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VIA FED EX

April 23, 2013

Massachusetts Department of Housing and Community Development
100 Cambridge Street
Third Floor
Boston, MA 02114

Re: SEB/Hingham LLC Comprehensive Permit Application for *The Village on Main*
At 895/901 Main Street, Hingham

**NOTICE OF APPEAL OF CLAIM OF SAFE HARBOR BY TOWN
OF HINGHAM ZONING BOARD OF APPEALS**

Dear Sir or Madam:

This firm represents SEB/Hingham LLC ("SEB Hingham") in connection with the above-referenced matter. Reference is made to the letter to SEB/Hingham dated April 12, 2013 from Kerry Ryan T. Ryan of the law firm of Morrissey, Wilson & Zafiroopoulos, LLP on behalf of the Town of Hingham Zoning Board of Appeals (the "Board"), a copy of which is attached hereto (without Exhibits) as Exhibit A (the "Safe Harbor letter"). The Safe Harbor letter notifies SEB/Hingham that pursuant to 760 CMR 56.03(8)(a), the Board considers that in connection with the above-referenced application, a denial of the comprehensive permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* as defined at 760 CMR 56.03 (1) has been satisfied. Specifically, the Safe Harbor letter claims that in the Town of Hingham, low or moderate income housing exists which is in excess of 10% of the housing units reported in the latest federal decennial census of the Town pursuant to M.G.L. c. 40B, s 20 and 760 CMR 56.00.

This letter serves as notice pursuant to 760 CR 56.03(8)(a) to the Department that SEB/Hingham challenges the Board's assertion of safe harbor as stated in the Safe Harbor letter. As grounds therefore, SEB Hingham states that the Department's Subsidized Housing Inventory published as of May 10, 2012 (the "SHI") shows that the Town of Hingham's percentage of low or moderate income housing units is only 6%. See copy of SHI attached hereto as Exhibit B. Pursuant to 760 CMR 56.03(3), "there shall be a presumption that the latest SHI contains an

accurate count.” The Board has not met its burden, pursuant to 760 CMR 56.03(8)(a), to prove that the SHI is incorrect.

The Department’s Comprehensive Permit Guidelines, dated July 30, 2008, Section II “Measuring Progress Towards Local Goals – A. Subsidized Housing Inventory” establish that in a continuing care retirement community, only the low or moderate income units count on the SHI. See copy attached hereto as Exhibit C. Thus, the Board’s calculation as asserted in the Safe Harbor letter is incorrect. It is within the sound discretion of the Department to establish the policies and guidelines intended to further the purpose of the comprehensive permit statute.

Finally, the Department’s calculation and methodology for counting SHI units in Hingham (in particular, the continuing care retirement community units) has recently been upheld by the Housing Appeals Committee: see *In the Matter of Hingham Zoning Board of Appeals and AvalonBay Communities, Inc.*, Housing Appeals Committee Docket No. 12-03, Interlocutory Decision Regarding Safe Harbor dated January 14, 2013. See copy attached hereto as Exhibit D. The Conclusion in this Interlocutory Decision states:

“For the reasons stated above, we conclude that Hingham had not achieved the 10% housing unit minimum at the time of AvalonBay Communities’ application and therefore may not avail itself of the safe harbor, and we affirm DHCD’s August 17, 2012 finding that “the Board has not met the burden of proof...that Hingham has achieved a ‘safe harbor’” See 760 CMR 56.03(1)(b), 56.03(4)(f), 56.07(3)(a).”

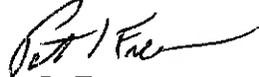
The Board included a “Chart A” in its Safe Harbor letter which contains the units it states should count on the Town’s SHI. Other than including all 986 units at Linden Pond (the continuing care retirement community) instead of just 216 units, this Chart A includes the same units that the Department has counted in the SHI, as shown in the Department’s letter dated March 8, 2012 to Suzanne Letzia-Eddy, Town of Hingham Zoning Administrator. See Exhibit A to the Safe Harbor letter. Therefore, the Board is not claiming that there are any additional units that should be counted in the Town’s SHI between the time of the filing of the comprehensive permit application by AvalonBay Communities, Inc. which was the subject of the Housing Appeals Committee Interlocutory Decision Regarding Safe Harbor cited above and the filing of the SEB/Hingham application on February 28, 2013. The Board is simply arguing, again, that all of the units at the Linden Ponds continuing care retirement community should count on the SHI.

Thus, both the Department’s August 17, 2012 finding and the Housing Appeals Committee holding in the AvalonBay Communities, Inc. case that the Town of Hingham has not achieved a safe harbor should be applied to the SEB/Hingham application for a comprehensive

permit, as well. For all of the above reasons, the Board's claim of a safe harbor and assertion that therefore a denial of SEB/Hingham's application or the imposition of conditions would be consistent with local needs should be denied.

SEB/Hingham LLC

By its attorney,

A handwritten signature in black ink, appearing to read "Peter L. Freeman", written over a horizontal line.

Peter L. Freeman

cc: Town of Hingham Zoning Board of Appeals
Kerry T. Ryan, Esq.
Robert Engler