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**TOWN OF BROOKLINE
MASSACHUSETTS**

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT
108 CENTRE STREET
BOARD OF APPEALS CASE NO. 2021-**

Date: _____

Re: Application of Hebrew SeniorLife, Inc. for a Comprehensive Permit
“Application”

Location: Town Assessor’s Atlas Map Sheet 079 Block 20 Lot 00, known and numbered as
108 Centre Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On June 3, 2021, the Department of Housing and Community Development (“DHCD”) issued a Project Eligibility Letter (“PEL”) to Hebrew SeniorLife, Inc. (the “Applicant” **or “HSL”**).
2. On June 3, 2021, the Applicant applied for a Comprehensive Permit pursuant to G.L. Chapter 40 Section 20-23 (the “Act”), to construct a seven story building with 54 units of rental housing for senior citizens 62-years of age and older within 55,856 square feet of living area of which 5000 sf on the ground floor would be rentable community space and with no parking spaces to be constructed with fossil-fuel-free heating and cooling and to the Passive House energy efficiency standard (the “Original Project”) on approximately 12,090 square feet of land located on the southbound side of Centre Street known and numbered as 108 Centre Street, Brookline, Massachusetts (the “Site”). **The Site abuts: (i) an improved parcel(s) to the southeast having a street address of 100 Centre Street and improved by a nine (9) story building containing _____ units of senior housing (“100 Centre Street”), and (ii) an improved parcel(s) to the southwest having a street address of 112-120 Centre Street and improved by a twelve (12) story building containing _____ units of senior housing (“112 Centre”). The Applicant identified 100 Centre, 112 Centre and the Site as part of a “campus” between two parcels known and numbered 100 Centre Street and 112-120 Centre Street, respectively, and owned by the Applicant (the “HSL Campus”) all owned and operated by the Applicant and affiliated entities.**
3. During the public hearing, Alison Steinfeld, Brookline Planning Director, asked the Department of Housing and Community Development (“DHCD”) for extensions from statutory deadlines for Local Hearings pursuant to 760 CMR 56 for Temporary Relief from the Impact of Multiple Comprehensive Permit Applications.
4. On August 27, 2021, DHCD submitted a letter to Brookline Select Board Chair Heather Hamilton granting the Board an extension to close the public hearing for 108 Centre Street

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Comprehensive Permit application beyond the 180-day deadline of January 8, 2022, to February 27, 2022 for Temporary Relief from the Impact of Multiple Comprehensive Permit Applications.

5. On September 20, the Brookline Zoning Board of Appeals (the “Board” **or “ZBA”**) issued a charge to the Applicant to mitigate the massing of the proposed building and lack of open space on the Site. The Board also expressed concern over the lack of parking serving the Site’s proposed use. The Board stated that if the proposal ~~does did~~ not provide necessary operations and amenities on the Site to support the program of the Original Project, then the Applicant would need to consider an integrated plan for the entire HSL Campus and the Original Project to provide safe circulation for residents of the Original Project and the balance of the HSL Campus, with-including but not limited to, shared open space and parking resources among the properties within the HSL Campus. The Board authorized Maria Morelli, Senior Planner, Brookline Planning Department, to convene working group meetings with the Applicant and independent peer reviewers to address the Board’s charge.
6. Ms. Morelli convened working group meetings on the following dates that were attended by the Board’s independent architecture peer reviewer, Clifford Boehmer; the Applicant’s attorney, Jennifer Dopazo Gilbert; and the Applicant’s principals, including but not limited to, Deborah Morse, Vice President of Real Estate; James Brown, Executive Director; and architect Janis Mamayak, **Icon-ICON** Architecture: September 23, 2021, September 30, 2021, October 7, 2021, October 14, 2021, and October 27, 2021.
7. On November 22, 2021, the Applicant submitted revised plans described in Item **86** under Procedural History (the “Project”) that in part reduced the rentable community space ~~space~~ to 4,200 square feet and provided-granted the Draft Easement Plan provided in Exhibit **4** that indicates the shared open space amenities, walkways, and handicapped parking spaces on the HSL Campus to be provided by means of executed cross-easements, subject to the conditions of this Decision, for the use of HSL Campus residents and residents of the Project in perpetuity.
8. The materials submitted by the Applicant in the Application and during the public hearing include:

Comprehensive Permit Application:

Comprehensive Permit Plans for 108 Centre submitted to the Board for the November 22, 2021, hearing and as follows:

Sheet Numbers and Titles

EX-100 Existing Conditions Plan prepared by Nitsch Engineering and dated June 3, 2021 and November 16, 2021

[“Existing Conditions”]

Comment [MM1]: See JDG use of CCB throughout—resolve with JDG

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Civil drawings dated November 16, 2021, and stamped by George P. Ryan, Professional Engineer, Stantec Planning and Landscaping, Boston, Mass.:

C-100 Zoning Plan

C-102 Site Preparation Plan
C-300 Grading and Utility Plan
C-500 Details
C-501 Details
C-502 Details

[“Civil Drawings”]

Landscaping drawings dated November 16, 2021, and stamped by Dylan Stevens, Registered Landscape Architect, Stantec Planning and Landscaping, Boston, Mass.:

C-200 Layout and Materials Plan
C-400 Planting Plan
Unnumbered Tree Preservation and Removal Plan
Unnumbered Tree Planting Plan

[“Landscape Plans”]

Architectural Drawings and Plans dated ~~November 16, 2021~~ December 10, 2021, and stamped by

Janis B. Mamayek, Registered Architect, ~~Icon~~ ICON Architecture, Boston, Mass.:

A-001 Existing Context Plan

A-002 Site Aerial

A-003 Precedent Images

A-101 Basement Floor Plan
A-102 Ground Floor Plan
A-103 Upper Floor Plans (Level 2 and Level 3)
A-104 Upper Floor Plans (Level 4 and Level 5)
A-105 Upper Floor Plans (Level 6 and Level 7)
A-106 Roof Plan
A-201 Building Elevation (North Elevation)
A-202 Building Elevation (West Elevation)
A-203 Building Elevation (South Elevation)
A-204 Building Elevation (East Elevation)

A-205 Perspective

A-301 Building Section (Through Stair Towers)

A-302 Building Section (Through Vestibule)

A-303 Building Section (Through Café)

A-401 Building Shadow Studies

A-402 Building Shadow Studies

[“Architectural Drawings and Plans”]

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Stormwater Report dated June 3, 2021, and prepared by Stantec Planning and Landscaping, Boston, Mass.

Preliminary Geotechnical Report Guidelines Report dated February 14, 2020, and prepared by Haley & Aldrich, Boston, Mass.

["Stormwater Management Plan"]

Traffic Impact Study dated September 20, 2021 and revised October 19, 2021, and prepared by Stantec Consulting Services Inc., Boston, Mass.

[Traffic Impact Study"]

Trash and Recycling Plan dated July 30, 2021

["Trash and Recycling Plan"]

Site Operations and Turning Movements submitted November 22, 2021

Campus Circulation submitted November 22, 2021

["Site Operations and Circulation"]

Draft Easements Plan as provided in Exhibit 4 of this Decision

["Draft Easements Plan"]-**update to include front yard at 100 Centre?**

9. The Applicant submitted a request for waivers from local by-laws and regulations dated June 3, 2021, and amended **November 22**~~December 13, 2021~~; a Zoning Table dated November 22, 2021; and a Zoning Plan dated November 16, 2021 ("Waivers").
10. The ~~Board Brookline Zoning Board of Appeals (the "Board" or the "ZBA")~~ with the consent of the Applicant opened a duly noticed and advertised public hearing on July 12, 2021. The Board continued the hearing and/or deliberated on testimony on the following dates: August 30, 2021, September 20, 2021, October 20, 2021, November 3, 2021, November 22, 2021, December 13, 2021, **ADDITIONAL DATES**. All continuances beyond 180 days but within 270 days from June 3, 2021 were authorized by DHCD's letter of August 27, 2021, granting Temporary Relief from the Impact of Multiple Comprehensive Permit Applications.
11. The Board conducted a duly noticed site visit on July 27, 2021.
12. 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 part of the public record of these

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proceedings and have been taken into consideration by the Board in ~~rendering~~ issuing its Decision.

13. During the course of the public hearing, Town staff and boards, independent peer reviewers, local residents, and technical experts submitted extensive oral and written testimony with respect to the Original Project and the Project on issues of height, yard setbacks, massing, scale, architectural style, development pattern and streetscape/public realm, **lighting**, open space, circulation, parking demand, feasibility of the parking plan, maneuverability of vehicles and emergency apparatus, handicapped parking spaces, traffic and pedestrian safety, stopping sight distance and visibility of pedestrians at the driveway, intensity of use related to programming and coordination of functions occurring at the ground plane, including but not limited to, trash management and truck deliveries and ride share drop off and pick up, stormwater management and impact on municipal systems, environmental, fire, and public health and safety, foundation method, abutters' viewsheds, shadow impacts, energy efficiency and non-fossil-fuel systems, ~~outreach to residents of the HSL Campus and neighbors.~~

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14. The following consultants and independent technical peer reviewers assisted the Board in its review of the Application:

MassHousing Partnership Technical Assistance Fund – Chapter 40B Advisor

Judith A. Barrett, Principal
Barrett Planning Group LLC
Plymouth, Massachusetts

Engineering and Traffic

James Fitzgerald, P.E., LEED AP
Jane R. Davis, P.E.
Director of Transportation
Environmental Partners Group
Quincy, Massachusetts

Parking Design/Feasibility and Parking Demand Management

Arthur G Stadig, P.E.
Vice President and Managing Principal
Greg Strangeways, AICP
Walker Consultants
Boston, Massachusetts

Site and Building Design

Clifford Boehmer, AIA, Principal
Davis Square Architects
Somerville, Massachusetts

15. The Board deliberated on the Application at a public hearing held on **DATE**, and voted to grant a Comprehensive Permit subject to the conditions below.

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16. On **DATE**, the Board closed the public hearing.

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 June 3, 2021, approximately 9.9% 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 those seeking to purchase, rent, and rehabilitate affordable homes; and other Chapter 40B housing developments.
3. DHCD determined that the Original Project was eligible under the Low Income Housing Tax Credit ("LIHTC") program for 54 units as follows: 11 units would be available to households earning at or below 30% Area Median Income ("AMI") and 43 units would be available to households earning at or below 60% AMI, adjusted for household size, as published by the Department of Housing and Urban Development ("HUD").
4. On November 30, 2021, DHCD ~~requested~~ **recommended** that the Applicant adjust the mix of affordable housing units as follows: ~~14-16~~ units would be available to households earning at or below 30% AMI, ~~4 units would be available to households earning at or below 50% AMI,~~ and ~~36-38~~ units would be available to households earning at or below 60% AMI.
5. The Site falls within a corridor that the Brookline Housing Production Plan ("HPP") identifies as an opportunity for additional higher density housing development. The HPP was approved by the Brookline Planning Board and the Brookline Select Board in September 2016 and approved by ~~DHCD the Massachusetts Department of Housing and Community Development ("DHCD")~~ on November 9, 2016.
6. The Site is located in the M-2.0 Multifamily Zoning District between two buildings on the HSL Campus that provide a total of approximately 346 units of affordable rental housing.
7. The structure abutting the Site ~~to the south~~ at 100 Centre is a nine-story residential building with a roofline that ~~would approximate~~ is emulated by the roofline of the proposed Project.
8. The structure ~~abutting the Site to the north~~ at 112 Centre is a twelve-story residential building.
9. The Site abuts three- and four-story residential structures on the northbound side of Centre Street in the M-1.0 Multifamily Zoning District.
10. The Site abuts the Brookline Senior Centre on Winchester Street to the west.

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11. Centre Street is a two-way street, single lane in both directions, with on-street parking on the northbound side, and with a bike lane on the southbound side, and no loading zones in the public way.
12. Thomas Brady, Town Arborist, was satisfied that the proposed driveway curb cuts would not conflict with the existing public shade tree.
13. The Board's independent parking peer reviewer, Greg Strangeways of Walker Consultants, in his report dated October 12, 2021, assessed a parking demand ratio of 0.31 per residential unit, or a need of about 17 parking spaces for the Original Project, and, in combination with an easement for two (2) handicapped spaces located on 100 Centre but serving the Site, there appears to be sufficient available public parking in the vicinity of 108 Centre to absorb the new demand, though this Original Project's parking demand would reduce the amount of available-public parking available to others.
14. Mr. Strangeways recommended that the Applicant prepare an "aggressive Transportation Demand Management program and assist those who need parking with information about where to find available spaces." (also referred to herein as "TDM").
15. The Town's on-street and public parking policy for the areas within walking distance of the Site limits parking to a maximum of two hours and prohibits overnight parking unless the Town's has issued a residential or guests overnight parking permit as part of its very limited overnight parking program.
16. The Board's independent traffic peer reviewer James Fitzgerald of Environmental Partners, stated in his October 13, 2021, report that *"a key part of the TDM plan relies on walking alternatives and public transportation services, which itself depends on accessibility for pedestrians. Environmental Partners ("EP") noted non-compliance with accessibility guidelines throughout the study area, additional to what was discussed in the Traffic Impact Study. Aside from pedestrian curb ramps, signal heads, and deteriorated/tree-disturbed sidewalks, some sidewalk locations within the study area appear to contain steep cross-slopes that are likely not ADA-compliant. Moreover, the exclusive pedestrian phases at signalized intersections do not provide adequate intervals for walk and clearance at every location. Since these issues may adversely affect the use of public transportation services and walking alternatives, EP recommends considerations be made for addressing accessibility issues."*
17. The Applicant agreed to ~~the~~ provide the public improvements and mitigation as recommended by the Transportation Board in its October 20, 2021, letter to the Board, including the provision of handicapped parking spaces on ~~the HSL Campus~~ 100 Centre for the use of residents of the Project and accessibility and public improvements at the intersection of Centre Street and Fuller Street.
18. In response to the Board's charge, the Applicant offered to residents of the Project access to improved open space amenities ~~and~~, walkways throughout the HSL Campus, and two

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handicapped parking spaces ~~on at the HSL Campus 100 Centre~~. The Board ~~then stated~~noted at its November 3, 2021, public hearing that the Applicant would need to ~~guarantee effectuate~~ the aforementioned access in perpetuity ~~through legal~~ as one of the conditions of Board's approval of the Project.

19. The Applicant confirmed at the Board's November 22, 2021, hearing that cross-easements would be the legal mechanism used provide to residents of the Project in perpetuity open space amenities, walkways, and handicapped parking spaces as indicated on Exhibit 4 "Draft Easements Plan" and that the Applicant would execute the aforementioned cross-easements upon approval by Town Counsel prior to the issuance of a Building Permit for the Project.
20. Independent design peer reviewer Clifford Boehmer testified that the Applicant rigorously studied different siting and massing options through three-dimensional digital massing models, yard setback and driveway configurations, site sections with sky-view angles, and shadow studies, and he concluded that the alternative siting and massing studies would ~~not offer sufficient open space to warrant the negative impact of the alternative studies on~~reduce the number of units included in the Project's 100% affordable housing program and sustainability program ~~that by far exceeds the minimum requirements of the State's Stretch Energy Code~~.
21. At the **DATE**, hearing, the Board granted all waivers requested from Zoning and Town By-Laws to the limits and scope indicated in Exhibit 3.
22. The Board heard the concerns of Town staff, boards, commissions, and residents and weighed them against local needs. The Board finds that the Project, subject to compliance with the Conditions below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.
23. The Board finds that the Conditions imposed in this Decision are necessary in order to address Local Concerns, as that term is defined in 760 CMR 56.02. The Board finds that such conditions will not render the Project uneconomic. To the extent that such Conditions render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
24. The Board finds that granting certain waivers of local by-laws and regulations is acceptable even though granting such waivers may have an adverse impact on Local Concerns.
25. The Board acknowledges concerns raised by abutters and other interested parties concerning the size and density of the project and its lack of open space and parking.
- 25.26. **The Board finds the criteria under Section 5.09.4 "Community and Environmental Impact and Design Standards have been satisfied.**
- ~~26-27.~~ The Applicant has had the opportunity to review the following Conditions and has no objections.

Comment [MM2]: have been comprehensively reviewed / ?

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DECISION

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, grants a Comprehensive Permit to the Applicant for the construction of 54 units of rental housing and zero parking spaces on the Site and 4,200 square feet of rentable community space, as shown on the Civil and Landscape Drawings, Stormwater Management Plan, Architectural Drawings and Plans, Draft Easements Plan, Trash and Recycling Plan, as shown under **Item 86** under Procedural History, subject to all of the Conditions listed below.

CONDITIONS

1. The Project shall include no more **than** 54 units of rental housing in one building within seven stories as configured on the Architectural Drawings and Plans shown in **Item 86** under Procedural History.
2. The total maximum number of bedrooms shall be 54 as follows:

Unit Type	Number of Units	Total Number of Bedrooms
One Bedroom	54	54

3. The Project shall have no more than 4200 square feet of **non-residential** community space.
4. The following uses on the Site shall be prohibited: **[define]**
5. With respect to the Applicant’s Request for Waivers from local by-laws and regulations dated November 22, 2021, the Board approves those Waivers in Exhibit **3** to the scope and limits specified by the Board as indicated in Exhibit **3**. The Project must comply with by-laws and regulations not waived.
6. Prior to the issuance of a Building Permit, the Applicant shall execute cross-easements **with appropriate mortgage subordination language** approved by Town Counsel consistent with the Draft Easements Plan provided in Exhibit **4** to provide and maintain in perpetuity as follows: at least two handicapped parking spaces for use of residents of the Project, **[trash storage,]** open spaces and walking paths for the use of **and access by** residents of the Project **and of the** located on the Site and elsewhere on the balance of the HSL Campus; and landscaping **improvements**, grading, outdoor seating, and plantings on the HSL Campus, **all as shown on the Draft Easement Plan, and shall provide evidence of recording/filing of such final approved cross easements with the appropriate Registry of Deeds/Land Registration Office together with executed and recorded/filed subordinations of all liens against all or any portion of the Site, 100 Centre and/or 112 Centre.**

Housing

7. As a condition of any approval hereunder, at least 20% of the units shall remain affordable in perpetuity and shall be for eligible households whose annual income may not exceed 50% of AMI, adjusted for household size, as determined by the United States Department of Housing and Urban Development (the “Affordable Units”); and subject to approval by the Subsidizing

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Agency, as defined in 760 CMR 56.02, as the project administrator, the Affordable Units and the units priced at market rates (the “Market Rate Units”) shall be eligible to be included in the Town’s SHI. ~~[NOTE: This is a minimum requirement on all Comprehensive Permit projects and will ensure that, in the case of a rental housing project, all units will remain on the SHI.] This wording of this condition is deliberate and not in error, should future funding be an issue.]~~

Comment [MM3]: VIRGINIA BULLOCK

8. For at least the first 30 years, one hundred percent (100%) of the units shall be available to senior and disabled households earning at or below 60% of the 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. All units shall be eligible to be included on the Town’s ~~SHI. Subsidized Housing Inventory.~~ ~~[Note: At the end of the first 30-year period, the Applicant would obtain new subsidies to achieve continued affordability at levels as close to the approved Project as possible.]~~

Comment [MM4]: VIRGINIA BULLOCK

9. 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 approved by the Town as the Monitoring Agent for the Project. Any costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.

10. 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 between the Applicant and the Subsidizing Agency, 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 agreements shall be consistent with the terms of this Decision and with the customary terms of the Town’s Regulatory Agreements.

11. 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.

12. Lease and occupancy agreements shall be for terms of not less than six months with the exception of extensions. No more than two such extensions of an existing lease for a period of less than six months shall be permitted. Nightly rentals shall not be permitted. Short-term rentals such as Airbnb and similar lodging services shall not be permitted.

13. Local Preference: The Applicant shall work with the Assistant Director for Community Planning to request that no ~~less-more~~ than 25% of the Affordable Units be awarded to households with local preference during the initial lottery, subject to the approval of the Subsidizing Agency.

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14. The Director of Planning and Community Development will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.
15. The Town will not issue a Building Permit for the Project without approval from the Subsidizing Agency.

Fire Safety

16. 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 Project's building has enhanced NFPA-13 (or latest version of the NFPA code) designed sprinkler systems, and
 - b. the Project's building has direct alarm notification to the Fire Department and is designed in accordance with the latest version of Building and Fire Codes.
17. Prior to the issuance of a Building Permit, the Applicant shall submit a final site plan for the review and approval of the Fire Chief.
18. Prior to the issuance of a Building Permit, the Applicant shall submit plans for access to the roof for the review and approval of the Fire Chief.
19. Prior to the issuance of a Building Permit, the Applicant shall submit a construction site safety plan in compliance with NFPA 241 prepared by a third-party fire safety professional who has been approved by the Fire Chief ("Construction Site Safety Plan") for the review and approval of the Building Commissioner and the Fire Chief, with all costs thereunder borne by the Applicant. The Construction Site Safety Plan shall include measures to decrease and/or eliminate fire safety hazards. The Fire Chief or their designee may review onsite operations during construction. The third-party fire safety professional shall report any conflicts with the Construction Site Safety Plan to the Fire Department in a timely manner.
20. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit a fire safety and emergency procedures plan for the review and approval of the Fire Chief or their designee.

Pre-Construction / Stormwater Management / Infrastructure

21. Prior to the Commencement of Construction, the Applicant shall provide to the Director of Engineering and Transportation plans showing that no erosion from the Site will cause deposition of soil or sediment upon adjacent properties or public ways or into public stormwater systems. For purposes of this Decision, "Commencement of Construction" shall mean: the initial disturbance of surface materials 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

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construction equipment on the Site and removing and disconnecting of utilities or water or sewer lines; and/or any alteration, demolition, repair, or improvements to a building or structure (~~“Commencement of Construction”~~).

22. Prior to Commencement of Construction and subject to the approval by the Building Commissioner in conjunction with the Director of Engineering and Transportation, the Health Commissioner, and the Fire Chief, the Applicant shall provide a Final Construction Management Plan that shall include but not be limited to: designation of truck routes, sequencing of truck traffic; limit of work areas; staging areas; the locations 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; security fencing; trash areas; construction trailer locations; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips.
23. The Applicant shall include the Final Construction Management Plan in the contract with the Project’s general contractor and be binding on all subcontractors for the duration of construction.
24. Prior to Commencement of Construction, the Applicant shall submit a plan to be included in the Final Construction Management Plan subject to the review and approval of the Building Commissioner and the Director of Engineering and Transportation for trucking and hauling soil from the Site during excavation, including but not limited to:
 - a. Duration of the excavation period;
 - b. Capacity of the dump trucks;
 - c. Number of dump trucks; and
 - d. Plan to avoid queueing of dump trucks.
25. Prior to any crane equipment being located or operated on the Site, the Applicant shall submit a plan to be included in the Final Construction Management Plan for the review and approval of the Building Commissioner for the usage of crane equipment in overhead movements, including but not limited to:
 - a. How the crane will be maintained on the Site during usage;
 - b. The radius of the crane’s overhead movements;
 - c. Protection of the roofs of structures and the parking areas of abutting parcels; and
 - d. Protection of public infrastructure, utilities, and street trees.
26. Any damage to structures and parking areas, including but not limited to, infrastructure owned by the Commonwealth of Massachusetts, the Town of Brookline, and/or private utility companies causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair, and the Applicant shall indemnify and hold harmless the Town from and against any and all loss, liability, claim, cost, or expense related to said damage.

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27. Prior to the Commencement of Construction, the Applicant shall confirm for the review and approval of the Director of Engineering and Transportation that utilities including but not limited to storm drainage infrastructure, sewer connections, electrical power lines do not cross the Site's property lines prior to disconnection. Should electrical power lines be relocated for construction of the Project, the Applicant shall coordinate activities with the Town and the utility.
28. The Applicant shall provide back-up generators if deemed necessary or ordered by the Building Commissioner in the event power is shut off or disconnected for an extended period during the construction of the Project with all costs paid by the Applicant.
29. Construction vehicles shall load and unload within the limit of the work area designated in the Final Construction Management Plan approved by the Building Commissioner and the Director of Engineering and Transportation. Construction equipment and vehicles shall not impede the access, staging, and passage of emergency vehicles on Centre Street.
30. Prior to the Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with a report and still photographs and/or video recording of the condition of finished surfaces of streets and sidewalks along truck routes designated in the Final Construction Management Plan ~~before Commencement of Construction~~ and then again prior to issuance of a Certificate of Occupancy to document any adverse effects on the hard surface materials caused by construction traffic. Any damage to streets and sidewalks causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair.
31. Prior to Commencement of Construction, the Applicant shall provide the Building Commissioner with a pre-construction report with video and/or still photographs of the condition of structures of properties (interior and exterior) within 100 feet of the ~~s~~Site and then again prior to issuance of a Certificate of Occupancy to ensure that construction of the Project has not adversely affected the structures. The Applicant shall be responsible for the cost to repair any and all damage **caused by the construction**. These report/s shall be provided to any direct abutter upon request.
32. There shall be no blasting during the construction of the Project.
33. Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of any public shade trees and shall submit a plan for protecting the roots, limbs, and canopies of any public shade trees adjacent to the Site on Centre Street during construction for the review and approval by the Town Arborist and with all costs for performance thereunder borne by the Applicant. Any proposed cutting or removal of public shade trees shall be subject to M.G.L. c.87, the "Shade Tree Act."
34. Contemporaneously with sending or within ten days of receiving any and all correspondence to and/or from the Massachusetts Historical Commission and/or the Massachusetts Secretary of Energy and Environmental Affairs concerning the Project, the Applicant shall provide the Planning Department with copies.

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35. Prior to the issuance of Demolition Permit, the Applicant shall provide evidence of compliance with Section 106 of the National Historic Preservation Act of 1966 to the satisfaction of the Director of Planning and Community Development.
36. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the building, 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 ~~86~~ under Procedural History. Color, windows, and materials shall be reviewed and approved on site by the Assistant Director for Regulatory Planning within a reasonable time frame.
37. Prior to the issuance of a Building Permit, the Applicant shall submit for the review and approval of the Assistant Director for Regulatory Planning a final site plan and final landscaping plans for the Project and a Final Easements Plan consistent with Exhibit ~~4~~ indicating:
- a. two handicapped parking spaces ~~at on the HSL Campus~~ 100 Centre for use of residents of the Project;
 - b. open space amenities on the ~~Site and the~~ HSL Campus for use of residents of the Project and all other residents of the HSL Campus;
 - c. walkways for pedestrian circulation on ~~Site and the~~ HSL Campus for use of residents of the Project and all other residents of the HSL Campus;
 - d. plant and tree types and sizes at planting and location of plants and trees;
 - e. tree protection plan for existing trees on the Site designated to be conserved;
 - f. location of and materials for fences, walls, walkways, and driveway;
 - g. height of fences and elevation at top of walls in relation to grade;
 - h. location and number of outdoor furniture for seating and recreation on the ~~Site and the~~ HSL Campus for use of residents of the Project and all other residents of the HSL Campus;
 - i. location of utilities, mechanicals, and ~~11~~ total bicycle spaces distributed between bicycle racks located on the Site both within and outside the Project's building footprint;
 - j. location of structures for temporary trash storage; and
 - k. location of trash, recycling, and snow storage.
 - ~~l.~~ [narrative concerning access to areas included in open space amenities located on the roof deck at 100 Centre and the courtyard at 112 Centre.]
38. Prior to the issuance of a Building Permit, the Applicant shall submit plans for review and approval of the Building Commissioner and Commissioner for Public Works or their designees indicating:
- a. compliance with Section 6.04.4.f.1 of the Zoning By-Law;
 - b. tree protection plan for any public shade trees abutting the Site;
 - c. evidence that handicapped parking spaces and walkways for use of the residents of the Project and the Project's driveway comply with the State Architectural Access Board design guidelines;

Comment [MM5]: 11 to comply with zoning

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- d. the driveway entrance and exit shall not be depressed, but shall be constructed at the elevation of the sidewalk to minimize impacts to pedestrians;
- e. curb cut at the Site driveway designed to accommodate the turning radius of American Emergency Vehicle Type 1 ambulances; and
- f. a “STOP” sign and stop line at the Site driveway in compliance with the Manual of Uniform Traffic Control Devices (MUTCD).

39. Mechanical systems shall comply with the Town’s Noise By-Law.

40. Prior to the issuance of Building Permit, the Applicant shall submit an exterior lighting and photometric plan for the review and approval of the Director of Engineering and Transportation and the Building Commissioner. 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. Headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded to the maximum extent possible.

41. There shall be no parking and no vehicular idling in the Project’s driveway.

42. ~~Prior~~ to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan for the review and approval of the Director of Engineering and Transportation.

Comment [MM6]: keep

43. Prior to the issuance of a Building Permit for the building on the Site or a portion thereof the Applicant shall comply with the Public Works Department’s Site Plan Review Checklist as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.

44. Prior to the issuance of a Building Permit, all water, stormwater, and sewage facility designs shall be subject to the review and approval of the Director of Engineering and Transportation and the Director of Water and Sewer.

45. Prior to the issuance of a Building Permit, the Applicant shall submit the following subject to the review and approval of the Director of Engineering and Transportation and the Director of Water and Sewer, as applicable. The Applicant shall:

~~a. Conduct test pits to determine estimated seasonal highground water table (“ESHGWT”) and percolation rates; CONFIRM~~

~~b.a.~~ Indicate on the site plan the dedicated fire service line for the Project’s fire protection;

~~e.b.~~ Provide calculations for fire and for domestic water service so that adequate sizing of these lines can be determined; and

~~d.c.~~ Provide sewer profile with depths and crossings with other utilities.

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46. 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. The Applicant shall operate and maintain all of the following specified in (a), (b), and (c) in good, safe, and working condition and repair at all times and its sole cost:
- a. The onsite stormwater management system;
 - b. All sewer, stormwater, and water connections, lines and equipment required, from the public way to the building; and
 - c. All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable systems.
47. All utilities shall be underground.

Construction

48. During construction, the Applicant shall conform to all local, state, and federal laws 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, except as otherwise provided by this Decision, are limited to: Monday through Friday (excluding Federal and State holidays) from 7:00 am to 5:00 pm; Saturday from 8:30 am to 5:00 pm; and Sunday from 8:30 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.
49. During construction and initial leasing, the Applicant may post on the Site no more than one 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.
50. 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 36 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). The Applicant shall work with the Town to coordinate construction activity with improvements the Town schedules to the public way.
51. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.
52. Upon the request of the Director of Engineering and Transportation and/or the Building Commissioner, the Applicant shall provide written reports during construction outlining the status of the Project.

Certificate of Occupancy

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53. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit as-built floor plans certified by a registered architect to the Building Commissioner for his review and determination of conformance with the approved plans and the Conditions of the Decision. Prior to the issuance of the first Certificate of Occupancy for the building on the Site or a portion thereof, the Applicant shall comply with the Building Department's Certificate of Occupancy Process as verified by the review and approval of the Building Commissioner.

54. ~~Prior~~ to issuance of the final Certificate of Occupancy, the Applicant shall provide evidence to the satisfaction of the Building Commissioner that three of the five ~~the~~ parking spaces shown on Sheet EX-100 under Item ~~86~~ of Procedural History that straddle the property line shared between the ~~parcels known as Site and 100 Centre Street and as 108 Centre Street, respectively,~~ have been relocated ~~on the~~to 100 Centre ~~Street parcel~~ in compliance with the Modified Comprehensive Permit for 100 Centre ~~Street~~ approved by the Board on December 13, 2021.

Comment [MM7]: REWORD

55. 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, the Architectural Plans, and Landscape ~~Plans~~, including the modifications required by this Decision.

Comment [JG8]: Confirm that the Landscaping Plans include the improvements to the open space (ex. leveling and expansion).

56. When fifty (50) percent of the Certificates of Occupancy are issued, 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.

57. After the issuance of the final Certificate of Occupancy and 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 in **Conditions 00 and 00**), unless the changes are deemed substantial by the Subsidizing Agency and/or the ZBA pursuant to 760 CMR 56.04(5).

58. After the final Certificate of Occupancy is issued, no additional stormwater and/or wastewater load to the municipal system shall be allowed without the Director of Engineering and Transportation's approval.

Transportation Management

59. Prior to the issuance of a Building Permit, the Applicant shall submit a final Transportation Demand Management Plan ("TDMP") to be prepared in accordance with the Transportation Access Plan Guidelines of the Town, and subject to the review and approval of the Director of Engineering and Transportation. Mitigation in the TDMP shall include:

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- a. designation of a transportation coordinator for the Project to coordinate the elements of the TDMP;
- b. installation of transit screens or similar technology in the onsite residential lobby displaying real time information on alternative modes of transportation;
- c. provision of a welcome packet to residents detailing available alternative transportation options; and
- d. provision of discounted public transit passes and bike-share memberships for employees of the Project and the HSL Campus.

60. Prior to the issuance of a Building Permit, the Applicant shall submit a final Transportation Access Plan Agreement including traffic monitoring to be prepared in accordance with the Transportation Access Plan Guidelines of the Town, and subject to the review and approval of the Director of Engineering and Transportation.

61. Prior to the issuance of a Building Permit, the Applicant shall provide **\$COST** to the Town for deposit into a segregated account to be used by the Town for (a) the reconstruction of the public sidewalks adjacent to the Site and ~~for (b)~~ ADA-compliant wheelchair ramps, signage, and pavement markings at the intersection of Centre Street and Fuller Street. “ADA” is defined as American Disabilities Act. If the funds are not used within three years from the date of deposit for the aforementioned public improvements, the Town will return the funds to the Applicant.

62. Vehicular and pedestrian safety measures shall all be as follows:

- a. The Project site driveways shall be ~~a minimum of 20 feet in width and~~ designed to accommodate the turning and maneuvering requirements of the largest anticipated responding emergency vehicle as defined by the Brookline Fire Department.
- b. Circulation within the pick-up/drop-off area of the Site’s circular driveway shall be in a one-way counter-clockwise direction, consistent with the ~~one-way~~ southbound traffic flow along Centre Street.
- c. The Applicant shall ensure that snow drifts and stored snow mounds do not impede the sight lines at the entrances and exits of the Project’s driveway and other driveways on the HSL Campus ~~driveways~~ in accordance with Section 6.04.4f.1 of the Zoning By-Law.
- d. The Applicant shall not store trash and recycling containers in the bike lane on Centre Street at any time.
- e. Once trash and recycling for the Project ~~and the HSL Campus~~ is collected, the Applicant shall ensure that emptied trash and recycling receptacles are immediately returned to the trash storage rooms of serving the Project ~~and the HSL Campus~~.
- f. The Applicant shall ensure that at all times a minimum of four-foot wide passageway for pedestrians is kept clear of snow and trash and recycling containers.

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63. Prior to the issuance of a Building Permit, the Applicant shall submit a final trash/recycling plan and schedule to the Assistant Director of Health and Human Services for review and a determination of compliance with Town regulations. Said plan shall include provisions guaranteeing that:
- a. the residential trash plan consists of a minimum of one compactor and two two-yard dumpsters (one active and one spare);
 - b. the residential recycling plan consists of two two-yard dumpsters (one active and one spare);
 - c. What about community space? [\[See Applicant's note.\]](#)
 - d. Sufficient space must be provided in the compactor room to accommodate storage of the four two-yard dumpsters (two active and two spares);
 - e. a plan to repair/replace the compactor within a reasonable timeline if/when the compactor fails;
 - f. Trash and recycling for the Project and the HSL Campus shall be picked-up twice per week not to exceed ~~two~~ [two](#) days per week;
 - g. The Applicant shall contract a private waste management services and assume all costs thereunder;
 - h. The Applicant shall ensure that trash and recycling containers once emptied are immediately returned to trash storage room;
 - i. Pick-up frequency may increase if trash production is in excess of the current capacity only with the Brookline Department of Public Health's prior approval;
 - j. The trash rooms, including the compactor room and trash rooms on the building floors, shall be constructed and equipped with a sound **proofing** material to prevent noise and must also contain an odor control element;
 - k. The trash chutes shall be constructed and equipped with **a-sound proofing** material to prevent noise.
 - l. The Applicant shall provide a cleaning schedule for maintaining trash rooms in sanitary condition;
 - m. A licensed pest control contractor must be secured to provide routine pest control services;
 - n. The noise generated by the trash compactors shall not exceed the thresholds indicated in the Town's Noise By-Law; and

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- o. The Applicant shall inform the Public Health Department when the Project's residential units are at 90 percent occupancy so that the Assistant Director of Health and Human Services may review and modify the trash and recycling plan for compliance with this Decision and applicable State and Town regulations and by-laws.

General

- 64. 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.
- 65. Any reference to Town staff shall be read to include a designee (either other staff member(s) or a consultant) of that person or of the head of the respective Town department or division.
- 66. 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.
- 67. Upon execution by the Board, the Director of Planning and Community Development or her designee is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.
- 68. Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
- 69. 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 the Project's building. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).
- 70. 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).
- 71. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
- 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 thereunder.
- 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 Zoning Board of Appeals, the Director of Planning and Community Development, and the Building Commissioner with a copy of this Decision endorsed with the applicable recording information.

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- 75. There shall be no structures or buildings or paved surfaces or other improvements 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.
- 76. As a courtesy to neighbors, the Applicant shall use best efforts to notify abutters with 100 feet of the Site's property lines of the Commencement of Construction and of the issuance of the Building Permit (the "Courtesy Notice"). Action of the Applicant pursuant to this Decision shall in no event be conditioned on such Courtesy Notice nor shall failure of receipt of any Courtesy Notice be a default of the Applicant under this Decision.

Summary of Pre-Building Permit Review, Approvals, and Conditions

This summary is provided for the benefit of convenience. In the event of any inconsistencies between the list below and the conditions above, the conditions above shall supersede.

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

[INSERT X-REFERENCES HERE]

ATTACHED:

- Exhibit 1 Notice of Hearing
- Exhibit 2 Terms to be included in Replacement Regulatory Agreement
- Exhibit 3 List of Waivers from Town and Zoning By-Laws and Regulations with Zoning Plan
- Exhibit 4 Draft Easements Plan [update to include front yard at 100 Centre?parking numbers]

Comment [MM9]: Second / ?

RECORD OF VOTE

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

_____ (signed) _____ (dated)
Mark Zuroff, Chairperson

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

Filed with the Town Clerk on _____ (date)

ATTEST:

Benjamin Kaufman
Town Clerk

Twenty-Day Appeal Period Ended (Town Clerk stamp)