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**DECISION APPROVING WITH CERTAIN CONDITIONS THE
CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION FILED BY
JEWISH COMMUNITY HOUSING FOR THE ELDERLY
370-384 HARVARD STREET
BOARD OF APPEALS CASE NO. 2016-0079**

Date: March 22, 2017

Re: Application of Jewish Community Housing for the Elderly III, Inc. (“JCHE”) for a Comprehensive Permit

Location: An 18,323 s.f. portion of Assessor’s Atlas Map Sheet 15, Block 078, Lot 05-08, known and numbered as 370-384 Harvard Street, Brookline, Massachusetts \

I. PROCEDURAL HISTORY

1. On September 9, 2016, the Department of Housing and Community Development (“DHCD”) issued a Project Eligibility Letter (“PEL”) to Jewish Community Housing for the Elderly.
2. On November 4, 2016, Jewish Community Housing for the Elderly, III, Inc. (“JCHE” and also referred to herein as the “Applicant”) applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the “Act”), to construct sixty-two (62) units of rental housing, up to 5,000 square feet of retail space, and fourteen (14) parking spaces (the “Original Project”) on approximately 18,323 square feet, at the existing site of the Epstein Auditorium, located at the corner of Harvard and Williams Streets in Brookline, Massachusetts (the “Site”).
3. On March 8, 2017, the Applicant submitted revised plans described in Paragraph four below, which constitutes “the Project.”
4. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application

Comprehensive Permit Plans for 370-384 Harvard Street dated October 28, 2016, and revised on March 8, 2017, prepared as follows:

Sheet Numbers and Titles

Site Plans dated October 28, 2016, revised to March 8, 2017, prepared by Stantec Inc., stamped by Registered Landscape Architect Joseph Geller and Professional Engineer Frank Holmes.

L-000	Zoning
L-100	Site Preparation and Demolition

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L-101	Layout and Materials
L-210	Grading
L-301	Utility Plan
L-401	Planting
L-501	Site Details
L-502	Site Details
L-601	Utility Details
L-602	Utility Details
L-701	Lighting

Additional Plan included with the March 8, 2017 submission:

L-801 Additional Drop-Off Information

Architectural Plans dated October 28, 2016 revised to March 8, 2017 prepared by Prellwitz Chilinski and Associates (“PCA”) stamped by registered architect Steve Allen.

A1.01 Floor Plans

A1.02 Building Elevations & Section

Additional Plan included with the March 7, 2017 submission:

A1.03 Typical Wall Section & Unit Plans

[“Architectural Plans”]

Traffic Impact Assessment dated October 28, 2016, prepared by Stantec Inc., Richard Bryant, including additional information requested by the Town’s Peer Reviewer.

Transportation Demand Management Plan, dated December 5, 2016 prepared by Stantec, Inc., Richard Bryant, including additional information requested by the Town’s Peer Reviewer.

5. The Applicant submitted a request for waivers from local bylaws and regulations and Waiver-Key site plan dated November 30, 2016 and amended on March 8, 2017 to include additional details requested by the Building Commissioner.
6. The Brookline Zoning Board of Appeals (the “Board” or the “ZBA”), with the consent of the Applicant, opened a duly advertised public hearing on December 14, 2016. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: January 18, 2017; February 1, 2017; February 27, 2017; March 8, 2017 and March 22, 2017.
7. The Board conducted a duly noticed site visit on December 20, 2016.
8. The Board deliberated on the Application at a public hearing held on March 8, 2017 and continued to March 22, 2017.
9. On March 22, 2017 the Board closed the public hearing.

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10. On March 22, 2017 the Board voted unanimously to grant a Comprehensive Permit with the waivers (See Exhibit 1) as requested subject to certain conditions listed below and noted that Waiver AA pertaining to the tree to be removed from Williams Street was not necessary as the Selectmen granted approval to remove the tree at its meeting on February 7, 2017.
11. As required by the Act, the Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
12. During the course of the public hearing, Town staff, boards and commissions; and local residents submitted oral and written testimony with respect to the Project. The Board considered the technical review of Town Department Heads, an independent site and building design peer reviewer, and an independent traffic peer reviewer in regard to matters of public health and safety, environmental health and safety, traffic, site and building design, and preliminary stormwater management plans, and other issues of local concern.
13. The following independent peer reviewers assisted the Board in its review of the application:
 - Engineering and Traffic
James Fitzgerald, P.E.
Environmental Partners Group, Inc.
Quincy, Massachusetts
 - Parking
Arthur G. Stadig, P.E.
Walker Parking Consultants
Quincy, Massachusetts
 - Site and Building Design
Clifford Boehmer, AIA, President
Davis Square Architects
Somerville, Massachusetts
14. During the course of the public hearing, Town staff and boards, peer reviewers, and local residents submitted extensive oral and written testimony with respect to the Original Project and the Project on issues of height, scale, feasibility of the parking plan, safety, traffic, and site circulation.

II. FINDINGS

1. According to the Commonwealth's Department of Housing and Community Development Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of February 17, 2017, eight and nine tenths percent (8.93 %) of the Town's total housing stock constituted SHI-eligible housing, as defined in 760 CMR 56.02.
2. The Town has an ongoing, active program of promoting: low and moderate-income housing, including inclusionary zoning; financial and technical assistance to non- and for-profit property owners and developers; technical and financial assistance to those seeking to purchase, rent and rehabilitate affordable homes; and other Chapter 40B affordable housing developments.

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3. DHCD determined that the Original Project was eligible under the Low Income Housing Tax Credit (LIHTC) program, which requires that at least forty percent (40%) of the units would be available to households earning at or below sixty percent (60%) of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. JCHE executed a Development Agreement with Congregation Kehillath Israel dated March 29, 2016 and incorporated herein by reference. Prior to issuance of a building permit, Congregation Kehillath Israel (the “Lessor”), will convey a ground lease to JCHE for a lease term of no less than 75 years for the Site. At the end of the term of the ground lease, the Site will be returned to the Lessor.
5. During the term of the ground lease, the Project includes the following unit affordability mix: eighty-one (81) percent of the units (50 units) shall be available to households earning at or below sixty (60) percent of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development. Thirteen (13) percent of the units (8 units) shall be available to households earning at or below 110 percent (110%) AMI. Six (6) percent of the units (4 units) shall be unrestricted and priced at below market rents (the “Unrestricted Units”). At the end of the term of the ground lease, the Project will include the following unit affordability mix in perpetuity: twenty-five (25) percent of the units (16 units) shall be available to households earning at or below 80 percent (80%) AMI.
6. On November 4, 2016, the Applicant submitted the Original Project, which proposes that at least eighty percent (80%) of the units would be available to households earning at or below sixty percent (60%) of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban and Development.
7. The Site consists of an 18,323 s.f. portion of the lot at 370-384 Harvard Street, which is zoned as M-1.0 (apartment house).
8. The Site is located at the corner of Harvard Street and Williams Street. Harvard Street extends from the Boston-Brookline town line to the area known as Brookline Village and consists in part of commercial structures that are mostly one-story tall. Williams Street extends two blocks from Harvard Street to Winchester Street and consists of single and two-family structures and both low-rise and high-rise apartment buildings.
9. The Site currently features one structure: Congregation Kehillath Israel’s Epstein Auditorium community hall. The Epstein Auditorium will be demolished for the proposed Project. A Development Agreement was executed with the current owner, Congregation Kehillath Israel, on March 29, 2016. The Epstein Auditorium has a nursery school on the ground floor, a large community room on the second floor and office space on the third floor. On December 5, 2016, the Applicant submitted to the ZBA for review the following: Narratives for the List of Community Meetings & Summary of Community Feedback, Site Context Plans, Shadow Studies, Site Sections, Renderings and a Transportation Demand Management Plan (TDMP).
10. On December 9, 2016, the Brookline Fire Department issued a letter stating that it has no objections or concerns with JCHE’s proposed project at that time.
11. On January 4, 2017, the Applicant provided the Transportation Board with additional documentation including a site plan for the Loading Area drop-off/pick-up, parking observations of the surrounding area, and crash and parking data for the Devotion School.

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12. On January 6, 2017, after reviewing the JCHE proposal, the Planning Board sent a letter supporting the project to the ZBA with comments on the design, streetscape, landscaping and other issues.
13. On January 9, 2017, the Applicant provided the Health Department with a Trash and Recycling Plan for the Original Project.
14. On January 13, 2017, Patrick Maloney, the Director of Environmental Health, issued an email to the Department of Planning and Community Development acknowledging that the Trash and Recycling Plan as proposed by JCHE addresses all requirements requested by the Health Department.
15. On January 10, 2017, the Brookline Preservation Commission (the “Preservation Commission”) reviewed the Applicant’s demolition review application for the existing Epstein Auditorium structure at 370-384 Harvard Street and responded favorably to the design of the proposed project and provided comments to the Zoning Board of Appeals.
16. The Applicant represented that it is working with the Town’s Preservation Planners in the Department of Planning and Community Development as it is they who serve as the lead agency for review of the project as designated by the Massachusetts Historical Commission for the purposes of review and compliance under Section 106 of the National Historic Preservation Act. The Applicant will enter into a Memorandum of Agreement with the necessary parties to insure compliance.
17. The Planning Board, independent design peer reviewer Clifford Boehmer of Davis Square Architects, and local residents expressed the following in summarized written and oral comments during the public hearing: the height and massing of the Original Project is taller and larger than much of the surrounding neighborhood; the architectural style, fenestration and building materials need to have a stronger coherence with the existing Sanctuary building; and the storefront sections should appear more visually unified and the sidewalks appear to be narrow.
18. The Transportation Board, independent traffic and parking peer reviewers (Environmental Partners Group and Walker Parking Associates), and local residents expressed in written and oral comments during the public hearing: contradicting views on the loading zone area, concern for the loss of on-street spaces from the peer reviewer, and concern about providing no on-site parking for use by residents’ in-home health care aides or visitors.
19. On February 7, 2017, the necessary tree removal permit for the removal of one tree on Williams Street was granted by the Board of Selectmen subject to the Applicant providing six replacement trees to the Town: three on-site and three near the Site.
20. On February 8, 2017, the Applicant provided Updated Plans to the ZBA, including floor plans and building elevation plans, which redesigned the main entrance on Harvard Street, reduced the size of the retail space, and added a roof plan with equipment specifications.
21. On February 27, 2017, Peter Ditto, the Director of Engineering and Transportation, submitted written comments raising concerns that the proposed number of on-site parking spaces was inadequate, and that the Applicant’s mitigation plan required additional details with respect to the Transportation Demand Management Plan.
22. On February 27, 2017, the third ZBA hearing, Applicant presented and formally submitted updated site plans, architectural plans and renderings; and a revised allocation of the Project’s parking spaces

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along with additional projected parking demand data which responded to the feedback received from the independent peer reviewers and comments from the public and Town staff, boards and commissions. With respect to parking, the Applicant submitted information concerning the availability of metered spaces at the Town's Fuller Street parking lot as well as metered spaces on Harvard Street.

23. The Applicant revised certain aspects of its proposal in response to feedback, including changing the unit program to 52 one-bedrooms and 10 two-bedroom units. The retail space on Harvard Street is now set-back three feet from the property line. The hardscape design extends along the front of the JCHE building to the KI sanctuary building and proposed addition. The Applicant modified the design and fenestration, and selected peer reviewers. The sixth floor is stepped back on Williams Street.
24. On March 8, 2017, the Applicant submitted final plans stamped by the architect and registered engineer. Said final plans now constitute "the Project."
25. The Board heard the concerns of Town staff, boards, commissions; and residents and weighed them against local needs. The Board finds that the Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.
26. The Board finds that the conditions imposed in this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the Project uneconomic. To the extent that such conditions may render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
27. The Board finds that granting the waivers requested by the Applicant from local bylaws and regulations is acceptable even though granting such waivers may have an adverse impact on Local Concerns. See Waivers, Exhibit 1. The Board voted with respect to Waiver Item BB, the permit to create a drop/off pick-up zone on Harvard Street, to approve the waiver subject to the ZBA's authority to grant such permit as part of the Comprehensive Permit. Nevertheless, the Board finds that the Local Concerns affected thereby do not outweigh the regional need for affordable housing, especially given the Project changes the Applicant has agreed to make, specifically the redesign of the building and improvements to the site layout in direct response to concerns of the Board and other parties in interest.
28. The Board acknowledges concerns raised by abutters and other interested parties. The Board finds that despite these concerns, the Project addresses local and regional housing needs.
29. The Board heard from numerous citizens, citizen groups and abutters in support of the project and notes that the proposed project is supported by the Board of Selectmen and the Housing Advisory Board ("HAB"). Additionally, the Board notes that at the recommendations of the HAB, the Board of Selectmen voted, subject to certain conditions, to commit up to \$2.5M of the Town-controlled HOME, CDBG, and Housing Trust funds to support the JCHE project. As described above, the Project's affordability mix during the term of the ground lease is described above and restated here: 50 units at or below 60% AMI; 8 units at or below 110% AMI and 4 units that are unrestricted and priced at below-market rents. After the term of the ground lease has expired, the Project includes the following unit affordability mix in perpetuity: twenty-five (25) percent of the units (16 units) shall be available to households earning at or below 80 percent (80%) AMI, adjusted for household size.

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30. The Board finds that many of the concerns expressed by abutters and other interested parties during the public hearing process involve pre-existing conditions on Fuller, Center, Williams, and Harvard Streets and the surrounding area that are not directly related to or caused by the Project.
31. The Applicant has had the opportunity to review the following Conditions and has no objections.

III. DECISION

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, voted to grant a Comprehensive Permit to the Applicant for the construction of sixty-two (62) units of rental housing and no more than 5,000 square feet of retail space with fourteen (14) parking spaces, as shown on the Site Plans, Architectural Plans, and Landscape Plans, subject to all of the conditions listed below.

IV. CONDITIONS

1. The Project shall include no more than sixty-two (62) units of rental housing in no more than one (1) building, as shown on the Site Plans and the Architectural Plans, and up to 5,000 square feet of retail space at the Site, and no fewer than fourteen (14) parking spaces.
2. Use of the fourteen (14) parking spaces shall be as follows:

Category	Weekday	Night/Weekend
JCHE Employees	5	3
Retail Employees	2	2
Congregation KI	3	3
Accessible Space	1	1
Car Share	1	1
Visitors to the Residential Units	2	4
Total	14	14

Non-visitor spaces may be used by visitors to the residential units when available.

3. Parking spaces shall not be provided to customers visiting the retail space.
4. Parking spaces shall not be provided to off-site residents or businesses.
5. Residents shall not be granted parking spaces at the Site and leases with residents shall prohibit residents from parking cars at the Site.
6. MBTA passes shall be offered at a discount to employees at the Project (including employees of the retail space) to discourage driving to the Site.

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7. Eighty-one (81) percent of the units (50 units) shall be available to households earning at or below sixty (60) percent of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
8. Thirteen (13) percent of the units (8 units) shall be available to households earning at or below 110 percent (110%) of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
9. The total maximum number of bedrooms shall be seventy-two (72) and the maximum number of units shall be 62 as listed in the following table.

Unit Type	Number of Units
One Bedroom	52
Two Bedroom	10
TOTAL	62

10. With respect to the Applicant’s request for waivers from local bylaws and regulations submitted with its Application as amended on March 8, 2017, the Board approves those waivers as listed in Exhibit 1 except for Waiver AA which is a tree removal permit, which is no longer required because the Applicant obtained relief from the Board of Selectman. Furthermore, the Board approves Waiver BB insofar as the Board has authority to grant such waiver pursuant to M.G.L. Chapter 40B; if, at any time, it is determined that the Board lacked authority to grant Waiver BB, the Applicant shall seek relief from the Transportation Board. The Project must comply with all bylaws and regulations not waived.
11. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the buildings, indicating façade design and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the plans listed under Item 4 under Procedural History. Color, windows, and materials shall be reviewed and approved on Site by the Assistant Director for Regulatory Planning within a reasonable timeframe.
12. Prior to the issuance of a Building Permit, the Applicant shall submit final site and landscaping plans indicating plant types and sizes and including an adequate plan for maintaining and replacing, as necessary, the plantings on the Site; location of, height of, and materials for fences, walls, and patios; exterior lighting; and location of utilities, mechanicals, parking spaces, bicycle storage, trash and recycling receptacles, and snow storage, subject to the review and approval for consistency with the final plans approved by the Board of the Assistant Director for Regulatory Planning.
13. Prior to the issuance of a Building Permit, the Applicant shall submit a lighting plan to the Director of Engineering and Transportation and the Building Commissioner for review and approval. All exterior lighting on the Site shall be installed and maintained so that no direct light or glare shines on any street or any nearby homes and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with local bylaws.
14. Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of the existing street trees and provide a plan for protecting existing street trees during

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construction, and planting additional street trees, for the review and approval by the Town Arborist and with all costs borne by the Applicant. Any proposed removal of street trees other than the tree on Williams Street to accommodate the proposed driveway which was approved by the Selectmen on February 7, 2017 shall be subject to M.G.L. c.87, the “Shade Tree Act.”

15. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan to the Director of Engineering and Transportation for review and approval for consistency with the final plans approved by the Board.
16. Traffic mitigation shall be as follows:
 - (a) The Applicant, in consultation with the Director of Engineering and Transportation, shall install a NO PARKING THIS SIDE sign on the southwest-bound side of Williams Street between the Centre-Harvard Street intersection and the driveway entrance, with all costs related to performance thereunder borne by the Applicant.
 - (b) The Applicant shall ensure that the Williams Street driveway apron is at the same level as the sidewalk elevation and that the material for the driveway apron is the same as that of the sidewalk.
 - (c) The Applicant shall install both visual and audible signals on the Site at the Williams Street driveway exit to alert pedestrians of exiting vehicles.
 - (d) The Applicant, in consultation with the Director of Engineering and Transportation, shall install a STOP sign and a stop line consisting of concrete pavers at the Site’s new driveway exit with all costs borne by the Applicant.
17. Prior to the issuance of a Building Permit, the Applicant shall submit the final rubbish/recycling plan and schedule to the Chief of Environmental Health for review and a determination of compliance with Town regulations. Said plan shall include provisions guaranteeing that:
 - (a) all rubbish generated from the Project (housing and retail) shall be handled and disposed of by private waste management services contracted by the Applicant in compliance with all applicable regulations;
 - (b) all recycling generated from the Project (housing and retail) shall be handled and disposed of by a private waste management service contracted by the Applicant in compliance with all applicable regulations;
 - (c) a total of eight (8) 96-gallon receptacles for rubbish and recycling, one compactor and two 2-yard dumpsters shall be provided for all tenant use and located in the trash room;
 - (d) Private waste management trucks shall not enter the Site before 7 AM or after 7:00 PM on weekdays and weekends;
 - (e) the trash chute and trash room will be insulated to mitigate noise;
 - (f) the schedule for the property owner’s rubbish and recycling pick-up demonstrating compliance with Town bylaws;
 - (g) rubbish receptacles and recycling containers shall not be stored in the public way on Harvard

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and/or Williams Streets at any time;

- (h) rubbish and recycling receptacles shall not be stored in the loading bay on Williams Street between 8 AM and 11 PM on weekdays and weekends;
 - (i) the Applicant shall inform the Public Health Department when the Project's residential units are ninety (90) percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance; and
 - (j) prospective retail tenants will be subject to local licensing and other approvals relative to the sale of food and beverages as required by local authorities. Additional reviews by municipal departments and boards shall occur at that time.
18. The loading zone pick-up/drop-off area on Harvard Street will be striped and contain signage indicating that it is a pick-up/drop-off area only. Striping and signage shall be reviewed and approved by the Director of Engineering and Transportation. The costs of fabrication and installation shall be borne by the Applicant.
 19. The loading zone pick-up/drop-off area on Harvard Street will include curb extensions on either side of the proposed loading zone with plantings.
 20. The Applicant shall be responsible for the snow removal of the sidewalk between the building and the loading zone as well as the loading zone to ensure they are always accessible with all costs related to performance thereunder borne by the Applicant.
 21. Plantings between the property line at the intersection of Harvard Street and Williams Street shall be no higher than three (3) feet for the first six (6) feet of the Williams Street front yard for optimal driver visibility.
 22. Prior to the issuance of a Building Permit for the building on the Site or a portion thereof, the Applicant shall submit a Construction Management Plan, consistent with the requirements listed in **Condition XX**, to the Building Commissioner and the Director of Engineering and Transportation for review and approval.
 23. Prior to the issuance of a Building Permit for each building on the Site or a portion thereof, the Applicant shall comply with the Public Works Department's Site Plan Review Checklist and with the Building Department's Certificate of Occupancy Process as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner respectively.
 24. Prior to the issuance of the final Certificate of Occupancy for the Project, the Applicant's registered architect and professional engineer shall certify in writing to the Building Commissioner that the Project complies with the Site Plans and the Architectural Plans required by this Decision.
 25. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with plans showing that no erosion from the Site will cause deposition of soil or sediment upon adjacent properties or public ways. For purposes of this Decision, "Commencement of Construction" shall mean the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities; the placement of or mobilization for construction activities including but not limited to placing materials, machinery, supplies or construction

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equipment on the Site and removal or disconnection of utilities or water or sewer lines; any alteration, repair or improvements to a building or structure.

26. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit as-built plans certified by a registered architect to the Building Commissioner to determine conformance with the approved plans and the Conditions of the Decision.
27. During construction and initial leasing of the Project, the Applicant may post on Site no more than one (1) temporary sign for the Project, no greater than twenty square feet (20 sf), with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.
28. After the issuance of the final Certificate of Occupancy, before the Applicant replaces or changes any exterior materials, the Applicant shall submit plans showing replacement materials, colors, and window profiles for the review and approval of the Assistant Director for Regulatory Planning (if they are other than those indicated on the plans listed **Conditions XX**) unless the changes are deemed substantial by the Subsidizing Agency pursuant to 760 CMR 56.04(5).
29. When a Certificate of Occupancy is issued for the first 50 percent (50%) of the residential units, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law.
30. Prior to the Commencement of Construction, the Applicant shall provide proof to the Director of Engineering and Transportation that utility companies shall permit existing utilities to be eliminated or relocated underground and that the Town shall not be financially responsible for the relocation of said utilities underground.
31. Prior to the issuance of a demolition permit, the Applicant shall conduct a pre-construction survey of the above and below-grade structures located on properties at 364 Harvard Street, 12 Williams Street, and the Centre-Williams Condominium (85-89 Centre Street and 11-21 William Street), subject to receipt from abutters of rights of access. Any damage to structures within this area due to construction of the Project shall be the financial responsibility of the Applicant to repair.
32. Any blasting on the site must receive prior approval by the Fire Department and all other relevant Town departments.
33. Contemporaneously with sending or within ten (10) days of receiving any and all correspondence to or from the Massachusetts Historical Commission and/or the Massachusetts Secretary of Energy and Environmental Affairs concerning the Project, the Applicant shall provide the Zoning Board of Appeals and the Planning and Community Development Department with copies.
34. Prior to the issuance of a Building Permit, the Applicant shall submit a Transportation Access Plan ("TAP") submitted with the Application for reducing the number of vehicular trips to and from the Project, which was prepared in accordance with the Transportation Access Plan Guidelines of the Town (Sec. 5.09.3.c.6) of the Town Zoning Bylaw, and which shall be subject to the review and approval of the Director of Engineering and Transportation.
35. As a condition of any approval hereunder, during the term of the ground lease, eighty-one (81) percent of the units (50 units) shall be available to households earning at or below sixty (60) percent

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of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development and subject to approval by the Subsidizing Agency, as defined in 760 CMR 56.02, as the project administrator, the Affordable Units and the remaining units shall be eligible to be included in the Town’s SHI. Further, during the term of the ground lease, thirteen (13) percent of the units (8 Units) shall be available to households earning at or below 110 percent (110%) AMI, adjusted for household size. The fifty-eight (58) units available to households earning at or below 110% AMI, shall be referred herein as the (the “Ground Lease Term Affordable Units”).

36. As a condition of any approval hereunder, at the end of the term of the ground lease, at least twenty-five (25%) percent of the units (16 units) shall be available to households earning at or below 80% AMI, adjusted for household size (the “Permanently Affordable Units”).
37. Six (6) percent of the units (4 units) shall be unrestricted and priced at below market rents (the “Unrestricted Units”).
38. The Ground Lease Term Affordable Units and Permanently Affordable Units shall be dispersed throughout the Project and shall have the same bedroom “ratio” or “mix” as the Unrestricted Units (as defined in Condition 31) in the Project, subject to the approval of the Subsidizing Agency. The specific units in the Project designated as the Ground Lease Term Affordable Units may change from time to time, provided that there shall be no fewer than fifty-eight (58) units in the Project which are Ground Lease Term Affordable Units. The specific units in the Project designated as the Permanently Affordable Units may change from time to time, provided that there shall be no fewer than sixteen (16) units in the Project which are Permanently Affordable Units.
39. The Ground Lease Term Affordable Units and Permanently Affordable Units shall:
 - (a) Be evenly dispersed throughout the project
 - (b) Be indistinguishable from the unrestricted units in external appearance
 - (c) Have the same interior finishes as the unrestricted units
 - (d) Contain the same square footage as the average size of the Project’s unrestricted units containing the same number of bedrooms
40. Lease and occupancy agreements shall be for a term of not less than one year. Nightly or short-term rentals shall not be permitted.
41. Prior to the issuance of a Certificate of Occupancy by the Building Commissioner, the Director of Planning and Community Development will review and approve the distribution of units between the Affordable and Unrestricted Units to ensure that the floor plans and amenities of the Ground Lease Term Affordable Units relative to the Unrestricted Units are consistent with the conditions of the Subsidizing Agency’s approval of the Project.
42. Local Preference: The Applicant shall work with the Director of Planning and Community Development to request that up to 70% of the Ground Lease Term Affordable Units be awarded to households with local preference during the initial lottery, as defined by the Town and subject to the approval of the Subsidizing Agency.
43. The Director of Planning and Community Development must review the affirmative marketing plan for the Ground Lease Term Affordable Units before it is submitted to the Subsidizing Agency for

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final approval. The Director of Planning and Community Development will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.

44. For the period in which the Project is being monitored by the Subsidizing Agency, upon the Town's request, the Applicant/Owner shall share all monitoring reports with the Director of Planning and Community Development including annual rent increases and information verifying income eligibility for affordable units.
45. Twenty-five percent (25%) of the units in the Project shall have an affordability term in perpetuity (subject to the following paragraph). Prior to the issuance of any Building Permit, a Regulatory Agreement, which shall include monitoring provisions if such provisions are not provided in a separate Monitoring Services Agreement, shall be executed by both the Applicant and the Subsidizing Agency, in form and content as approved by the Subsidizing Agency as Subsidizing Agency, and recorded with the Registry of Deeds by the Applicant against the Property, provided, however, that if a lender or governmental funding agency for the Project requires the issuance of Building Permits prior to any construction loan closing, then the Building Permits may be issued, subject to the Building Commissioner's satisfaction with compliance with all other applicable legal requirements for issuance, and released to the construction lender's closing attorney, who may then release them to the Applicant upon the execution and recording of the Regulatory Agreement. Such restrictions shall take priority over all financing documents related to the Project and shall survive foreclosure. The Applicant/Owner shall provide copies of monitoring reports to the Town. Moreover, a second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in Exhibit 2) shall be prepared prior to expiration of the initial Regulatory Agreement, approved by Town Counsel, executed and recorded for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent to continue such restrictions. Such agreement shall be consistent with the terms of this Decision and with the customary terms of Town's Regulatory Agreements.
46. As described above, the Applicant will execute a ground lease with Congregation Kehillath Israel, the current owner of the Site (the "Lessor") with a lease term of no less than 75 years. The Applicant has agreed to the following affordability mix for which the term shall be the same as the term of the ground lease: eighty-one (81) percent of the units (50 units) shall be available to households earning at or below sixty (60) AMI, adjusted for household size; thirteen (13) percent of the units (8 units) shall be available to households earning at or below 110 percent (110%) AMI, adjusted for household size. In addition, the Lessor shall be a signatory to the Regulatory Agreements referred to in the prior paragraph to provide that the Project shall remain affordable (which shall mean 25% of the units at 80% of area median income) for so long as the building exists and does not comply with underlying zoning. Furthermore, Lessor shall execute an agreement which shall be in a form acceptable to Town Counsel, wherein Lessor agrees to be bound by the foregoing affordability restrictions notwithstanding the expiration or earlier termination of the ground lease. Prior to the Commencement of Construction, the Applicant shall provide proof in writing to the Director of Planning and Community Development or her designee that the aforementioned agreement was recorded.
47. During the affordability period required by the Subsidizing Agency, the Project shall be monitored by the Subsidizing Agency or its successors. For the period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency, the Applicant shall retain the Town or a consultant the Town designates as the Monitoring Agent for the Project. All costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.

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48. Subject to the requirements of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements (as defined in Exhibit 2, Terms To Be Included in Replacement Town Regulatory Agreement) relative to limited dividends from the Project during the Subsidy Period (as defined in Exhibit 2), the Applicant shall provide a copy to the Board of Selectmen of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by the Applicant to the Subsidizing Agency to revalue the Applicant's equity in the Project, made by the Applicant to the Subsidizing Agency relative to the Applicant's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g. all statements required to be submitted to the Subsidizing Agency as set forth in the Subsidizing Agency's Regulatory Agreement), contemporaneous with the Applicant's delivery of such documents to the Subsidizing Agency. The Applicant shall be bound by all terms contained in the Subsidizing Agency Agreements, including the terms pertaining to limited dividends and the use of development revenues.
49. The Town will not issue a Building Permit for the Project without review of final plans by the Assistant Director for Community Planning and final approval from the Director of Planning and Community Development or their designee.

Fire Safety

50. Prior to the issuance of a Building Permit, the Fire Chief or his designee shall review and approve the final site plan to ensure that fences and landscaping do not impede firefighter access to the lower windows in both buildings.
51. Prior to the application for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) the building has enhanced NFPA-13 (or latest version of the NFPA code) designed sprinkler systems and (b) direct alarm notification to the Fire Department designed in accordance with the latest versions of Building and Fire Codes.

Infrastructure

52. The following portions of the Project shall be and shall remain forever private and the Town shall not have, now or ever, any legal responsibility for their operation, maintenance, repair, or replacement:
- (a) The on-site stormwater management system;
 - (b) All sewer, stormwater and water connection, lines and equipment required from the public way to the buildings;
 - (c) All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable system.
53. The Applicant shall operate and maintain all of the foregoing **in Condition** XX in good working condition and repair at all times at its sole cost.
54. Prior to issuance of a Building Permit, all water, stormwater and sewage facility designs shall be subject to review and approval by the Director of Engineering and Transportation for consistency with the final plans approved by the Board.

Pre-Building Permit Review

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55. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:

- (a) Final site plans and architectural plans have been reviewed and approved by the Assistant Director for Regulatory Planning in accordance with **Conditions XX and XX.**
- (b) The Director of Engineering and Transportation has reviewed and approved the final site and lighting plans in accordance with **Condition XX**; the final stormwater management and drainage plans in accordance with **Condition XX**; the water, stormwater and sewage facility designs in accordance with **Condition XX**; the erosion control plans in accordance with **Condition XX**; the pavement surfaces in accordance with **Condition XX**; and all other items requiring review, verification, or approval by or to the satisfaction of the Director of Engineering and Transportation as listed in these Conditions.
- (c) It has paid all fees and funded all improvements.
- (d) It has initiated and participated in a pre-construction meeting to discuss the proposed construction schedule with its contractor and the Town, including but not limited to the Building Commissioner, Director of Engineering and Transportation, and the Fire Chief.
- (e) All required local, state and federal approvals and permits have been obtained and it has obtained Final Approval from the Subsidizing Agency as provided in 760 CMR 56.05(8)(c)(2) and (3).
- (f) The Building Commissioner and Director of Engineering and Transportation have approved the Construction Management Plan (**Condition XX**).
- (g) The Chief of Environmental Health has reviewed and approved the rubbish and recycling plan in accordance with **Condition XX.**
- (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- (i) The Assistant Director for Community Planning has reviewed the final plans in accordance with **Condition XX.**
- (j) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with **Condition XX.**
- (k) The Town Arborist has reviewed a plan to protect existing street trees and/or add new street trees in accordance with **Conditions XX and XX.**

Construction

56. During construction, the Applicant shall conform with all local, state, and federal laws including but not limited to those regarding air quality, noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents and businesses in the general area. The Applicant shall provide the Police Department with the name and 24-hour telephone number for the project manager responsible for construction. The hours for operation of construction equipment, deliveries and personnel are limited to: Monday through Friday (excluding Federal and State holidays) from 7:00 am to 5:00 pm; and Saturday from 8:30 am to 5:00

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pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.

57. Prior to Commencement of Construction and subject to approval by the Building Commissioner and the Director of Engineering and Transportation, the Applicant shall provide a Construction Management Plan that shall include but not be limited to: designation of truck routes; a survey of existing trees on the Site and measures to ensure tree protection during construction; limit of work areas; where construction vehicles, materials and equipment will be stored; parking hours and locations for construction workers' vehicles; location of portable toilets; rodent and insect control plan; dust/airborne particle control plan; location of security fencing, trash areas, and construction trailers; the timetable for excavation and overall earthwork operation; and the number and routes through Brookline of necessary truck trips.
58. The Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than thirty (30) months except subject to causes beyond the Applicant's reasonable control. Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11).
59. The Applicant shall request its contractors to keep in optimum working order any and all construction equipment that makes sounds.
60. Upon the request of the Director of Engineering and Transportation and the Building Commissioner, the Applicant shall provide written reports during construction outlining the status of the Project.
61. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with a report and photographs of the condition of pavement surfaces along truck routes in Brookline before Construction Commencement and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic does not adversely affect the pavement.

General

62. The provisions of this Comprehensive Permit shall be binding upon the heirs, successors and assigns of the Applicant and the obligations shall run with the land.
63. Any reference to Town staff shall be read to include a designee (either other staff members or a consultant) of that person or of the head of the respective Town department or division.
64. If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.
65. All required materials pursuant to this decision and outlined conditions shall be submitted electronically to each respective department.
66. Upon execution by the members of the Board, the Clerk of the Board is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.
67. Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.

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68. This Comprehensive Permit shall expire if construction is not commenced within three (3) years from the date this Decision becomes final as provided in 760 CMR 56.05(12)(c), subject to the tolling provisions of 760 CMR 56.05(12)(c). For purposes of this paragraph only, Commencement of Construction is defined as the construction of the foundation of at least one of the Project's buildings. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).
69. If the Applicant revises any of the Plans, it shall present the revised plans to the Board in accordance with 760 CMR 56.05(11).
70. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
71. All utilities shall be underground.
72. Applicant shall pay for the Town's cost of Police and Fire details for the Project, in accordance with the Town's standard practices.
73. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.
74. Prior to thirty (30) days subsequent to the end of all applicable appeal periods, the Applicant shall record this Decision in the Norfolk County Registry of Deeds and shall provide the Board and the Building Commissioner with a copy of this Decision endorsed with the applicable recording information.
75. There shall be no structures or buildings or paved surfaces on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.

ATTACHED:

Exhibit 1 (Granted Waivers)

Exhibit 2 (Terms to Be Included in Replacement Town Regulatory Agreement)

Exhibit 3 (Public Hearing Notices)

RECORD OF VOTE

The Board of Appeals voted unanimously to grant a Comprehensive Permit subject to the above-stated conditions:

_____ Jonathan Book, Chairman, Brookline Board of Appeals

Wherefore a Comprehensive Permit, consistent with the conditions of this Decision, is granted to the Applicant.

Filed with the Town Clerk on _____.

ATTEST:

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Patrick J. Ward
Clerk, Board of Appeals

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