

RICE ROAD APPLICATION

ATTACHMENT 1

APPLICATION

TOWN OF MILLBURY

Board of Appeals

Millbury Town Hall

Millbury, Massachusetts

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**RULES AND REGULATIONS GOVERNING COMPREHENSIVE PERMIT
APPLICATIONS UNDER GENERAL LAWS CHAPTER 40B**

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SECTION 1
GENERAL PROVISIONS

1.1 Authority

General Laws Chapter 40B, Sections 20-23, governing Low and Moderate Income Housing (Chapter 774 of the Acts of 1969), requires that Comprehensive Permit applications be filed with and heard by the Board of Appeals. Section 21 provides that the "board of appeals shall adopt rules, not inconsistent with the purposes of this chapter, for the conduct of its business pursuant to this chapter and shall file a copy of said rules with the city or town clerk." As required by that section, the Board of Appeals has promulgated these Rules and Regulations for the conduct of its business regarding Comprehensive Permit applications and hearings. See also Regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00. In the event of a conflict between these comprehensive permit rules and the Board's general Rules and Regulations, these comprehensive permit rules shall govern.

1.2 Definitions

Defined terms are capitalized in these Rules.

ACT	M.G.L. c. 40B, §§ 20-23 (Chapter 774 of the Acts of 1969)
APPLICANT	Any person or such person's authorized representative who files an APPLICATION for a Comprehensive Permit under M.G.L. c. 40B, §§ 20-23.
APPLICATION	All plans, forms, reports, studies and other documents submitted to the BOARD under these RULES by an APPLICANT.
BOARD	The Millbury Board of Appeals established under M.G.L. c. 40A, § 12.
BYLAW	The Town of Millbury Zoning Bylaw.
DECISION	Final Action by the BOARD on an APPLICATION.
LAW	M.G.L. c. 40B, §§ 20-23.
PARTIES IN INTEREST	The APPLICANT; abutters; owners of land directly opposite on any private or public STREET or way; and abutters to the abutters within 300 feet of the property line of the Comprehensive Permit site as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town; the Millbury Planning Board; and the Planning Boards of every abutting city or town.
PERMIT	A Comprehensive Permit under the LAW.
RULES	These Rules and Regulations.
SITE	The property on which the Comprehensive Permit project is proposed.
TOWN	Town of Millbury.

1.3 Waiver of Rules

Strict compliance with these RULES may be waived if the BOARD finds that granting the waiver is in the public interest and not inconsistent with the intent and purpose of the LAW and the RULES, or that the subject of the requested waiver is irrelevant to the proposed development.

Any request by an APPLICANT for a waiver from these RULES must be submitted to the BOARD in writing as part of the APPLICATION. Such requests shall identify the specific sections of the RULES from which waivers are sought and shall include a statement setting forth the reasons why the APPLICANT believes a waiver should be granted.

1.4 Performance Guarantee

The BOARD may require in its DECISION that a performance guarantee be posted with the TOWN and/or recorded in the Registry or registered in the Land Court as applicable in such form and amount as is required by the BOARD to secure the satisfactory completion of all or any part of the work authorized under a PERMIT. The form of the performance guarantee may be (a) a performance bond or other financial surety similar to that required by the TOWN's Subdivision Rules and Regulations, (b) a covenant or other restriction recorded in the Registry of Deeds or Land Court Registration office that runs with the land, and/or (c) such other performance guarantee as the Board shall deem necessary and sufficient under the circumstances of the PERMIT.

1.5 Advice from Town Staff

Any advice, opinion, or information given to the APPLICANT by a BOARD member or by any agency, official, agent or employee of the TOWN shall be considered advisory only and shall not be binding on the BOARD.

1.6 Amendments to the Rules

The RULES may be amended by a majority vote of the BOARD in a public meeting. Any such amendment shall be reduced to writing and filed with the Town Clerk.

SECTION 2

PRELIMINARY REVIEW

2.1 Preliminary Consultations

Before filing an APPLICATION with the BOARD, the APPLICANT must, under state regulations, 760 CMR 31.02(2), apply for a written determination of project eligibility from a subsidizing agency or a project administrator. Under these regulations, the subsidizing agency or project administrator must give the TOWN notice of the application, and afford the TOWN a 30-day period in which to provide comments on the APPLICATION to the subsidizing agency or project administrator. As early as possible during this 30-day period, the APPLICANT shall on request meet with the Board of Selectmen and, if requested by the Board of Selectmen, with other town boards and/or officials, to provide such information reasonably requested by them regarding the SITE, the proposed project and the anticipated

APPLICATION. The APPLICANT shall make itself available for such meetings at reasonable times, and with reasonable notice from the Board of Selectmen.

SECTION 3

CONTENTS OF AN APPLICATION

An APPLICATION for a PERMIT that does not comply with the application requirements of these RULES or of applicable state regulations may be denied by the BOARD after giving the APPLICANT an opportunity to remedy the defect, as governed by 760 CMR 31.01(5). It is the responsibility of the APPLICANT to assure the accuracy and completeness of all information submitted to the BOARD as part of an APPLICATION. The APPLICANT shall be responsible for factually supporting all points relied upon in the APPLICATION, including references for methodologies used in its design and calculations.

25 sets of the entire APPLICATION package shall be required at the time of submission of an APPLICATION.

A COMPLETE APPLICATION FOR A PERMIT SHALL INCLUDE THE FOLLOWING ITEMS:

3.1 Application Form

An APPLICATION for a PERMIT shall be made in writing and include the completed APPLICATION form entitled "Application for a Comprehensive Permit" (see Appendix). Where the APPLICANT is a person other than the record owner of the property, the APPLICANT shall obtain the owner's signature on this form indicating that the owner has knowledge of and consents to, and concurs with, the APPLICATION.

3.2 Evidence of Compliance With Jurisdictional Pre-Requisites

3.2.1 An APPLICATION shall include the following documents:

- (a) If the APPLICANT is a non-profit organization, a copy of its Articles of Organization, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the APPLICANT is a for-profit corporate entity, a copy of its Articles of Incorporation or equivalent documents, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the APPLICANT is a public agency, evidence of the agency's authority to engage in the development of the housing as proposed by the APPLICATION;
- (b) A copy of the proposed Regulatory Agreement that restricts the APPLICANT's profit in the proposed development;
- (c) A determination from a subsidizing agency or project administrator pursuant to 760 CMR 31.01(2) that the proposed development is eligible for funding under the applicable subsidy program;
- (d) Evidence that the APPLICANT controls the SITE, including:

- (1) if the APPLICANT owns the SITE, a copy of the APPLICANT's deed or certificate of title to the SITE, clearly indicating the recording or filing references from the Registry of Deeds (*i.e.*, book and page numbers) or Land Court Registration office (*i.e.*, Certificate of Title number);
- (2) if the Applicant does not own the SITE, a copy of an executed purchase and sale agreement or equivalent document and all necessary extensions thereto entitling the APPLICANT to obtain title to the SITE for the duration of the public hearing, and a copy of the owner's deed or certificate of title to the SITE, clearly indicating the recording or filing references from the Registry of Deeds (*i.e.*, book and page numbers) or Land Court Registration office (*i.e.*, Certificate of Title number); and
- (3) an attorney's title certification revealing all title encumbrances relevant to the SITE.

In all cases, site control shall be deemed satisfied only if there are no legal impediments to the construction of the proposed project on the SITE.

If the APPLICANT is acting in the name of a trust, corporation or company, an authorizing vote shall be attached.

3.3 Development Impact Report

A completed Development Impact Report (see Appendix).

3.4 Certified List of Parties in Interest

A certified list of all PARTIES IN INTEREST as defined in these RULES, taken from the most recent tax list of the TOWN and certified by the Town Assessor. The APPLICANT shall pay any charges required by the Town Assessor for preparing the list.

3.5 Existing Site Conditions

A report to accompany the "Natural Features and Existing Conditions Sheet" of the SITE plan described below, which identifies the location and nature of existing buildings, street elevations, traffic patterns, on-site circulation, sight distances, and character of open areas, if any, in the neighborhood, as well existing impacts on municipal facilities, such as water, public safety, sewage treatment, wetlands, and wildlife habitat

3.6 Recorded Plans and Deeds

A copy of the most recently recorded plan(s) and deed(s) for the SITE on which the work will take place bearing the book number(s), page number(s), and date(s) of recording(s) or registration(s).

3.7 Legal Documents

If the APPLICATION proposes housing in a condominium form of ownership, the proposed condominium master deed and trust documents; any documents intended to govern a homeowners association; and any other legal documents intended to restrict future buyers and tenants of lots or dwelling units, including proposed affordable housing restrictions.

3.8 Drainage Calculations

Storm drainage runoff calculations used for the drainage system design must be prepared by and display the seal of a qualified Registered Professional Engineer and must support the sizing of all drainage structures and pipes. These calculations must be based on a recognized standard method (usually the Rational or Soil Conservation Service Methods). The calculations must contain a written summary explaining the rationale of the design so that a lay person can understand the basic design approach and its validity for the SITE in question. Furthermore, the calculations should be fully documented, including copies of charts or other reference sources, to make review possible. The pre- and post-development runoff rates must be provided. The use of computer generated reports is acceptable; however, the source of the software should be identified. Design of the storm drainage system shall ensure compliance with the Department of Environmental Protection's stormwater management standards and guidelines for a 2-, 10-, and 100-year storm event.

3.9 Earth Removal Calculations

Calculations for determining the amount of earth to be removed and the amount of fill to be brought to the SITE shall be prepared by and show the seal of a qualified Registered Professional Engineer.

3.10 Water Balance Calculations

Depending on the BOARD's assessment of the circumstances at or near the SITE during the public hearing process, the BOARD may require a hydrologic water balance calculation for pre- and post-development conditions based on annual precipitation that quantifies evapotranspiration, runoff, recharge, and septic flow.

3.11 Traffic Study

A traffic impact study shall be submitted with the APPLICATION where the proposed uses of the SITE are likely to produce an average of 400 additional trips per weekday based on the most recent edition of the Institute of Transportation Engineers' publication "Trip Generation". For all other projects, the Board may require such a study during the public hearing process depending on the BOARD's assessment of the circumstances at or near the SITE. To avoid lengthy delays in the processing of an APPLICATION, the APPLICANT should consult with TOWN staff during the preliminary review to determine the scope of the traffic impact study. In general, a traffic study shall examine and include the following:

- 3.11.1** Existing traffic conditions, including roadway geometries, traffic volumes, safety, accident data, delays, and levels of service for roads and intersections (whether in Millbury or another town) affected by the proposed development.
- 3.11.2** Future traffic conditions including trip generation, trip distribution, volume-to-capacity ratios, and levels of service for existing roads and intersections (whether in Millbury or another town) affected by the proposed development five years beyond anticipated completion. Impacts of other previously approved projects and of projects pending approval shall be taken into consideration. Approach and departure route assignments shall be based on existing traffic patterns, minimum time paths, "journey to work" data, market studies, or a combination thereof.
- 3.11.3** All traffic information shall include data for both AM and PM peak hours and weekend peak hours, as well as average daily data. Sight distances for turning movements to and from the SITE as well as within the SITE must be

analyzed using AASHTO (American Association of State Highway and Transportation Officials) standards. The adequacy of vehicular queuing storage at the SITE entrances shall also be demonstrated. The impact of any planned phasing of the project shall be discussed.

3.11.4 Mitigation measures that could be taken to reduce the impacts of the proposed development and their estimated cost. These should include capacity enhancements such as added turn lanes, bike lanes, pedestrian facilities, signalization, and improvements to intersections and medians. The traffic study shall make specific proposals for mitigation measures to be implemented by the APPLICANT. The potential for driveway connections to neighboring LOTS must be explored. The study should take into account those improvements that are planned and/or currently implemented by the TOWN or the State, and any proposed improvements should be consistent with the TOWN'S Master Plan.

3.12 Master/Housing Plan Consistency Report

The APPLICATION shall include a narrative report describing how the APPLICATION is consistent, or inconsistent as the case may be, with the Millbury Master Plan and the Millbury Housing Plan adopted under Chapter 40B's "planned production" regulations. An APPLICATION shall be presumed to be not "consistent with local needs" if the SITE is not located within one of the village center districts identified in the TOWN's Master Plan and Housing Plan.

3.13 Site Plan

The APPLICATION shall include Project SITE plans, legibly drawn to fully detail, and explain the intentions of the APPLICANT. SITE plans shall be drawn on 36" x 24" sheets at a suitable standard scale (1 inch = 20, 30, 40, or 50 feet) except when noted otherwise in these RULES. All plans shall include a reasonable numbering system for lots, buildings, and dwelling units. Each plan sheet shall feature a north arrow, a legend identifying any representative symbols used on the sheet in question, an appropriate title block in the lower right hand corner, and the seal of a Registered Professional Engineer, Registered Land Surveyor, Registered Landscape Architect, Registered Professional Architect, or some combination of these as appropriate to the data on the sheet. Topography and all elevations shall be referenced to the National Geodetic Vertical Datum of 1929 with the location and elevation of the starting benchmark plus at least two additional temporary benchmarks on the SITE.

The individual SITE plan components (*i.e.*, Master Plan, Natural Features and Existing Conditions Plan, etc.) may be presented on one or more plan sheets as necessary to present clear and legible plans. Match lines shall be placed in plan locations that feature a minimum of information. Sufficient overlap between plan sheets shall be provided to permit easy reading of plans across match lines. Unless other arrangements are made with staff during the preliminary review process, which other arrangements shall be identified as a part of the Plan, the project SITE plan shall consist of the following:

3.13.1 A *Title Sheet* showing:

3.13.1.1 A locus map showing an area of at least one mile diameter around the SITE at a scale of at least 1" = 1200' with major

streets, buildings, brooks, streams, rivers and other landmarks, public facilities, recreation facilities, and open spaces displayed with sufficient clarity to show the relationship of the proposed project to the community, its facilities and major features.

3.13.1.2 The general layout of the project drawn to a scale suitable to fit the entire SITE onto the title sheet and showing existing and proposed approximate layouts of streets and ways, lot boundary lines, lot numbers, existing street names and identification of proposed streets and ways, areas to be developed, designated open space, other areas to be left undeveloped within the project boundaries, and all zoning district boundaries within or adjacent to the SITE.

3.13.1.3 Names and addresses of the owner of record, the APPLICANT, the engineer and the land surveyor, and the book and page number of the recording of the deed or the Land Court certificate for the SITE.

3.13.2 A *Master Plan Sheet* drawn at a scale of not smaller than 1" = 100' showing:

3.13.2.1 The proposed lot layout and project boundaries with ownership of abutting properties indicated.

3.13.2.2 The proposed distribution of the various land uses by parcels, lots, and buildings. Identify the proposed affordable units.

3.13.2.3 Access and utility easements.

3.13.2.4 All zoning district boundaries shown in their proper location.

3.13.2.5 Access streets or ways to the project including intersections with existing streets, and access driveways and intersections within 200 feet of the access driveways or streets serving the proposed development, with centerline offsets dimensioned.

3.13.2.6 Locations of all permanent monuments, structures, buildings, streets, roads, driveways, intersections, parking lots, walkways, fire lanes and other improvements, easements and rights of way, locations of any special SITE features including, but not limited to waterways, wetlands, bridges, dams, drainage courses, stone walls, fences and wells, properly identified as to whether existing or proposed.

3.13.2.7 A table showing the zoning requirements for the SITE and the actually proposed dimensions or calculations.

3.13.2.8 A table showing the proposed dwelling unit density, floor area ratio, building coverage, and total coverage of the SITE with buildings and other impervious materials (driveways, walks, parking lots, etc.).

3.13.2.9 If the project is to be built in phases, the proposed boundaries of each development phase.

- 3.13.2.10 Proposed general layout of drainage and wastewater disposal systems
- 3.13.3 *A Recordable Plan Sheet* suitable for recording at the Worcester District Registry of Deeds or the Land Court, signed and stamped by a registered land surveyor or professional engineer, showing:
- 3.13.3.1 The project name, names of streets and ways within the project and immediately adjacent to it, the project perimeter and lot boundaries, open space boundaries (if any), north point, date, scale and legend and the TOWN Atlas Map and Parcel Number(s).
- 3.13.3.2 Names and addresses of the owner(s) of record, and the APPLICANT, the engineer and land surveyor, and the book and page number(s) of the recording of the deed(s) or the Land Court certificate(s) for the SITE.
- 3.13.3.3 Location of abutting property lines with ownership indicated.
- 3.13.3.4 All zoning classifications and zoning district boundaries shown in their proper location.
- 3.13.3.5 Sufficient data to easily determine the location, direction, width and length of every street line, easement, right of way, way or path, lot line and boundary line, and to reproduce these lines on the ground. All bearings shall be true, magnetic or grid, and the north arrow used on the plan shall clearly indicate this.
- 3.13.3.6 House or dwelling unit numbers on each lot, clearly distinguishable from the lot numbers.
- 3.13.3.7 Location of affordable housing lots and units.
- 3.13.3.8 A clear indication, by proper symbols, markings, dates or other notes, after a thorough search has been made, of permanent monuments or boundary markers as were found in the traverses and/or perimeter surveys, and of wetlands, watercourses and other significant features.
- 3.13.3.9 A statement that the plan is subject to a Comprehensive Permit granted by the BOARD with conditions and limitations, dated [date].
- 3.13.3.10 A reference to all covenants and restrictions applying or relating to the land, and their purpose.
- 3.13.4 *A Natural Features and Existing Conditions Plan Sheet* showing:
- 3.13.4.1 Site features such as, but not limited to, flood plains, waterways, drainage courses, ponds, wetlands, ledge outcroppings, soil characteristics, existing vegetation, any species occurring on the SITE that is listed by the Massachusetts Natural Heritage and Endangered Program as endangered, threatened and/or of special concern, or as rare native plants. The boundaries of all wetland

resources, including those defined under the state Wetlands Protection Act and any local wetlands bylaw, shall be delineated on the plan in their locations as approved by the Conservation Commission.

3.13.4.2 All existing monuments and improvements such as, but not limited to, buildings, structures, roads and ways, paved areas, stone walls, underground and above ground storage tanks, wastewater disposal systems, wells, historic structures, historic buildings, archeological sites, and scenic vistas; indicate final disposition of any existing building, structure and other improvements, whether they are to remain or to be removed.

3.13.4.3 Existing contours of the land shown at two-foot intervals.

3.13.4.4 The perimeters of all proposed improvements such as, but not limited to, buildings, structures, roads, and paved areas superimposed on the natural features plan in a faded or screened back mode.

3.13.5 A *SITE Development Plan Sheet* showing proposed SITE conditions for the following characteristics:

3.13.5.1 SITE boundary lines and proposed lot lines within the project.

3.13.5.2 All zoning classifications and zoning district boundaries.

3.13.5.3 Proposed topography at two-foot intervals.

3.13.5.4 Proposed dimensions for setbacks, parking lots, and other features whether or not regulated under the BYLAW, to allow an easy evaluation of the project in relation to the generally-applicable standards of the BYLAW.

3.13.5.5 Location of any special SITE features including, but not limited to, waterways, wetlands, bridges, dams, drainage courses, stone walls, fences, and wells, with indication of any proposed alterations if feature is existing.

3.13.5.6 All wetlands and wetland buffer area boundaries defined as those areas subject to the provisions of the Wetlands Protection Act (G.L. Chapter 131, Section 40).

3.13.5.7 The proposed layout and area of the open space, if any, showing proposed ownership and intended use, with percent of total project area.

3.13.5.8 All proposed improvements to be located in the open space, including but not limited to, buildings, structures, sidewalks, walkways, trails, and other recreation facilities.

3.13.5.9 The location of affordable housing lots and units.

3.13.5.10 Locations, layouts, widths, and names of all existing (on SITE and abutting, approaching, or within reasonable proximity of the

SITE) and proposed streets, roads, ways, access and interior driveways, common driveways, walkways, sidewalks, parking lots, fire lanes, loading areas and other impervious covers with proposed finished grades along the center line or as appropriate, including project access streets or ways and intersections with existing streets.

- 3.13.5.11 The size of the largest truck expected to use the SITE shall be noted and all turning radii must be sufficiently sized to accommodate that size. The smallest size for the design shall be the SU-30 design vehicle so that fire trucks will have adequate maneuvering space.
- 3.13.5.12 Parking spaces must be identified as either standard size or handicapped parking spaces with a parking space typical for each type showing actual dimensions. The location of any signs intended to be used for identification of handicapped parking spaces must be shown.
- 3.13.5.13 Location and outline or footprint of all buildings or structures including garage spaces with finished floor elevation and dimensions.
- 3.13.5.14 Any areas intended for open (outdoor) storage with purpose identification label and dimensions.
- 3.13.5.15 Any proposed features designed for energy and water conservation and pollution control.
- 3.13.5.16 Lot, building, and dwelling unit numbers.
- 3.13.5.17 All access and utility easements.
- 3.13.5.18 Proposed boundaries of each development phase clearly showing the specific limits of construction for each phase and detailing the work to be accomplished in each phase; interim curbing, pavement, and landscaping shall be shown as needed between phases.
- 3.13.5.19 Location and type of stormwater drainage facilities, including notes on the construction materials of pipes, culverts, catch basins, and any other system component unless clearly depicted on the Construction Details Plan. Sufficient information relating to placement of the drainage system components (rim and invert elevations, pipe slopes, amount of cover, etc.) shall be shown so that the operation of the system can be evaluated. Any retention and/or detention ponds intended to be constructed shall be shown fully dimensioned.
- 3.13.5.20 Location of underground storage tanks for fuel or other chemicals or hazardous materials or waste storage, including the tank types, capacities, age, and condition.

- 3.13.5.21** Location and type of existing and proposed water services including wells. If the SITE is to use an on-SITE well, its proposed location must be shown in addition to its setbacks from any buildings, structures, wells, or wastewater disposal systems on the SITE and within 200 feet from the SITE. If public water services are to be utilized, show the proposed water main and service lines, properly dimensioned to meet the requirements of any local bylaw or regulation.
- 3.13.5.22** All fire hydrants on the SITE, or off the SITE but within 500' of any building within the project. If no fire hydrants are located within such distance, then a note shall appear clearly explaining how the APPLICANT will provide fire protection to the SITE. The location of any proposed municipal fire alarm boxes or other warning systems and any proposed fire lanes shall be clearly shown and identified. Any underground conduit for municipal fire alarm connections shall be shown.
- 3.13.5.23** The location and type of any other underground utilities, including but not limited to electric, gas, telephone, or cable television services. Emergency power facilities, if any are proposed, should also be shown.
- 3.13.5.24** Location of dumpsters with appropriate screening specified.
- 3.13.5.25** Location and perimeter outline of any on- or off-SITE existing and proposed wastewater treatment and disposal system including any required reserve areas, and any private wells within 200 feet of the SITE. The type of the wastewater disposal system shall be identified by a simple notation. Actual design and construction specifications for a wastewater disposal system are not required. The proposed location of sewer lines must be shown.
- 3.13.5.26** The locations of any proposed stump dumps.
- 3.13.5.27** Plan notes that: 1) forbid the use of fill containing hazardous materials or waste; 2) require the marking of the limits of work in the field prior to the start of construction or site clearing; 3) require the cleaning of catch basin sumps and storm water basins following construction and annually thereafter; 4) restrict the hauling of earth or construction debris to or from the SITE to the hours between 9 AM and 4 PM on weekdays if such materials are intended to be removed from or brought to the SITE; 5) describe the materials to be used in the construction of impermeable surfaces such as streets, sidewalks, and driveways; 6) address any other issues as appropriate.

3.13.6 *Plan and Profile Sheet* of streets and ways showing:

- 3.13.6.1** Design and layout of streets and ways at a horizontal scale of 1" = 40' and a vertical scale of 1" = 4'.

- 3.13.6.2 Existing grades along the centerline and both sidelines of the street or way with centerline dimensioned.
- 3.13.6.3 Proposed finished centerline grades with elevations at 50-foot stations, location of vertical curves and gradient of even grades.
- 3.13.6.4 Profiles tied to a stationed base line.
- 3.13.6.5 The proposed sidewalk layout.
- 3.13.6.6 Proposed layout of storm drainage system, water supply system, fire hydrants, fire call box system, sewer lines, and all other utilities.
- 3.13.6.7 Identification, location, inverts, slopes, grades, stations, and sizes of all utilities and appurtenances.
- 3.13.6.8 If streets are proposed for acceptance as public ways, show a table that itemizes where the proposed streets do not comply with the design and construction requirements of the Millbury Subdivision Rules and Regulations.

3.13.7 A *Construction Details Plan Sheet* showing:

- 3.13.7.1 Typical detail of a proposed catch basin, diversion box, emergency slide gate, manhole, headwall, retaining wall, walkway, curbs, ramps, sub-drain, waterway, leaching basin, drainage pond, or other similar improvements.
- 3.13.7.2 Typical cross-section and construction materials of proposed streets and ways, driveways, walkways, parking and loading areas, and fire lanes.
- 3.13.7.3 Typical detail with dimensions of each type of parking space to be used on the SITE.
- 3.13.7.4 Outdoor lighting details.

3.13.8 A *Landscape Plan Sheet* showing:

- 3.13.8.1 General SITE and project features such as lot lines, buildings, structures, parking areas, curbs, walkways, loading areas, land contours, water bodies, wetlands, streams, ledge outcroppings, and large boulders so that it may be easily related to the other plans.
- 3.13.8.2 Landscape treatments planned for the SITE and existing vegetation to be retained.
- 3.13.8.3 A planting table with the botanical and common name of each species, its height (at planting), its spread (at maturity) and the quantity intended to be planted, along with the symbols used to represent the plants on the plan.
- 3.13.8.4 A typical detail of a tree well, tree planting, and specialty planting area if applicable.

- 3.13.8.5 The limits of work beyond which no disturbance during construction will be permitted; a plan note shall require that the limits of work be staked out at the SITE and they must be maintained at all times; in the vicinity of trees the limits of work shall follow the drip line of the trees.
 - 3.13.8.6 The perimeter of any existing wooded areas on the SITE; existing wooded areas intended for preservation; the location, size, and proposed fate of any existing trees larger than 16" in diameter.
 - 3.13.8.7 The location of outdoor lighting installations and signs.
 - 3.13.8.8 Proposed boundaries of each development phase clearly showing the specific limits of construction for each phase. Interim curbing, pavement, and landscaping shall be shown as needed between phases.
- 3.13.9 An *Erosion and Sedimentation Control Plan Sheet* showing:
- 3.13.9.1 Sediment basins if used.
 - 3.13.9.2 Type of mulching, matting or temporary vegetation.
 - 3.13.9.3 Location of hay bales and siltation control fences.
 - 3.13.9.4 Size and location of land to be cleared at any given time and length of exposure time.
 - 3.13.9.5 Method of covering soil stockpiles.
 - 3.13.9.6 Any other methods to be used during construction to control erosion, sedimentation, and siltation.
 - 3.13.9.7 Documentation of proper construction and erosion control sequencing from the point of implementation to removal.
- 3.13.10 *Architectural Floor and Elevations Plan Sheet*, signed and stamped by an architect registered in Massachusetts, showing:
- 3.13.10.1 Floor plans for each floor of each building, proposed or to remain; if buildings will be constructed repetitively a typical floor plan shall suffice. Each floor plan must illustrate how individual residential units are to be combined to form a residential building, including any accessories to the building (*i.e.*, solarium, patio, foyer, etc.). The Floor Plans shall be drawn at a scale of 1/4" = 1'.
 - 3.13.10.2 Architectural scaled drawings of all buildings, including elevations for the front, sides, and rear of each building and structure, including the proposed architectural treatments to the building such as roofing, siding, and window materials at an appropriate scale, generally not less than 1/8" = 1'.
 - 3.13.10.3 An outline summary in tabular form for each principal residential building, or by type of building, including construction materials, finished basement and floor elevations, floor area (total per

building and by dwelling unit), outside dimensions including height, number of units, number of bedrooms by unit, etc.

3.14 Local Laws and Regulations; Non-Compliance

The APPLICATION shall include a complete itemized list of all requested exemptions to local bylaws, requirements, and rules and regulations, including, but not limited to, the BYLAW, the Subdivision Rules and Regulations, and Board of Health Regulations. For each requested exemption, the APPLICATION shall identify the bylaw, rule or regulation section number, provide a brief summary of the exemption needed, and state the basis for the requested exemption.

3.15 Affordable Dwelling Units

The APPLICATION shall include the following information for the proposed affordable dwelling units:

3.15.1 The proposed types of affordable dwelling units - homeownership units with initial sale prices, and rental units with initial monthly rents.

3.15.2 The proposed methods of selecting qualified purchasers or tenant of the affordable units, including local preference criteria.

3.15.3 Proposed subsidies from qualifying State and Federal programs.

3.15.4 Proposed legal documents for the affordable units in compliance with the applicable subsidy programs.

3.15.5 List of proposed differences between market rate and affordable units.

3.16 Development Schedule

The APPLICATION shall include a Development Schedule (see Appendix).

Unit Composition Schedule

The APPLICATION shall include a completed Unit Composition Schedule (see Appendix).

3.17 Development Pro Forma

The APPLICATION shall include a completed Development Pro Forma for the proposed project at the SITE and a certified Real Estate Appraisal for all parcel(s) relating to the proposed development. Such appraisal shall be based upon the highest and best land use under current zoning by right (see Appendix).

3.18 Market Study

The APPLICATION shall include a market study prepared by a qualified appraiser or real estate professional. The study must demonstrate sufficient demand for the market rate units as shown and priced in the proposed development to ensure the projected income, profit, and cash flow, and to ensure the completion of the affordable units whether or not a Federal or State subsidy program will be used.

3.19 Developer Information

The APPLICATION shall include resume(s) of the APPLICANT, developer, and/or development team, including company history, references, and list of similar projects completed within the previous 10 years with location, date of completion, description, plans, and photographs, and municipal contact person or department.

3.20 Additional Information

The APPLICATION may contain whatever additional information the APPLICANT believes is necessary to properly inform the BOARD about the proposed development, including legal opinions, copies of deeds, historical data, studies, and reports, and any additional information requested by the BOARD.

SECTION 4 FILING PROCEDURES

4.1 Who May File an APPLICATION?

Anyone may file an APPLICATION for a PERMIT. However, the APPLICANT and the proposed development SITE must fulfill the jurisdictional requirements of 760 CMR 31.01:

- a) The APPLICANT shall be a public agency, a non-profit organization, or a limited dividend organization; and
- b) The project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program (Site Approval/Project Eligibility Letter from State or Federal Funding Agency); and
- c) The APPLICANT shall have full control of the SITE.

The property owner of record shall sign the APPLICATION form thereby granting his/her consent to the filing of the APPLICATION.

4.2 APPLICATION Fees

The application fee prescribed in this section shall accompany the APPLICATION for a PERMIT. The application fee shall be submitted in check form and made payable to the "Town of Millbury". The application fee is not refundable. The application fee for a PERMIT is calculated as follows: \$5,000.00 base fee, plus an additional \$200.00 for each market rate unit proposed in the APPLICATION.

4.3 Outside Consultants and Review Fees

- 4.3.1 A technical review escrow deposit shall accompany the APPLICATION for a PERMIT. The escrow for technical review fees is intended to cover the BOARD'S cost of hiring consultants, including but not limited to facilitators, engineers, landscape architects, architects, legal counsel, financial, real estate, and/or other professionals to review the project. The initial escrow deposit amount required for an APPLICATION shall be \$15,000.00 and may be adjusted by vote of the BOARD. Whenever the account falls below 50% of the requirement set by the Board, the

applicant must deposit an additional amount sufficient to return the account to the required level. Any unexpended monies in the escrow account will be returned to the applicant only after all obligations are satisfied. Failure to fulfill escrow requirements may render an APPLICATION incomplete and be considered sufficient grounds for its denial.

4.3.2. The APPLICANT may appeal the BOARD's selection of a consultant(s) whose fees are to be paid from the escrow deposit to the Board of Selectmen.

- (a) The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications.
- (b) The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.
- (c) Pursuant to M.G.L. c. 44, § 53G, the required time limits for action upon the APPLICATION by the BOARD shall be extended by the duration of the appeal. If no decision is made by the Board of Selectmen within one month following the filing of the appeal, the BOARD's selection shall stand.

4.3.3. The escrow deposit shall be deposited in a special account established by the Town Treasurer pursuant to M.G.L. c. 44, § 53G. Funds from the special account shall be administered in accordance with M.G.L. c. 44, § 53G, and may be expended only for the purposes described above.

4.4 Submission to the Town Clerk and the Board

The APPLICANT shall submit two complete copies of the APPLICATION to the office of the Millbury Town Clerk. The Town Clerk will certify the date and time of filing on both copies, keep one of the copies, and return the other to the APPLICANT. The APPLICANT shall then forthwith file the returned copy, 14 additional copies of the APPLICATION, and the required fee with the office of the BOARD during normal business hours. The APPLICANT may request and shall be entitled to a written receipt for the materials submitted.

Information submitted after the initial filing of the APPLICATION as described above will not be accepted except at the public hearing.

If significant information that was not included in the APPLICATION is presented at the public hearing, the hearing may be continued by the BOARD to allow for TOWN staff and consultants review of the new material. Additional APPLICATION materials shall be submitted in multiple copies as required for the original APPLICATION.

Questions concerning the submission of additional materials and information should be directed to TOWN staff.

4.5 Review of Application

To ensure full and qualified review of the APPLICATION, the BOARD will forthwith notify other TOWN departments, boards, committees, agencies, or independent consultants of the APPLICATION by sending one or more copies thereof to such local boards, committees, agencies, or independent consultants for their recommendations, and shall notify them of the due date by which comments must be returned to the BOARD, which shall ordinarily be within 25 days of the filing of the APPLICATION unless otherwise specified by the BOARD. The BOARD will make available to the APPLICANT upon request copies of any comments or recommendations received.

SECTION 5

PUBLIC HEARING & DECISION

5.1 Procedures and Time Limits

The LAW requires a public hearing on the APPLICATION. Procedures and time limits for hearings and DECISIONS on APPLICATIONS shall be as required by LAW.

5.2 Public Hearing Notice

The BOARD will hold a public hearing within 30 days of the APPLICATION filing date, unless the time has been extended by mutual agreement between the BOARD and the APPLICANT in accordance with the LAW. Pursuant to M.G.L. c. 40A, § 11, the BOARD will give notice of the time and place of the public hearing and its subject matter, sufficient for identification, as follows (see Appendix):

- 5.2.1** By publication of the notice in a newspaper of general circulation in the TOWN once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the public hearing. The newspaper will send the bill for the advertisement directly to the APPLICANT and the APPLICANT shall pay the bill directly to the newspaper.
- 5.2.2** By posting the notice in a conspicuous place in the Millbury Town Hall for a period of not less than fourteen days before the day of the public hearing.
- 5.2.3** By mailing the notice by certified mail, postage prepaid, to all PARTIES IN INTEREST. At least 21 days before the day of the public hearing, the APPLICANT shall submit to the office of the BOARD the certified mail letters containing the hearing notice (date, time, and place of the public hearing from the office of the BOARD) addressed to each PARTY IN INTEREST; sender: the Town of Millbury Board of Appeals, 127 Elm Street, Millbury, MA 01527; sealed and ready to be mailed; accompanied by one copy of the notice for the BOARD's record, and payment to the Town of Millbury in the amount of the cost of the certified mailings.
- 5.2.4** One business day before the start of the public hearing, the APPLICANT shall present to the office of the BOARD the certified mail return receipts and copies of

the newspaper advertisements of the hearing as evidence that notice has been given as required by the LAW.

- 5.2.5 Failure to properly notify PARTIES IN INTEREST and to publish a notice of the hearing in the newspaper could render the public hearing invalid.

5.3 Public Hearing

An APPLICANT may appear on his/her/its own behalf or be represented by an agent or attorney. It is the responsibility of the APPLICANT or his/her/its agent to present the APPLICATION to the BOARD and the public. Failure to appear by the APPLICANT may constitute grounds for denial of the APPLICATION.

Due notice of the hearing will be given to the applicant and abutters and to such other persons as the Board deems to be interested parties. The applicant may appear in person or be represented by an attorney. When dealing with corporate entities the Board does not require that the applicant be represented by counsel if the representative before the Board is an officer of the corporation or a member/manager of a limited liability company. If the representative of the corporate entity is not an officer or a member/manager, the Board requires either a corporate vote which states that the representative has authority to act for the corporate entity or a letter signed by a corporate officer, preferably the President, stating that the employee/engineer/contractor is an agent for the corporate entity and has complete authority to act on its behalf. The applicant will be given an opportunity to present witnesses and evidence and persons appearing in opposition will also be given an opportunity to be heard. No cross-examination of the witnesses will be allowed except at the discretion of the Board. The Board may in its discretion permit arguments at the close of the evidence.

- 5.3.1 The APPLICANT may be requested to answer questions raised by the BOARD or the public. The BOARD will keep a record of any evidence that has been introduced at the hearing for reference in its deliberations.
- 5.3.2 No evidence shall be received by the Board after the hearing closes, unless the BOARD has specifically voted to reopen the public hearing for receipt of such information. The BOARD may receive any testimony or documentary evidence that it deems necessary to enable it to render a fair and informed decision. Any party desiring to submit evidence to the BOARD for its consideration at the next session of the public hearing shall submit such evidence to the BOARD at least 48 hours in advance of that session of the public hearing.
- 5.3.3 Any person that received written notice from the BOARD of the public hearing pursuant to Section 5.2 above may present testimony during the public hearing; however, the BOARD may exclude unnecessary, irrelevant, or repetitive testimony.
- 5.3.4 Members of the BOARD and/or an attorney on its behalf may cross-examine representatives of the APPLICANT and any witness that presents testimony during the public hearing.

- 5.3.5 The APPLICANT or its duly authorized representative shall appear and be available to answer questions and provide information to the BOARD at each session of the public hearing.
- 5.3.6 The APPLICANT shall make the SITE available for an inspection by the BOARD at any reasonable time determined by the BOARD during the public hearing. Signature of the owner of the SITE on the APPLICATION shall constitute the owner's irrevocable consent to the BOARD's conducting such a SITE inspection. The BOARD may conduct the SITE visit during the public hearing or any continued session thereof. A SITE visit shall not be considered to be a session of the public hearing, unless the BOARD designates it as such.
- 5.3.7 Where more than one member of the BOARD has missed a session of the public hearing, the APPLICANT may at the beginning of a session of public hearing where a member is absent request a continuance of that session, and the BOARD shall grant said request provided that the APPLICANT executes a consent form waiving any right to raise a claim of constructive approval or constructive denial of the APPLICATION as a result of said continuance, in a form approved by Town Counsel.
- 5.3.8 All persons wishing to present evidence or testimony during the public hearing shall identify themselves, including their place of residence, and any persons for whom they are acting as an agent or attorney.

5.4 Withdrawal of APPLICATION

- 5.4.1 Any APPLICATION for a PERMIT may be withdrawn without prejudice by notice in writing to the BOARD prior to the posting or mailing of notice of a public hearing. Withdrawal of any APPLICATION thereafter requires BOARD consent. No refund of the application fee will be provided if an APPLICATION is withdrawn. Application fees can be refunded in whole or part only at the discretion and by vote of the BOARD. Remaining fee deposits for consultant reviews will be refunded to the extent that they have not yet been paid or committed for consultant services.
- 5.4.2 The BOARD may grant a request for a continuance of the public hearing from the APPLICANT or any other PARTY IN INTEREST. Any request for a continuance made by the APPLICANT shall be accompanied by a signed consent form waiving any right to raise a claim of constructive approval or constructive denial of the APPLICATION as a result of said continuance. Requests for continuances shall be submitted to the BOARD no later than one week prior to the scheduled hearing.

5.5 Time Period for Deliberation

The BOARD shall decide each APPLICATION for a PERMIT within forty (40) days after the close of the public hearing, unless such APPLICATION has been withdrawn as set forth above or the period for deliberation has been extended as provided in Section 5.5.1 below.

- 5.5.1 Extension - The period within which final action shall be taken may be extended for a definite period by written agreement between the BOARD and the APPLICANT.
- 5.5.2 Continuance - If the BOARD determines that the APPLICATION is defective, it shall give the APPLICANT notice of the defect before closing the hearing, and allow

the applicant a continuance of 60 days to remedy the defect. If the defect is not remedied by the APPLICANT within said 60 days, the BOARD may close the public hearing and deny the application. See 760 CMR 31.01(5). See Section 3, above.

5.6 DECISION

The BOARD may (1) approve the APPLICATION and grant the PERMIT for the development as proposed in the APPLICATION; (2) approve the APPLICATION and grant the PERMIT subject to conditions as the BOARD may deem appropriate; or (3) deny the APPLICATION and the PERMIT. A motion to grant or deny a comprehensive PERMIT shall carry if a majority of those voting on the motion vote in favor of the motion. A quorum shall consist of three of the five members or associate members designated to hear, and qualified to vote on, the APPLICATION. Conditions imposed by the Board in the DECISION may include, but are not limited to, such conditions as are appropriate in the BOARD's judgment to:

- Ensure compliance with federal or state statutes or regulations, or with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of local concern;
 - Protect valid health, safety, environmental, design, open space, master planning, or other local concerns; and/or
 - Mitigate adverse impacts of the project arising out of or related to health, safety, environmental, design, open space, master planning or other local concerns, including without limitation concerns related to (1) structural soundness of the proposed building; (2) adequacy of sewage arrangements; (3) adequacy of water drainage arrangements; (4) adequacy of fire protection; (5) adequacy of the applicant's proposed arrangements for dealing with the traffic circulation within the site and for dealing with traffic generated by the project on adjacent streets; (6) proximity of the proposed site to airports, industrial activities, or other activities that may affect the health and safety of the occupants of the proposed housing; (7) height, bulk, and placement of the proposed housing; (8) physical characteristics of the proposed housing; (9) height, bulk, and placement of surrounding structures and improvements; (10) physical characteristics of the surrounding land; (11) adequacy of parking arrangements; (12) adequacy of open areas, including outdoor recreational areas, proposed within the building site; (13) open space availability, utilization, need, plans, preservation, use, proximity, inventory, and legal restrictions; (14) municipal planning including without limitation the TOWN's master plan, comprehensive plan, or community development plan, and the relationship of the proposed project to the TOWN's efforts to implement such plans.
- 5.6.1 The BOARD shall file a written DECISION with the Town Clerk and send a copy to the APPLICANT by certified mail. The BOARD shall also send a notice of its DECISION to all PARTIES IN INTEREST, and to those who have requested such notice at the public hearing.
- 5.6.2 A written DECISION granting the PERMIT shall be considered the Comprehensive Permit under the LAW.

5.7 Recording of DECISION

If the BOARD approves an APPLICATION, the APPLICANT shall record a full copy of the DECISION in the owner's chain of title for the SITE in the Worcester South District Registry of Deeds, or file it in the Land Court if applicable, and shall pay any required recording or registration fees and surcharges. A certified copy of the recorded DECISION shall be submitted to the Building Commissioner prior to the issuance of a building permit or the start of any work on the SITE.

5.8 Submission of Approved Plans, Endorsement

The approved plan, as amended or revised in accordance with the BOARD's DECISION of approval, shall be submitted to the Building Commissioner before the issuance of any building permit on the SITE. The approved plan shall be signed by a majority of the members of the BOARD in a form acceptable for recording by the Worcester South District Registry of Deeds prior to the issuance of a building permit for the SITE.

5.9 Appeal of DECISION

Any person aggrieved by the issuance of a comprehensive PERMIT may appeal the BOARD's DECISION in accordance with M.G.L. c. 40B, § 21, and M.G.L. c. 40A, § 17, within 20 days after the filing of the DECISION with the Office of the Town Clerk. The APPLICANT may appeal the BOARD's DECISION to the Massachusetts Housing Appeals Committee as provided in M.G.L. c. 40B, § 22 within 20 days after the filing of the DECISION with the Office of the Town Clerk.

5.10 Time Limit for PERMIT

The time limit on the PERMIT and any extensions thereof shall be governed by 760 CMR 31.08(4).

5.11 Limitation of the DECISION

Only those local bylaws, rules, regulations, and requirements that are specifically waived by the BOARD in the PERMIT DECISION shall be deemed to be waived by the PERMIT. All other local bylaws, rules, regulations, requirements, permits or approvals shall apply to the project on the SITE as they would in the absence of the PERMIT. The BOARD may condition any PERMIT hereunder on satisfactory demonstration of compliance with the requirements of other governmental bodies having jurisdiction prior to the start of any work on the SITE, the issuance of a building permit, or any other appropriate step in the development process. The APPLICANT is hereby encouraged to seek approvals and certificates of compliance from such other governmental bodies prior to or concurrently with the APPLICATION to the BOARD.

5.12 Amending a PERMIT

If, after a PERMIT is issued, an APPLICANT desires to change the details of its proposal as approved by the BOARD or the Housing Appeals Committee, it shall promptly notify the BOARD in writing describing such change(s). The BOARD shall process such request in accordance with 760 CMR 31.03(3), as amended. Consultation with TOWN staff is recommended prior to the filing of any request to amend a PERMIT.

5.13 Transfer of a PERMIT

No PERMIT shall be transferred to a person or entity other than the APPLICANT without the written approval of the BOARD.

APPENDIX

**COMPREHENSIVE PERMIT
APPLICATION FORM**

Refer to the "Rules and Regulations for Comprehensive Permits" available from the office of the Board of Appeals for detailed permit filing requirements.

(Please type or print your application)

1. Street Address of Site:

17 RICE ROAD

Name of Proposed Development:

RICE POND VILLAGE

2. Applicant's Name:

SJV INVESTMENTS, LLC

Address:

118 TURNPIKE ROAD, SUITE 200, SOUTHBOROUGH, MA 01772

Telephone: (508) 485-9900 Fax _____ e-mail _____

3. Record Owner Name:

SJV INVESTMENTS, LLC

Address:

118 TURNPIKE ROAD, SUITE 200, SOUTHBOROUGH, MA 01772

Telephone: (508) 485-9900

4. Zoning District(s) of Parcel(s):

~~RESIDENTIAL~~ SUBURBAN 2

Town Assessor's Map(s)/ Parcel Number(s):

MAP 63 PARCELS 75, 75A, 75B, 75C & 144

5 a) Total development site area 15.6 ACRES

b) Number of dwelling units 192

c) Number of affordable units 48

d) Number of units adaptable for persons w/ disabilities 192

e) Total open space area 11.2 AC.

f) Total length of road(s): public _____ ft private N/A ft

g) Method of wastewater disposal:

CONNECTION TO SANITARY SEWER MAIN IN RICE ROAD

The undersigned hereby apply to the Board of Appeals for a Comprehensive Permit under M.G.L. c. 40B, §§ 20-23. The undersigned hereby certify that the information on this application

and plans submitted herewith are correct, and that, to the best of his/her knowledge, the application complies with all applicable provisions of Law and Regulations.

Signed under the penalties of perjury in accordance with M.G.L. c. 268, § 1A.


Signature of Petitioner(s)

10/16/23
Date

Signature of Petitioner(s)

Date

RECORD OWNER'S KNOWLEDGE AND CONSENT

I hereby assert that I have knowledge of and consent to and concur with the application presented above.


Signature of Record Owner(s)

10/16/23
Date

Signature of Record Owner(s)

Date

AZIMUTH LAND DESIGN, LLC

Civil Engineers & Erosion Control Specialists

118 Turnpike Road, Suite 200, Southborough, Massachusetts 01772

Telephone (508) 485-0137 james@azimuthlanddesign.co

October 31, 2023

Millbury Zoning Board of Appeals
Town of Millbury
127 Elm Street
Millbury, Massachusetts 01527

Re: Rice Pond Village comprehensive permit application
17 Rice Road, Millbury

Dear Board members:

The proposed Rice Pond Village comprehensive permit development will require three waivers from the Millbury Zoning Bylaw:

- 1) From section 23.2 – The Applicant is proposing density of multifamily housing greater than what is allowed with a special permit
- 2) From section 23.32 – The Applicant is proposing three apartment buildings which will have heights in excess of the allowed 30 foot maximum.
- 3) From section 33.2 – The applicant is proposing to provide parking at the ratio of 1.66 per unit rather than two per unit plus a third space per each three bedroom unit.

If you have any questions at all, please contact me.

Sincerely,

AZIMUTH LAND DESIGN, LLC

A handwritten signature in blue ink, appearing to read "James Tetreault", with a long horizontal flourish extending to the right.

James Tetreault, PE, CPESC

Cc: SJV Investments, LLC



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus, Jr., Secretary

August 17, 2023

Christopher Naff, Chair
Board of Selectmen
Town of Millbury
127 Elm Street
Millbury, Massachusetts 01527

Steven Venincasa
Rice Pond Village, LLC
118 Turnpike Road, Suite 200
Southborough, MA 01772

RE: Rice Pond Village, Millbury, Massachusetts
Determination of Project Eligibility under the Local Initiative Program (LIP)

Dear Mr. Naff and Mr. Venincasa:

I am pleased to inform you that your application for project eligibility under the Local Initiative Program (LIP) for the proposed Rice Pond Village project has been approved. This approval is based on your application that sets forth a plan for the development of 192 rental units. The proposed rents for the LIP units are generally consistent with the standards for affordable housing to be included in a community's Chapter 40B affordable housing stock.

As part of the review process, the Executive Office of Housing and Livable Communities (EOHLC) staff has performed an on-site inspection of the proposed project sites. EOHLC has made the following findings:

1. The proposed project appears generally eligible under the requirements of LIP, subject to final program review and approval;
2. The site of the proposed project is generally appropriate for residential development;
3. The conceptual plan is generally appropriate for the site on which the project is located;
4. The proposed project appears financially feasible in the context of the Millbury housing market;
5. The initial pro forma for the project appears financially feasible and consistent with cost examination and limitations on profits and distributions on the basis of estimated development costs;

6. The project sponsor and the development team meet the general eligibility standards of LIP;
7. The project sponsor has an executed Purchase and Sale agreement for the site.

The proposed project must comply with all state and local codes not specifically exempted by a comprehensive permit.

Please provide us with a copy of the comprehensive permit as soon as it is issued. The EOHLC legal office will review the comprehensive permit and other project documentation. Additional information may be requested as is deemed necessary. Following the issuance of the comprehensive permit, the specifics of this project must be formalized in a regulatory agreement signed by the municipality, the project developer, and EOHLC prior to starting construction.

As stated in the application, the Rice Pond Village project will consist of 192 units, 48 of which will be affordable; all will be eligible for inclusion in the Town's subsidized housing inventory. The affordable units will be marketed and rented to eligible households whose annual income may not exceed 80% of area median income, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development.

The conditions that must be met prior to final EOHLC approval include:

1. A final affirmative fair marketing and lottery plan with related forms shall be submitted that reflects LIP requirements including consistency with the *Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing Plans*;
2. Any changes to the application it has just reviewed and approved, including but not limited to alterations in unit mix, rents, development team, unit design, site plan and financial pro forma reflecting land value, must be approved by EOHLC;
3. The project must be organized and operated so as not to violate the state anti-discrimination statute (M.G.L. c151B) or the Federal Fair Housing statute (42 U.S.C. s.3601 et seq.). No restriction on occupancy may be imposed on the affordable unit (other than those created by state or local health and safety laws regulating the number of occupants in dwelling units); and
4. The Town shall submit to EOHLC the finalized details of the comprehensive permit.

As the Rice Pond Village project nears completion of construction, EOHLC staff may visit the site to ensure that the development meets program guidelines.

When the units have received Certificates of Occupancy, the developer must submit to both EOHLC and the Millbury Board of Selectmen a project cost examination for the comprehensive permit project.

This letter shall expire two years from this date or on August 17, 2025, unless a comprehensive permit has been issued.

We congratulate the town of Millbury and Rice Pond Village, LLC on your efforts to work together to increase the Town's supply of affordable housing. If you have any questions as you proceed with the project, please call Rieko Hayashi at 617-573-1426.

Sincerely,

A handwritten signature in black ink, appearing to be 'Catherine Racer', written over a horizontal line.

Catherine Racer
Director

cc: Conor McCormack, Director of Planning and Development
Sean Hendricks, Town Manager
Kenneth Perro, Zoning Board of Appeals
Office of the Chief Counsel, EOHLC

Enc.

RESPONSIBILITY FOR COST CERTIFICATION:

By your signature below, Rice Pond Village, LLC, acknowledges and accepts this approval letter, including the obligation under law to provide the Executive Office of Housing and Livable Communities and the town of Millbury with a project cost examination.

Signature: _____

Name (print): _____

Date: _____

*Upon receipt, please make a copy of this letter and return a signed copy to the Executive Office of Housing and Livable Communities, 100 Cambridge Street, Boston, MA 02114
ATTN: Local Initiative Program.*

Rice Pond Village, Millbury, Massachusetts

LOCAL INITIATIVE PROGRAM – COMPREHENSIVE PERMIT

Sponsor:

Rice Pond Village, LLC
118 Turnpike Road, Suite 200
Southborough, MA 01772

Project Addresses:

17 Rice Pond Road
Millbury, MA 01527

This project will provide rental opportunities according to the following breakdown:

Type of Unit	# of Units	# of Bdrms.	# of Baths	Gross SF	Utility Allowance	Maximum Rent
LIP Units	26	1	1	956	\$204	\$1,564
	16	2	2	1,358	\$294	\$1,725
	6	3	2	1,727	\$372	1,837
Market Units	76	1	1	956	N/A	\$2,500
	50	2	2	1,340		\$2,910
	18	3	2	1,727		\$3,400
Total Units	192					

**COMPREHENSIVE PERMIT
PUBLIC HEARING NOTICE**

In accordance with the provisions of M.G.L. c. 40B, §§ 20-23, the Millbury Board of Appeals will hold a public hearing on _____, 20__ at _____ p.m., at _____ on the application of _____ for approval of a Comprehensive Permit on a parcel located at _____ and shown on Town Assessor's Map _____, parcel _____. The applicant proposes a development of _____ dwelling units, _____ of them qualifying as affordable.

(above for newspaper legal advertisement only)

(above and below notices to parties in interest)

The Board of Appeals may grant Comprehensive Permits under the provisions of M.G.L. c. 40B, §§ 20-23A. A copy of the application is also available for review at the office of the Board of Appeals, Town Hall between 8:30 AM and 4:30 PM, Monday through Friday.

At the hearing, the applicant or his/her representative will present the application and reason(s) why the permit should be granted. When the applicant or his/her representative has concluded, the Chair of the Board will allow Board members to speak to the matter under consideration or to ask questions. Subsequently, the Chair will give the public the same opportunity to speak to the matter under consideration or to ask questions.

Any party may appear in person, by agent, or by attorney at any hearing. When all of the facts have been presented and all persons wishing to speak on the petition have been heard, the Chairman will close the hearing. No evidence shall be received by the Board after the hearing closes, unless the BOARD has specifically voted to reopen the public hearing for receipt of such information.

COMPREHENSIVE PERMIT DEVELOPMENT IMPACT REPORT

The Development Impact Report (DIR) is intended to assist the Board of Appeals in its evaluation of the proposed development in the context of existing conditions and planning efforts by the Town.

The DIR seeks to summarize the broad range of issues generally associated with development plans in a form and language that is understandable to a layperson. It assesses development impacts that might be avoided or mitigated if recognized early in the development process. Other portions of the DIR request information that will assist the Town in planning ahead to provide adequate services in the future. The Board of Appeals hopes that the DIR, early consultations with the Town staff, and the applicant's continuing cooperation throughout the development review process will foster an atmosphere in which a development of excellent quality and design will emerge that helps meet housing needs and is sensitive to Millbury's natural and historic heritage and other community concerns.

The DIR shall be filed with a comprehensive permit application. However, it is recommended that it be given to Town staff at the preliminary review stage, even if portions are incomplete at that time. The DIR shall clearly and methodically assess the relationship of the proposed development to the natural, physical, and social environment. In preparing the DIR, professionals of the respective fields should be consulted as necessary.

COMPREHENSIVE PERMIT
DEVELOPMENT IMPACT REPORT

(Please type or print information in blanks below)

1. Name of Proposed Development: RICE POND VILLAGE
2. Location: 17 RICE ROAD
3. Name of Applicant(s): SJV INVESTMENTS, LLC
4. Brief Description of the Proposed Project: AN APARTMENT DEVELOPMENT WITH 3 BUILDINGS PROPOSED, EACH HAVING 64 UNITS FOR 192 TOTAL.
5. Name of individual preparing this DIR: JAMES TETREAULT, PE
 Address: AZIMUTH LAND DESIGN, LLC, 118 TURNPIKE ROAD, SUITE 200, SOUTH BOROUGHN MA 01772
 Business Phone: (508) 485-0137 Fax: _____ E-mail: _____
 Professional Credentials: PROFESSIONAL CIVIL ENGINEER

A. Site Description

Present permitted and actual land uses by percentage of the site.

Use	Percentage of the site (permitted)	Percentage of the site (actual)
Industrial	0	0
Commercial	0	0
Residential	100	12
Forest		0
Agricultural		0
Other (specify)		

Total acreage on the site: 15.6 acres.

Land Type	Current Acreage	Acreage After Completion
Meadow or Brushland (non-agriculture)	0	0
Forested	13.7 AC	7.1 AC
Agricultural (includes orchards, cropland, pasture)	0	0

Wetland	0.9 ac	0.9 ac
Surface Water	0.65 ac	0.65 ac
Flood Plain	0	0
Unvegetated (rock, earth, or fill)	≈ 300 sqft	0
Roads, buildings and other impervious surfaces	0.2 ac	4.3 ac
Other (indicate type)		

List the zoning districts in which the site is located and indicate the percentage of the site in each district. *Note: include overlay zoning districts.*

District	Percentage
SUBURBAN 2	100
PRESIDENTIAL	

Predominant soil type(s) on the site: MERRIMAC SERIES SOIL

Soil drainage (using the US Soil Conservation Service's definitions):

Soil Type	% of the Site
Well drained	91%
Moderately well drained	
Poorly drained	9%

Are there bedrock outcroppings on the site? yes no

Approximate percentage of proposed site with the following slopes:

Slope	% of the Site
0 - 10%	20%
10 - 15%	10
Greater than 15%	70%

How close is the site to a public well? 4,200 feet (Zone)
OFF MILLBURY AVE.

Does the project site contain any species of plant or animal life that is identified as rare, endangered or threatened? (Consult with the Massachusetts National Heritage and Endangered Species Program and the Millbury Conservation Commission).

yes no

If yes, specify:

Are there any unusual or unique features on the site such as trees larger than 30 inches dbh, bogs, kettle ponds, eskers, drumlins, quarries, distinctive rock formation or granite bridges?

yes no

If yes, specify:

Are there any established footpaths or railroad right of ways on the site?

yes no

If yes, specify:

Is the site presently used by the community or neighborhood as an open space or recreation area? yes no

Is the site adjacent to conservation land or a recreation area? yes no

If yes, specify:

Does the site include scenic views, or will the proposed development obstruct any scenic vistas? yes no

If yes, specify:

Are there wetlands, lakes, ponds, streams or rivers within or contiguous to the site?

yes no

If yes, specify: **THERE ARE INTERMITTENT STREAMS WITH BORDERING VEGETATED WETLANDS ON THE WEST SIDE OF THE SITE AND A POND ON THE SOUTH SIDE OF THE SITE.**

Is there any land on the site protected under General Laws Chapter 61, 61A or 61B?

yes no

If yes, specify:

Has the site ever been used for the disposal of hazardous waste? yes no

Has a Chapter 21E study been conducted for the site? yes no

If yes, specify (including results):

Will the proposed activity require use and/or storage of hazardous materials or generation of hazardous waste? yes no

If yes, specify:

Does the project contain any buildings or sites of historic or archaeological significance? (Consult with the Millbury Historic Commission and the Massachusetts Historic Commission) yes no

If yes, describe:

Is the project contiguous to or does it contain a building in a local historic district or national register district? yes no

If yes, specify:

B. Circulation System

What average traffic volumes will the project generate?

Average weekday traffic	1045 TRIPS/DAY
Average peak hour volume - weekday morning	69 TRIPS
Average peak hour volume - weekday evening	84 TRIPS
Average peak hour volume - Saturday	N/A

Existing street(s) providing access to proposed development:

Name RICE ROAD

Existing intersections: list all intersections located within 1000 feet of any access to the proposed development: SITE ENTRANCE AND RICE ROAD, RICE ROAD AND SOUTH MAIN STREET, RICE ROAD AND PROVIDENCE STREET

Location of existing sidewalks within 1000 feet of the proposed site:

SOUTH MAIN STREET

Location of proposed sidewalks and their connection to existing sidewalks:

SEE SITE PLAN

Are there parcels of undeveloped land adjacent to the proposed site? ~~yes~~ no

Will access to these undeveloped parcels be provided within the proposed site?

N/A yes no

If yes, describe:

If no, explain why not:

C. Utilities and Municipal Services

What is the total number of bedrooms proposed? 306

Storm Drainage

a. Describe the type and location of any surface water body currently receiving runoff from the site:

THERE ARE INTERMITTENT STREAMS ON THE WEST SIDE OF THE SITE

b. Describe the proposed drainage system and how it will alter existing drainage patterns:

ALL COLLECTED STORMWATER RUNOFF WILL BE INFILTRATED

c. Will a NPDES Permit be required? yes no

Estimate the fire department response time to the site (consult with Fire Dept.)

5 MINUTES

Schools

a. Projected number of new school age children: 36

b. Distance to nearest school:

1.4 MILES (ELMWOOD STREET)

D. Measures to Mitigate Impacts

Attach brief descriptions of the measures that will be taken to:

Prevent surface water contamination. - WE WILL MEET DEP STORMWATER MANAGEMENT STANDARDS

Prevent groundwater contamination. - WE WILL MEET DEP STORMWATER MANAGEMENT STANDARDS

Maximize groundwater recharge. - ALL COLLECTED STORMWATER WILL BE INFILTRATED

Prevent erosion and sedimentation. - FOLLOW A STORMWATER POLLUTION PREVENTION PLAN.

Maintain slope stability. - SLOPES >3:1 WILL BE STABILIZED USING EROSION CONTROL MATTING

Design the project to conserve energy. - IT WILL ENERGY STAR STANDARDS THROUGH A VARIETY OF METHODS

Preserve wildlife habitat. - DIMINISHING DISTURBANCE COMPARED TO PREVIOUS PROPOSAL.

Preserve wetlands. - NO WETLAND ALTERATION IS PROPOSED

Ensure compatibility with the surrounding land uses. - OTHER USES ARE ALSO RESIDENTIAL

Control peak runoff from the site so that the post-development rate will be no greater than the predevelopment rate for the 10-year storm event. - INFILTRATE ALL COLLECTED STORMWATER.

Preserve historically significant structures and features on the site. - THERE ARE NONE.

Mitigate the impact of the traffic generated by the development. - SEE TRAFFIC REPORT

Please use layperson's terms where possible while still being accurate and comprehensive. Where appropriate, graphics shall be used. List sources of data, reference materials, and methodology used to determine all conclusions. Use additional sheets as necessary.

SEE ATTACHED

COMPREHENSIVE PERMIT
DEVELOPMENT SCHEDULE

	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Total
Projected completion date						
Number of affordable units						
Number of market units						
Subtotal of units						

For the last development phase, or if only one development phase is proposed, suggest below a building permit schedule by which affordable units will be completed. Generally, the Board will allow a staggered completion of market rate and affordable units but requires the completion of all affordable units before the issuance of the last building permit(s) for the project.

SEE ATTACHED

COMPREHENSIVE PERMIT
UNIT COMPOSITION TABLE

Type of unit		Number of units	Number of baths/unit	Gross Sq. Ft./unit	Unit sales price or monthly rent	Homeowner's association/condominium fee
1-bedroom	Affordable					
	Market rate					
2-bedrooms	Affordable					
	Market rate					
3-bedrooms	Affordable					
	Market rate					
4-bedrooms	Affordable					
	Market rate					
5 or more bedrooms	Affordable					
	Market rate					
Totals						

SEE ATTACHED

COMPREHENSIVE PERMIT
DEVELOPMENT *PRO FORMA*

If the project is for new construction of ownership units, complete this development *pro forma*. For other types of projects, such as rental units or rehab projects, use *pro formas* approved or suggested by the Massachusetts Department of Housing and Community Development.

<u>A. Costs</u>	<u>Total Costs</u>	<u>Per Unit</u>
(a) Site Acquisition:	\$ _____	\$ _____
<i>Hard Costs</i>		
(b) Site Preparation	\$ _____	\$ _____
(c) Landscaping	\$ _____	\$ _____
(d) Residential Construction	\$ _____	\$ _____
(e) Subtotal Hard costs (b+c+d)	\$ _____	\$ _____
(f) Contingency	\$ _____	\$ _____
(g) Total Hard Costs (e+f):	\$ _____	\$ _____
<i>Soft Costs</i>		
(h) Permit/Surveys	\$ _____	\$ _____
(i) Architectural	\$ _____	\$ _____
(j) Engineering	\$ _____	\$ _____
(k) Legal	\$ _____	\$ _____
(l) Insurance	\$ _____	\$ _____
(m) Security	\$ _____	\$ _____
(n) Construction Manager	\$ _____	\$ _____
(o) Property Manager	\$ _____	\$ _____
(p) Construction Interest	\$ _____	\$ _____
(q) Financing/Application Fees	\$ _____	\$ _____
(r) Utilities	\$ _____	\$ _____
(s) Accounting	\$ _____	\$ _____
(t) Marketing	\$ _____	\$ _____
(u) Subtotal Soft Costs (add h-t)	\$ _____	\$ _____
(v) Contingency	\$ _____	\$ _____
(w) Total Soft Costs (u+v):	\$ _____	\$ _____
(x) Total Development Costs (a+g+w):	\$ _____	\$ _____

B. Profit Analysis

Sources:

- (A) Affordable sales \$ _____
- (B) Market sales \$ _____
- (C) Total Sales (A+B) \$ _____
- (D) Public grants \$ _____
- (E) Total Sales plus Grants (C+D) \$ _____

Uses:

- (F) Total Development Costs (x, above) \$ _____
- (G) Total Profit (E-F) \$ _____
- (H) Percentage Profit (G/F) _____ %

C: Cost Analysis

- (I) Total Building Floor Area (gross): _____ square feet
- (J) Residential Construction Cost per square foot (d/I): \$ _____
- (K) Total Hard Costs per square foot (g/I): \$ _____
- (L) Total Development Costs per square foot (z/I): \$ _____
- (M) Sales per square foot (C/I): \$ _____
(Do not include proceeds from public grants)

D: Construction Lender

Attach a signed letter of interest from at least one construction lender.

DEVELOPMENT AGREEMENT

This AGREEMENT ("AGREEMENT") is made and entered into as of this _____ day of December, 2022, by and between the TOWN OF MILLBURY, MASSACHUSETTS, (the "TOWN"), a Massachusetts municipal corporation with its usual place of business at 127 Elm Street, Millbury, Massachusetts 01527, acting by and through its Board of Selectmen, and Rice Pond Village, LLC (the "DEVELOPER" or "OWNER"), a Massachusetts limited liability company with an address of c/o Steven Venincasa, 118 Turnpike Road, Suite 200, Southborough, Massachusetts 01772.

WHEREAS the DEVELOPER is the owner-of-record of a certain parcel of land in Millbury (the "LOCUS") known as 17 Rice Road, as further identified in the TOWN Assessor's records as Map 63, Lots 75, 75B, and 144; and

WHEREAS the DEVELOPER wishes to develop a portion of the LOCUS comprised of +/- 15.6 acres, more or less, with 192 units of rental housing, to consist of one and/or two-bedroom units and up to but no more than 10 percent three-bedroom units, (the "PROJECT") With the remainder of the LOCUS to be dedicated to such other uses as are or may be permitted by the TOWN without a comprehensive permit; and

WHEREAS the PROJECT will be pursued under and in accordance with G.L. c. 40B, §§ 20-23, a.k.a. the Comprehensive Permit Law, ("CHAPTER 40B") and specifically the Local Initiative Program (LIP) administered by the Commonwealth's Department of Housing and Community Development (DHCD); and

WHEREAS, as required by the LIP, the DEVELOPER seeks an endorsement of its application by the TOWN's Board of Selectmen, as Chief Executive Officer of the municipality, per 760 CMR 56.04(2); and

WHEREAS, in exchange for the DEVELOPER's cooperation in its pursuit of PROJECT approval(s) and the DEVELOPER's commitments as hereinafter enumerated, the TOWN's Board of Selectmen wishes to give its endorsement as aforesaid and join in submittal of a LIP application for the PROJECT to DHCD;

NOW, THEREFORE, for good and valuable consideration and the mutual promises hereinafter specified, the receipt and sufficiency of which is hereby acknowledged, the parties hereto (the "PARTIES") agree as follows:

1. If the DEVELOPER constructs the PROJECT, it shall develop and operate the PROJECT in substantial compliance with the foregoing and subject to the following commitments:

(a) Acknowledging that CHAPTER 40B authorizes an applicant to request and a zoning board of appeals to issue waiver(s) from local requirements and regulations, see 760 CMR 56.05(7), the DEVELOPER nonetheless agrees NOT to request waivers from the TOWN's standard fees for the issuance of building permits, water connections and septic approvals and installations, but to pay the same in full.

(b) The DEVELOPER shall coordinate its submittal and pursuit of a comprehensive permit application for the PROJECT, to the TOWN's Board of Appeals, so as to allow the TOWN until February 14, 2023 to obtain DHCD approval of a Housing Production Plan (HPP) pursuant to 760 CMR 56.03(4)(e), it being the express purpose and intent of the foregoing that the units in the

PROJECT will qualify the TOWN for a certification of municipal compliance with its HPP, per 760 CMR 56.03(4)(f). The provisions of this Subparagraph (b) shall be of no further force and effect after February 14, 2023.

(c) A minimum number of units in the PROJECT shall be restricted as affordable to qualifying households in accordance with the LIP and DHCD's "Guidelines, G.L. c. 40B Comprehensive Permit Projects, Subsidized Housing Inventory" (December 2014) (the "GUIDELINES"), § VI.B.6.c, and so as to ensure that all of the units in the DEVELOPMENT shall be eligible for inclusion on the Subsidized Housing Inventory (SHI) per the GUIDELINES, § 11.A.2.b.1. Subject to approval by the DHCD and in accordance with the GUIDELINES, the DEVELOPER shall provide a local selection preference for tenants who qualify for the PROJECT's affordable units.

(d) The DEVELOPER agrees to install stop signs and stop lines that conform with current MUTCD standards at the northbound approach of Thomas Hill Road at its intersection with Rice Road, at the southbound approach of Hillcrest Circle at its intersection with Rice Road, at the Rice Road approach to its intersection with Providence Street, and at the Aldrich Avenue approach to its intersection with Rice Road.

(e) The DEVELOPER agrees to submit an intersection improvement plan, prepared in consultation with a traffic engineer, of the intersection of Rice Road and Providence Street to address the geometry of the intersection. Such traffic survey and intersection improvement plan shall address the following:

- i. Survey of existing conditions including location, width, curbing, paving, right-of-way, topography, utilities, etc.;
- ii. Widening of Providence Street travelled way and shifting the centerline to the east to address the geometry of the right turn onto Rice Road from Providence Street;
- iii. Shifting Rice Road's travelled way centerline to the south;
- iv. Flattening the horizontal curve on Providence Street, extending it past the Rice Road intersection to reduce the angle of the right turn.

(f) The DEVELOPER shall be responsible for installing a sidewalk and appropriate berm on the north side of Rice Road extending from the driveway of the PROJECT location to and connecting with the existing sidewalk on South Main Street. Said sidewalk shall be constructed in accordance with Massachusetts DOT and Town of Millbury standards and/or regulations and in such a way as to maintain existing road width. The TOWN agrees to assist in securing any temporary construction easements to enable work on private property that may be required to ensure a reasonable transition between residents' driveways and Rice Road; such driveway work shall adhere to Town of Millbury standards.

(g) The DEVELOPER shall coordinate with the Director of the Millbury Department of Public Works to ensure that the post-PROJECT-construction condition of Rice Road is substantially similar to its pre-construction condition.

(h) The DEVELOPER promises to provide a monetary gift or donation to the TOWN in the amount of \$100,000.00 (the "DONATION"). Said DONATION be due and payable in installments

corresponding to the issuance of a certificate of occupancy for each of the buildings associated with the PROJECT. Said DONATION is in addition to and not as a substitute for the other commitments above, which DONATION shall be made pursuant to G.L. c. 44, §53A. The TOWN agrees to use a portion of the DONATION for improvements to Windle Field, a municipally-owned open space parcel located on Canal Street, Map 46, Lot 142. Expenditure(s) of the DONATION shall be by the TOWN, in its sole discretion.

2. Simultaneously with the execution hereof, the DEVELOPER shall provide for the TOWN's review a LIP application form as prescribed by the DHCD, together with the supporting materials required to be submitted therewith; and the TOWN shall endorse the same.

3. If and after a written determination of PROJECT eligibility is made by the DHCD, the DEVELOPER in its sole and absolute discretion may complete, file with the TOWN's Board of Appeals and pursue an application for a comprehensive permit. The DEVELOPER understands and acknowledges that, while the TOWN's Board of Selectmen, by execution hereof, has endorsed the PROJECT as now presented to it, the TOWN's other permitting authorities, including the aforementioned Board of Appeals but also the TOWN's Conservation Commission and its Board of Health, are independent and the Board of Selectmen cannot unduly influence proceedings before these authorities or guarantee the outcome(s) of the same. The DEVELOPER further understands and acknowledges that these other permitting authorities may perform review(s) of certain aspects or components of the PROJECT within their respective jurisdictions; and that additional mitigation may be requested or required by them.

4. Nothing herein shall be deemed to relieve or release the DEVELOPER from its obligation(s) to make proper application for and obtain all permit(s), license(s) and other approval(s) as may be required for the PROJECT to proceed, if separate from and not subsumed by the comprehensive permit per CHAPTER 40B, whether from a board, commission, official or other agency or agent of the TOWN or from an agency of the Commonwealth or the federal government.

5. The PROJECT's units shall be subject to all requirements of the LIP, as specified by the DHCD, such that said units qualify for inclusion on the SHI as indicated above. The DEVELOPER shall be responsible for the lottery and marketing requirements associated with affordable units developed under the LIP, as well as any and all costs associated with monitoring responsibilities thereunder.

6. The obligations provided for herein shall run with the LOCUS and shall be binding upon the DEVELOPER and/or OWNER and their respective successors and assigns. Once executed by all PARTIES hereto, this AGREEMENT shall in its entirety be recorded by the DEVELOPER, at its sole cost and expense, with the Worcester County Registry of Deeds. Should a comprehensive permit not be issued, nor its denial appealed by the DEVELOPER, or should this AGREEMENT be terminated for any other reason hereinafter authorized, the TOWN agrees to record with the aforesaid Registry of Deeds a release hereof. In the event that the TOWN fails to record such a release within 30 days thereof, the DEVELOPER may record the same, accompanied by an affidavit certifying under the pains and penalties of perjury that this AGREEMENT has been terminated by the PARTIES hereto or by its own terms

7. If the DEVELOPER shall default in the performance of any term, covenant or condition of this AGREEMENT, which default shall continue for more than thirty (30) days after written notice to DEVELOPER at the address first stated above (or, if the default shall be reasonably expected to take more than thirty (30) days to cure, such longer period of time), the TOWN shall have the right to: terminate this

AGREEMENT; withhold any permits, license or other approvals issued by the TOWN or its subdivisions; or exercise any other remedy available to it at law or in equity, including commencing an action for specific performance hereof. The DEVELOPER and the TOWN shall reimburse the prevailing party for its reasonable legal fees and other expenses in seeking judicial enforcement. Any and all amounts due hereunder and the obligations hereof, if any, by the DEVELOPER shall be considered a municipal charge and may consequently be enforced pursuant to M.G.L. c. 40, § 57.

8. It is the express intention of the PARTIES hereto that each and every term, condition and provision hereof be fully enforceable and binding on and against the PARTIES and the LOCUS; and that any PARTY may pursue enforcement of this AGREEMENT or any component hereof in the event of a breach or default, with all remedies at law and in equity available to it, explicitly including but not limited to specific performance of the duties and obligations established hereunder.

9. Each PARTY affirms to the other that the foregoing constitutes the sole and entire agreement between them with respect to the subject matter hereof; that neither PARTY has made any representation or promise regarding any of the foregoing except for those expressly stated herein; and that no claim or liability shall be asserted for nor shall either PARTY be liable by reason of a failure to comply with any representations or promises not expressly stated herein.

10. The PARTIES do hereby represent and acknowledge that this AGREEMENT is given and executed voluntarily; that they are duly authorized to execute this AGREEMENT on behalf of the TOWN or DEVELOPER, as the case may be; that they have each been afforded an opportunity to consider and negotiate this AGREEMENT and its terms and conditions; that they have read and fully understand the terms of this AGREEMENT; and that they have been given an opportunity to consult with legal counsel of their choice prior to executing this AGREEMENT.

11. No modification of this AGREEMENT shall be effective, or of any consequence to the PARTIES hereto, unless in writing and signed by each of the PARTIES hereto, by their respective duly-authorized agent(s).

12. Should any provision of this AGREEMENT be deemed invalid, illegal or unenforceable under any law applicable thereto, then said provision shall be excluded to the extent of such invalidity; all other terms and conditions hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid provision shall be replaced with terms and/ or conditions that are valid and enforceable and that come closest to expressing the intentions of the PARTIES hereto as of the date hereof.

13. This AGREEMENT shall be governed by, constructed in accordance with and enforced under the laws of the Commonwealth of Massachusetts. Nothing in this AGREEMENT shall affect the rights of the TOWN in the exercise of any of its powers under applicable law with respect to the proposed development of the LOCUS, including but not limited to the powers of TOWN's Board of Appeals, pursuant to CHAPTER 40B and 760 CMR 56.00, *et seq.*, the TOWN's Conservation Commission, under G.L. c. 131, § 40, or the TOWN's Board of Health, under 310 CMR 15.00, *et seq.* Nor shall anything in this AGREEMENT release the developer from its obligation(s) to satisfy all applicable provisions of law in the proposed development of the LOCUS.

14. Prior to the initiation of any judicial proceeding regarding the term(s) of this AGREEMENT or performance hereunder, the TOWN and the DEVELOPER shall, absent mutual agreement to the contrary, submit their dispute(s) to nonbinding mediation for a period of sixty (60) days.

15. This AGREEMENT may be executed in counterparts, each to be considered an original insofar as the PARTIES hereto are concerned, but together said counterparts shall comprise one (1) agreement. A signed copy of this AGREEMENT transmitted by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy hereof for all purposes.

16. The TOWN and the DEVELOPER agree to revisit the AGREEMENT in the event that the TOWN'S Board of Appeals, as a condition of issuance of a comprehensive permit for the PROJECT, reduces the size of the PROJECT to less than 185 units.

17. This AGREEMENT may be terminated by DEVELOPER in its sole and absolute discretion by written notice to the TOWN, in which case this AGREEMENT shall no longer be of any force and effect, if:

(a) the TOWN's Board of Appeals denies a comprehensive permit for the PROJECT;

(b) the DEVELOPER, in its sole and absolute discretion, elects not to submit or withdraws its application for a comprehensive permit for the PROJECT or elects not to construct the PROJECT;
or

(c) a comprehensive permit for the PROJECT is applied for and thereafter appealed to the Housing Appeals Committee and any condition of the comprehensive permit as issued by the TOWN's Board of Appeals which increases the cost of the PROJECT by more than \$100,000.00 is thereafter appealed to the Housing Appeals Committee and overturned or eliminated by the Housing Appeals Committee.

18. All notices to be given pursuant to this AGREEMENT shall be in writing and shall be deemed given when: delivered by hand; delivered by certified mail, postage prepaid, return receipt requested; delivered by overnight carrier (e.g. Federal Express); or sent by e-mail (with written confirmation of the e-mail sent by first-class mail the date the email is sent) to the parties hereto at the addresses set forth below, or to such other place as a party (or its successor, assign, nominee, affiliate and designee) may from time to time designate by written notice:

DEVELOPER:

Rice Pond Village, LLC

Attn: Steven Venincasa

118 Turnpike Road, Suite 200, Southborough, Massachusetts 01772

E-mail: sv@svcasa.com

TOWN:

Town of Millbury

Attention: Sean Hendricks, Town Manager

127 Elm Street

Millbury, Massachusetts 01527

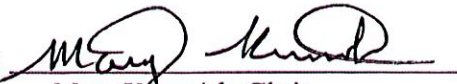
E-mail: shendricks@millburyma.gov

18. This AGREEMENT shall be effective as of the latest date it shall be executed by the DEVELOPER or the TOWN.


IN WITNESS WHEREOF, the PARTIES execute this AGREEMENT, under seal, as of and effective on the latest of the dates indicated below.

Town of Millbury,
Acting by and through its Board of Selectmen

Date: December 21, 2022

By: 
Mary Kumsiek, Chair
Millbury Board of Selectmen
Duly authorized by a vote of the Board of
Selectmen on October 25, 2022

Date: December 27, 2022

By: 
Steven Venincasa, Manager
SJV Investments, LLC