic to the extent it would provide the Board with the right to negate the Comprehensive Permit and in turn, makes the Project incapable of being financed.

Condition 35: The applicant's profit shall be limited in accordance with the regulations of DHCD and any excess profit remitted to the Town's fund for affordable housing.

Greendale objects to this condition as legally untenable and unreasonable in that it is inconsistent with MassHousing requirements which provide for excess profits to be placed in a fund for the benefit of tenants.

RELIEF SOUGHT

12. Pursuant to 760 CMR 56.07(5)(a)(1), the Applicant hereby requests that the Committee find that:

A. The Decision of the Board was not by its own terms the final action of the Board on the Application; that the Board has therefore failed timely to issue a decision on the Application; and that the Application has therefore been constructively granted; or, alternatively,

B. The Decision is in effect a denial of the Application and that such denial is not reasonable and consistent with local needs; and that

the Decision should be annulled and vacated and that the Board be directed to issue a Comprehensive Permit for the Project substantially in accordance with Greendale's Application as revised; or alternatively, if the Committee should determine that the Application has not been constructively granted or that the Decision is not a de facto denial but an approval with conditions

C. The conditions and requirements of the Decision in the aggregate render the Project uneconomic and that the conditions and requirements are not consistent with local needs and certain of the conditions are unreasonable or legally untenable and that those conditions which render the Project uneconomic or which are unreasonable or legally untenable must be stricken from the Decision.

NAME AND ADDRESS OF APPLICANT/PETITIONER

13. The name and address of Applicant/Appellant is as follows:

Greendale Avenue Venture, LLC
c/o Mill Creek Residential Trust LLC
15 New England Executive Park
Burlington, MA 01803

NAME AND ADDRESS OF APPLICANT/PETITIONER'S COUNSEL

14. The Applicant's attorneys, upon whom service of any papers in connection with this appeal may be made, are as follows:

Kevin P. O'Flaherty, Esq.
Tristan Foley, Esq.
Goulston & Storrs PC
400 Atlantic Avenue
Boston, Massachusetts 02110-3333
(617) 482-1776

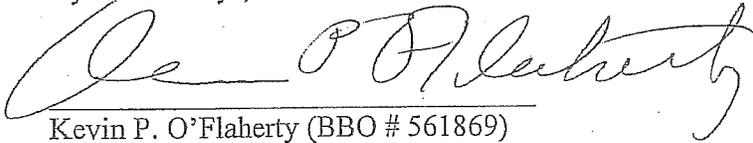
APPLICATION AND DECISION OF THE BOARD

15. A copy of the Application was already provided to the Committee and a copy of the Decision is attached.

Respectfully submitted,

GREENDALE AVENUE VENTURE, LLC,

By its attorneys,



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Dated: February 27, 2014

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record or each other party by mail ^{and email} ~~(by hand)~~ on 2/27/14



