

DEVELOPMENT AGREEMENT

This Agreement is entered into as of this ____ day of May, 2007, by and between Brickstone Sharon, LLC, a Massachusetts limited liability company, (the “Developer”) and the Town of Sharon, acting by and through its Board of Selectmen (the “Town”) and for those provisions specifically enumerated, the Sharon Conservation Commission (the “Commission”), for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged (the “Agreement”). The Agreement represents the understanding between the parties with respect to the contributions and commitments of the Developer with respect to mitigating impacts arising from the development of Sharon Hills (the “Project”) located off Bay Road in the Town of Sharon, as more particularly shown as that 87 acre parcel, located between Bay Road and Mountain Street, on Exhibit A (the “Site”).

1. GENERAL

- 1.1 The Project shall comply with all applicable rules, regulations and by-laws of the Town of Sharon, including, but not limited to the Board of Selectmen, the Board of Health, the Commission, the Zoning Board of Appeals, the Commonwealth of Massachusetts and Federal Agencies as they apply to the construction, operation and maintenance of the Project, including, without limitation, compliance with Wetlands Protection Act final orders, the Massachusetts Environmental Policy Act (MEPA), General Laws Chapter 30, Section 61, and the State Building Code unless variances, waivers or similar relief is granted pursuant to local, state or federal regulations.
- 1.2 The Developer shall comply with all applicable regulations issued by the Commonwealth of Massachusetts relative to the existence of hazardous waste located on the Site, including compliance with the provisions of M.G.L. Chapter 21E and other applicable government codes.
- 1.3 The Developer shall file an Environmental Notification Form (“ENF”) under MEPA covering the entire Project and any required Environmental Impact Report (“EIR”) prior to the commencement of any construction except for Project Site preparation, which may commence prior to the final issuance of the EIR decision if authorized by the Secretary of Environmental Affairs.
- 1.4 The Project, shall consist of no more than 624 over 62 age-restricted residential units dispersed among six, eight-story buildings, a 150 bed capacity nursing facility, an amenities building and other related infrastructure and amenities to be constructed in two or more phases. The first phase shall consist of three residential buildings, an amenities building and other related infrastructure and amenities (the “First Phase”). The Second Phase shall consist of some or all of the remaining three residential buildings to be constructed at the Project (the “Second Phase”). The balance of the residential buildings in

the Second Phase may be constructed in additional phases. The nursing home facility shall be constructed as part of the First Phase, Second Phase or a separate phase. Construction of the Project is contingent on the passage of Rezoning Articles establishing a Senior Living Overlay District, including development requirements and allowed uses (to be acted upon at a Special Town Meeting to be held on May 7, 2007, a copy of which is attached hereto as Exhibit B and incorporated as if fully set forth herein) (“Rezoning Articles”). The Project shall also comply with the Town’s site plan approval process (“Site Plan Approval”) as amended by said Rezoning Articles. The age restriction limitations shall be contained in an appropriate deed restriction or other agreement in a form acceptable to Town Counsel.

1.5 The applicable terms of this Agreement and such other provisions as the Zoning Board of Appeals may reasonably impose shall be incorporated into the conditions of any Site Plan Approval. All such applicable terms and conditions shall be binding upon the Developer and any successor or assign, as provided in the “Successor and Assigns” Section of this Agreement.

1.6 In consideration of the Developer’s promises contained herein, the Town and the Commission agree to support the proposed Rezoning Articles and the accompanying proposed Article relating to the Town’s signage general by-law to effectuate the terms and intent of this Agreement. Nothing contained herein shall be deemed to be a guarantee of the successful or affirmative vote on any such Rezoning Articles or other Article related to this Project.

2. **CONSTRUCTION PHASE RESPONSIBILITIES AND MITIGATION**

2.1 Construction of all structures on the Site shall comply with all applicable zoning regulations in effect in the applicable local or state jurisdiction and with the State Building Code. The Town shall not sponsor or support, prior to the issuance of the final building permits for the Project, any changes in the Zoning By-Laws, General By-Laws or Rules and Regulations of any Town boards or committees, which would limit or prohibit the proposed Project on the Site.

2.2 The Developer shall work with the Town to coordinate an integrated approach to permitting and inspections.

2.3 The Developer shall pay a sum equal to two (2) times the reasonable, standard, actual expenses of initial and ongoing inspection and review of all permit applications customarily reviewed by the Building Inspector and required in connection with this Project. This review shall include, but not be limited to, review of the building permit application or applications. The Town shall provide to the Developer an initial estimate of the cost of inspection and review services and, prior to the issuance of the initial building permit, the Developer shall deposit with the Town Treasurer the amount of \$50,000 (the “Account”). The Town shall draw from the Account as necessary to pay for inspection and review services, and shall provide an additional estimate to the Developer when the balance of the escrow account is reduced to an amount below the anticipated requirements for the

next month. The Developer shall then deposit further amounts equal to such estimate and subject to the terms of this Section. For each payment for actual reimbursement made, the Developer shall also deposit an additional 50% of said amount with the Town Treasurer. At the issuance of a final Occupancy Permit for the last residential unit constructed at the Project, the Developer shall pay the Town any additional monies needed so that the total payments are equal to two (2) times the actual expenses of initial and ongoing inspection and review of the construction process, as provided above. The remaining amount due (50% of the particular cost) shall be paid not later than one year after the Town incurs such cost or expense. The Town agrees that it will not engage consultants to undertake reviews or inspections that are duplicative of work performed above.

3. WATER IMPROVEMENT COMMITMENTS AND MITIGATION

3.1 In conjunction with the development of the Project, the Developer shall construct and transfer to the Town ownership of certain improvements to the Town's water storage and distribution system. Installation of improvements to the water distribution system to be provided by the Developer shall comply with the following:

(a) the design engineer for all improvements shall be acceptable to the Sharon Water Department. Construction plans and specifications of all improvements shall be submitted for review and approval by the Water Department, which the Town agrees shall be reviewed in a reasonable and timely manner. The Developer shall compensate the Town for the cost of a peer review engineer engaged to review submissions and to observe construction of the water storage and distribution improvements. The costs of such peer review consultant shall not be subject to Section 2.3;

(b) water distribution and storage improvements shall comply in all respects with the standards and requirements of the American Waterworks Association ("AWWA") and the Sharon Water Department. At a minimum, all water mains shall be cement lined bituminous coated ductile iron pipe class 52 minimum, hereinafter CLDI. Hydrant assemblies shall be installed at intervals required by the Sharon Water Department or ISO standards. Full diameter line valves shall be installed at maximum intervals of 1,000 feet. All water main junctions shall be provided with three full diameter gate valves. All pumping stations shall have standby power provided by natural gas, or if available, liquid natural gas or propane;

(c) all water mains installed within paved streets shall have trenches patched with full depth pavement of like kind and depth;

(d) the Sharon Water Department may alter any of the foregoing construction standards as may be required to meet field conditions. Any other changes shall be mutually agreed by the Developer and the Sharon Water Department.

(e) the Developer shall prepare a construction management plan specifically designed to address the installation of the water improvements set forth herein, which shall be submitted for approval by the Sharon Police Department and all materials, equipment, and

personnel required for maintenance of traffic related to such installation shall be furnished at no cost to the Town.

- 3.2 In conjunction with the development of the Project, the Developer shall construct and transfer to the Town ownership of certain improvements to the Town's water storage and distribution system, in coordination with the Town Engineer. Such improvements shall include certain improvements required for a high service district including a booster pumping station(s) and a 12-inch diameter CLDI water main and appurtenances, including pressure reduction valves extending from the existing Massapoag Avenue water tank, along Massapoag Avenue, Morse Street and Mountain Street to a newly constructed approximately 750,000 gallon underground water tank located off Mountain Street. In general, location of these improvements is shown on Exhibit C, attached hereto and incorporated as if fully set forth herein.

With respect to all existing houses not currently connected to municipal water and which front on Mountain Street, where water mains will be installed under the provisions of this Section 3.2, required taps and curb stops shall be provided in order to allow property owners to connect to the municipal water distribution system. If there is any damage caused to the water quality or quantity of existing individual non-municipal water supplies resulting from any activity performed in connection with any provision of this Agreement, the Developer shall be responsible for paying all such costs associated with connecting such affected Mountain Street home to the municipal water system.

- 3.3 Also in conjunction with the development of the Project, the Developer shall construct and transfer to the Town ownership of the following improvements to the Town's water distribution system:

(a) an 8-inch diameter CLDI water line, with appropriately spaced fire hydrant assemblies and line valves, as reasonably approved by the Town Fire Chief, extending through the Site, as generally depicted on Exhibit D, attached hereto and incorporated as if fully set forth herein, and then to the center of Coach Lane to a point approximately one hundred (100) feet from the intersection of Coach Lane and Bay Road to allow Project abutters to connect to Town water. The Developer's obligation to extend this water line beyond its property line is contingent upon the Town obtaining appropriate easements from private parties either through negotiations or, if required, through use of the Town's powers of roadway acceptance or eminent domain all in accordance with applicable law. Subject to the limitations contained in this section, the cost of any such easement and/or eminent domain action shall be paid for by the Developer provided, however, that the Town shall agree not to purchase any such easement for more than \$3,500 without the written approval of the Developer. The amount of said costs will be subject to the reasonable approval of the Developer. The Developer shall install taps and curb stops in front of each existing home abutting such main necessary to connect to Town water. Subject to the provisions of the following paragraph and Articles 7 and 9, any connection to such tap or curb stop shall be at said property owner's cost.

In connection with the above described water line, the Water Department and Board of Selectmen agree to waive all connection fees for the existing houses located on properties

identified as 2 Coach Lane (Burr), 4 Coach Lane (Weinstein), 2131 Bay Road (MacInnis), 2111 Bay Road (Hogan), and 1 Coach Lane (Apse) provided that the property owner consents to connect contemporaneously with the water main installation. The Developer agrees to promptly reimburse upon receipt of bills (but shall not be required to perform the work) the actual reasonable cost of connection for the five homes enumerated above, but in any event not to exceed an average of \$3,500 per home. The Developer shall have no obligation to perform the connection work described in this Section 3.3(a).

(b) an 8-inch diameter CLDI water main, with appropriately spaced fire hydrant assemblies and line valves, as reasonably approved by the Town Fire Chief, extending south from the underground water tank described in Section 3.2 through and within land to be given to the Town, acting by and through its Board of Selectmen and then extending through and within land to be given to the Town acting by and through its Conservation Commission, as described in Sections 6.1 and 6.2 hereof and further through and within the layout of Mountain Street to the Mountain Street Extension, a private way, to allow Project abutters to connect to Town water. A hydrant assembly shall be provided at the intersection of Mountain Street and Mountain Street Extension to facilitate water main flushing. This 8-inch water line and the line terminus is generally shown on Exhibit E, attached hereto and incorporated as if fully set forth herein. The Developer shall install taps and curb stops in front of each existing home abutting such main necessary to connect to Town water. Subject to the provisions of Articles 7 and 9, any connection to such tie-ins shall be at said property owner's cost.

3.4 The Developer shall grant to the Town, acting through its Board of Selectmen, acting as the Board of Water Commissioners, a twenty foot (20') wide easement centered upon the 8-inch water line described in Section 3.3(a) so that there is roughly ten feet (10') on each side of the water line. An easement agreement, in a form reasonably acceptable to Town Counsel and the Developer shall be recorded at the Registry of Deeds when ownership of the improvements in Section 3.3(a) is transferred to the Town pursuant to Section 3.5. Among other requirements, the easement agreement shall provide the twenty foot (20') wide easement area and improvements therein may be relocated at the Developer's discretion (subject to the provisions of Section 3.1(a)) and cost provided there is no interruption in service to any users of the water line. The easement agreement shall also authorize the Town to enter over and across the Site in order to access the twenty foot (20') wide easement area for purposes of maintenance, repair and reconstruction; such access to be subject to standard conditions of minimum disturbance, restoration, and standard insurance provisions. As built plans showing said easement shall be provided to the Town Engineer.

3.5 The Town agrees to cooperate with the Developer in applying for and obtaining any permits or approvals necessary to construct the improvements described in this Article 3 and Developer's obligations are contingent on receipt of such approvals which Developer agrees to diligently seek with the Town's cooperation. The Developer shall pay all costs associated with obtaining such permits and approvals. Provided all necessary permits or approvals for such improvements are issued without unreasonable delay, such improvements shall be constructed prior to the initial Certificate of Occupancy for the Project. Ownership of such improvements shall be transferred to the Town upon the

completion of construction of such improvements. The Town hereby agrees to accept delivery and ownership thereof upon certification by the Town Engineer that said Improvements have been constructed and installed to his reasonable satisfaction.

- 3.6 In recognition of the water system improvement contributions described in this Article 3, the Town shall charge the Developer for only one (1) water main connection fee for the entire residential Project, rather than charging a separate connection fee for each residential unit in the Project, and one (1) water main connection for the nursing home facility in an amount not to exceed \$9,000, which represents a cost of approximately \$4,500 per connection.
- 3.7 The Developer shall not be obligated to construct the water improvements set forth in this Article 3 unless and until it proceeds to construct the Project.
- 3.8 The Developer shall use shallow, on-site interceptor wells or other non-municipal sources for all irrigation, including, but not limited to, watering of landscaping, and on-site golf links. Such withdrawal of irrigation water shall not adversely affect Briggs Pond or wells of abutting home owners. The Developer shall not use any water from the Sharon municipal water distribution system for such irrigation purposes.

4. AFFORDABLE HOUSING COMMITMENTS AND MITIGATION

- 4.1 The Town agrees the Developer shall satisfy its affordable housing obligation, as required by the zoning applicable to the Project, in accordance with the terms of this section.

(a) The Developer shall, pursuant to the schedule set forth in 4.2 below, either provide funds to allow for the construction of additional affordable units at the “Stone Grove Sharon Project” or shall provide funds to the Town of Sharon as follows: (i) the Developer shall execute an agreement with and provide funds to Sharon-Walpole, LLC, or its successor or assign, for construction of an additional water and sewer connection necessary to allow an additional thirty-six (36) affordable housing units to be constructed as part of the “Stone Grove at Sharon” project; or (ii) in the event that the Stone Grove project has not received a building permit for the additional thirty-six (36) units prior to the issuance of the first certificate of occupancy for the First Phase, due to circumstances beyond the Developer’s control, the Developer shall provide funds, in the amount of \$982,000.00, to the Board of Selectmen for the Sharon Housing Trust to construct affordable housing units and for such other purposes as the Trust shall designate.

(b) The Developer shall, pursuant to the schedule set forth in 4.2 below, provide funds in the amount of \$900,000.00 to the Board of Selectmen for the Sharon Housing Trust to construct affordable housing units and for such other purposes as the Trust shall designate.

- 4.2 The Developer shall provide the Town with one-half of the funds in Section 4.1(a)(ii) and 4.1(b) prior to the issuance of the first certificate of occupancy for the First Phase with the remainder of the funds in Section 4.1(a)(ii) and 4.1(b) paid upon receipt of the first certificate of occupancy for the Second Phase. The Developer’s obligation to provide affordable housing, as required above, shall be fully satisfied upon delivery to the Town of

the funds required under (i) Section 4.1(b), and (ii) the delivery to Sharon-Walpole LLC or the Town, as applicable, the funds required by the Section 4.1 (a) above.

5. PUBLIC SAFETY COMMITMENTS AND MITIGATION

5.1 In recognition by the parties that the Project will have substantial impacts upon various components of the Town's infrastructure and the duties and obligations of various public boards and commissions, and to help mitigate such impacts, the Developer agrees to provide the Town with the following public safety mitigation contributions at the times or events indicated:

(a) Six Hundred Fifty Thousand Dollars (\$650,000.00) for public safety personnel and other purposes, payable to the Board of Selectmen as follows:

- (i) \$325,000.00 on or before June 30, 2008; and
- (ii) \$325,000.00 on or before June 30, 2009.

(b) Seven Hundred Seventy Five Thousand Dollars (\$775,000) payable as follows:

- (i) \$200,000.00 to the Board of Selectmen and the Economic Development Committee for the study and implementation of a revitalization project, including but not limited to the post office square area, and including septic system improvements. One-half of said funds to be paid at the receipt of the first building permit for the First Phase with the remainder to be paid at the receipt of the first building permit for the Second Phase;
- (ii) \$100,000.00 to the Board of Selectmen for water system mitigation/improvement measures. One-half to be paid at the receipt of the first certificate of occupancy for the First Phase with the remainder to be paid at the receipt of the first certificate of occupancy for the Second Phase;
- (iii) \$50,000.00 to the Board of Selectmen for recreation purposes, including the creation of additional recreational fields, to be paid upon receipt of the first certificate of occupancy for the First Phase;
- (iv) \$50,000.00 to the Board of Selectmen for Public Safety purposes, including improved radio communication facilities, to be paid upon receipt of the first certificate of occupancy for the First Phase. Further, the Developer shall allow the Town to install, at the Town's sole cost, one (1) municipal-only communications antennae to be used solely for public safety purposes in an area to be determined by the Developer on the roof of one of its residential buildings and grant the Town all necessary easements related thereto subject to standard conditions of minimal disturbance, standard insurance provisions, restricted hours of access, prior notification and abilities of grantor to relocate;
- (v) \$50,000.00 to the Board of Selectmen for Memorial Beach improvements, including the installation of lighting, to be paid at a mutually agreeable time after

passage at the Special Town Meeting of the Rezoning Articles as designated by the Town;

- (vi) \$100,000.00 to the Conservation Commission for land acquisition purposes. One-half of said funds to be paid at the receipt of the first building permit for the First Phase with the remainder to be paid at the receipt of the first building permit for the Second Phase;
- (vii) \$100,000.00 to the School Committee, paid upon receipt of the first certificate of occupancy for the First Phase, to integrate the Project into the school curriculum by establishing a water study program and purchasing necessary lab equipment to implement the program;
- (viii) \$100,000.00 to the Council on Aging, paid upon receipt of the first certificate of occupancy for the First Phase, to endow a technology or educational program at the Sharon Adult Center; and
- (ix) \$25,000.00 to the Board of Health, paid upon receipt of the first building permit for the First Phase, to fund additional personnel (1/2 time health agent) during the Project's development.

(c) The Developer agrees to make a public safety mitigation contribution by expanding the design and construction of the proposed pumphouse to include a fire sub-station, the location of which is shown generally on Exhibit F, attached hereto and incorporated as if fully set forth herein. The expanded pumphouse and fire sub-station shall consist of a total of approximately 9,000 square feet and will include one (1) kitchenette, one (1) bathroom, one (1) other room to accommodate up to four persons and two (2) overhead bay doors designed to accommodate fire vehicles. The Developer shall have no obligation to pay fit out costs for the expanded pumphouse, other than costs related to the water improvements described in Article 3, the kitchenette, and bathroom. The plans and specifications of such combined pumphouse building shall be mutually determined by the Board of Selectmen and the Developer.

(d) The Developer agrees to work cooperatively with the Council on Aging to integrate the Project population with other Town seniors and to provide opportunities, when appropriate, to share programs conducted at the Project with Town seniors. The Developer shall provide Town seniors shuttle service for such programs conducted at the Project.

6. LAND TRANSFERS

- 6.1 At the time of transfer of the ownership of the underground water tank described in Section 3.2, the Developer shall transfer to the Town, acting by and through its Board of Selectmen, the fee interest of an approximately 3 acre parcel of land located off of Mountain Street and shown on Exhibit F, attached hereto and incorporated as if fully set

forth herein. This parcel of land will contain the underground water tank described in Section 3.2. The Town shall restrict its use of this land to water system improvements, municipal telecommunications and/or public safety purposes. The Town shall reasonably screen any improvements on this parcel and such improvements shall be landscaped and maintained to the same standards as if part of the Project at no cost to the Developer. Any antenna shall be located to be least visible from the north, east, and south. If a fire substation is constructed and operational on this parcel, the Fire Chief shall limit the use of sirens or other alarm devices to those instances where he/she determines that the use of such alarms is required for public safety (i.e., to alert vehicles obstructing the roadway) or the emergency or fire vehicles are more than one mile from the Site.

- 6.2 At the time of the issuance of the first building permit for any residential unit to be constructed at the Project, the Developer shall transfer fee title interest in approximately 249 acres of the land adjacent to the Project Site to the Town of Sharon acting by and through its Commission, to be held as open and undeveloped land and to remain in its natural condition except as provided in Sections 3.3(b), 6.2.1 6.2.2 and 6.2.3 herein. Such land is generally shown on Exhibit G, attached hereto and incorporated as if fully set forth herein. At the time of the transfer, the Town shall record a conservation restriction in perpetuity, subject to the provisions at Sections 3.3(b), 6.2.1, 6.2.2 and 6.2.3, pursuant to Mass. Gen. L. ch. 40, §8C and Mass. Gen. L. ch. 184, §§ 31-33, with the registry of deeds. The Commission shall designate a co-grantee on the restriction. Upon the transfer of the land in this Section 6.2 to the Commission, the Town of Sharon and the Commission acknowledge and agree that the provisions of Section 4380(e) of the Rezoning Articles are satisfied.
 - 6.2.1 The Developer shall be able to access and use the land described in Section 6.2 for the purposes of constructing and maintaining access trails, the design and location of which shall be mutually agreed upon between the Developer and the Commission.
 - 6.2.2 The Developer shall have the ability to use the land described in Section 6.2 for purposes of locating, maintaining, repairing, reconstructing and using water collection and distribution pipes and percolation systems for the purpose of infiltrating water collected from the Project building roofs, or other “clean” sources into the Neponset River basin. The specific design and location of such infrastructure shall be performed in cooperation and consultation with the Commission, and in compliance with all applicable federal, state and local requirements.
 - 6.2.3 The Developer shall have the ability to use the land described in Section 6.2 for locating, maintaining, repairing or reconstructing or otherwise restricting areas for any wildlife habitat enhancements requested or required by the Natural Heritage & Endangered Species Program pursuant to the Massachusetts Endangered Species Act in cooperation and consultation with the Commission.
- 6.3 Upon the issuance of the first certificate of occupancy for any residential unit to be constructed at the Project, the Developer shall restrict the use of approximately 36 acres of the Site from further development by buildings or roads through a recorded deed restriction or other instrument, in a form acceptable to Town Counsel. This land is generally shown

on Exhibit H, a copy of which is attached hereto and incorporated as if fully set forth herein. This restriction shall be enforceable by the Town. Notwithstanding the foregoing, permitted uses on this restricted land may include landscaped areas, conservation and passive recreation, subsurface improvements such as utility lines, facilities used in connection with connection to on-site waste water treatment facilities, above-grade utility lines, transformers, poles and related appurtenances, storm water retention basins or swales and related infrastructure improvements and habitat mitigation requested or required by the Natural Heritage & Endangered Species Program pursuant to the Massachusetts Endangered Species Act.

- 6.4 The Developer acknowledges and agrees that the land transfers as described in Sections 6.1 and 6.2 are reasonable mitigation measures.

7. **BLASTING COMMITMENTS AND MITIGATION**

- 7.1 The Developer shall comply with all terms of the Brickstone Blasting Plan, a copy of which is attached hereto as Exhibit I and incorporated as if set forth herein, with regard to the Project Site. Such Plan includes, but is not limited to, performance of a Pre-Blast Survey to document existing property conditions including, without limitation, the current condition of existing wells, at those properties which abut the Site or any structures within 1000 feet of the blasting (or such greater distance as an independent blasting consultant, working with the blasting contractor, may reasonably identify based on geotechnical conditions). Attached as Exhibit J is a plan showing structures within 1000 feet of the blasting area. The obligation to perform the Pre-Blast Survey is subject to the Developer or its contractor being granted access to the property to perform such surveys. The Pre-Blast Survey shall be conducted by the blasting contractor after consultation with the independent blasting consultant. The Developer shall pay all costs associated with any blasting at the Site, including all consultant and survey costs, which shall not be subject to Section 2.3. The Developer shall also conduct radon tests in the homes identified in this survey if, and to the extent requested, by the home owner.
- 7.1.1 Developer shall provide evidence to the Town of appropriate insurance coverage to protect abutting property owners from blasting damage, as provided in Section 7 of Exhibit I.
- 7.1.2 The Developer or its blasting contractor shall indemnify home owners identified in the Pre-Blast Survey against property damage, including but not limited to, release of Radon gas, and/or alteration of water quality or quantity as a result of blasting at the Project. The Developer and its blasting contractor shall immediately provide property owners with any necessary temporary housing and/or alternative water supply, temporary or permanent, necessitated or caused by any blasting at the Project at no cost to either property owners or the Town. The Developer's or its blasting contractor's obligation to indemnify home owners for damage and/or alteration of water quality or quantity shall be limited to (i) connecting to a municipal water supply, if available, or if such connection is not available or reasonably obtainable, (ii) repair or replacement, as necessary of the water well source.

7.1.3 The Developer or its blasting contractor shall provide the Board of Health, the Fire Chief and all property owners identified in the Pre-Blast Survey with notice at least 72 hours prior to the commencement of any day(s) in which any blasting will occur.

8. **TRAFFIC AND ROADWAY**

8.1 The Developer has retained a Traffic Consultant who has performed a traffic impact study of the proposed Project, entitled "Traffic Impact and Access Study Brickstone at Sharon," a copy of which is attached hereto as Exhibit K and incorporated as if fully set forth herein. This study recommends certain potential traffic mitigation measures. These mitigation measures may include, but are not limited to, installing traffic signals and widening access roads at both the Bay Road and East Street and Bay Road and Plain Street intersections. The mitigation measures may also include the provision of shuttle bus service from the Site to off-site shopping and recreational destinations. The Developer, as required by Sections 4387 and 4388 of the Rezoning Articles and as may be agreed upon (and subject to obtaining all necessary permits, approvals and existing right-of-way) in the Site Plan Approval Process, shall implement recommendations/requirements contained in Exhibit K at no expense to the Town.

8.2 All primary access to the Project shall be designed to be from Bay Road. Secondary access from the Project to Mountain Street shall be gated and only used for emergency access or egress and shall be equipped with an "Optical" receiver provided by the Developer.

9. **WATER QUALITY COMMITMENTS AND MITIGATION**

9.1 Prior to any Project construction on the Site, the Developer and the Board of Selectmen shall jointly retain and the Developer shall pay for a consultant (the "Water Consultant") to conduct a pre-Project water quality survey of Briggs Pond for purposes of establishing a baseline for water quality. The Developer agrees to fund the reasonable costs associated with the Water Consultant performing an annual water quality survey of Briggs Pond on the anniversary of the pre-Project water quality survey. The results of said survey shall be provided to the Town Engineer and the Briggs Pond Association.

9.2 As part of this survey, the Developer agrees to install monitoring wells along the perimeter of the closest property boundary between the Project and Briggs Pond and at locations surrounding the proposed waste water treatment facility and the two proposed soil absorption systems as generally shown on Exhibit L, attached hereto and incorporated as if fully set forth herein. The Developer shall consult with the Board and the Water Consultant in determining the final location of any proposed on-site monitoring wells. The frequency of the testing and the content of the tests shall be as reasonably determined by the Developer and the Water Consultant subject to the customary standards and practices associated with monitoring potential contaminants from wastewater treatment facilities.

9.3 As part of the Project, the Developer proposes to install a waste water treatment facility (the "Facility") and two soil absorption systems (the "Waste Water System"). The proposed location of the Waste Water System is shown on Exhibit L, a copy of which is attached hereto and incorporated as if fully set forth herein. The Waste Water System shall be

designed according to all applicable state and local requirements and must obtain all necessary approvals prior to construction and operation. The Facility shall be operated and maintained by a licensed waste water treatment facility operator at all times.

- 9.4 The Developer intends to look first to and utilize the soil absorption system area furthest from Briggs Pond to the extent feasible and the parties recognize that the Developer is not precluded from permitting, constructing, or using any other area in accordance with the Regulations of the Department of Environmental Protection and the Sharon Board of Health.
- 9.5 The Developer shall, subject to applicable and enforceable state and local permitting requirements (including design parameters for redundant systems), design the Facility based on usage by no more than 624 residential units of the type proposed, and no more than a 150 bed nursing facility.
- 9.6 The Developer shall simultaneously provide the Board of Health, the Commission, the Town Engineer and the Briggs Pond Association with copies of all reports and monitoring logs that will be submitted to the Commonwealth.
- 9.7 The Developer may install shallow interceptor wells (not located in the existing underlying aquifer) for purposes of recapturing water from the Waste Water System for non-potable water purposes, including but not limited to, irrigation uses.
- 9.8 In the event that the water quality or quantity of any private well is adversely impacted by the Waste Water System, the Developer shall (i) connect home owners to a municipal water supply, if available, or if such connection is not available or reasonably obtainable, (ii) repair, remediate or replace, as necessary, the water well at the sole cost of the Developer.
- 9.9 In the event that any activity related to the Waste Water System degrades or diminishes the water quality of Briggs Pond below the levels established in the annual monitoring program performed on a consistent basis as part of the survey referenced in Section 9.1 the Developer shall take all actions required under applicable state and local regulations to remediate such degradation or diminution.

10. **PERFORMANCE BONDS**

- 10.1 Prior to the commencement of any work with regard to the high pressure water system improvements, as shown on Exhibit C, the Developer shall post with the Sharon Town Clerk a bond or surety in such amount as shall be determined by the Town Engineer and consistent with the normal and customary bonding requirements for contractors performing public utility work to secure proper completion of the high pressure water system improvements. Said performance bond shall be in a form reasonably acceptable to Town Counsel.
- 10.2 In those instances when conditions requiring construction, operation or maintenance of an improvement are not so satisfied prior to the issuance of a final Occupancy Permit, due to the nature of the condition, delay or other matters beyond Developer's control, the Town and the Developer shall reasonably agree on the amount and nature of a bond, letter of

credit or other form of acceptable security to ensure completion of those conditions not yet satisfied and the Building Inspector, upon notification that such bond or security is satisfactory to Town Counsel, shall issue the Occupancy Permit.

10.3 Prior to the commencement of any work with regard to the Project, the Developer shall provide a performance bond or other form of security reasonably acceptable to Town Counsel in the amount of \$250,000 to protect against actual losses suffered in connection with construction of the Project.

10.4 Nothing contained herein shall limit the applicable provisions of the Rezoning Articles.

11. MISCELLANEOUS

11.1 Since certain infrastructure-related improvements contemplated by the Project may involve the Town of Stoughton, the Town and Developer shall work cooperatively to obtain the necessary consents or agreements from the Town of Stoughton, at no cost to the Town, to secure all necessary permits or approvals for such improvements.

11.2 The Town acknowledges that nothing contained herein shall prohibit or hinder the Developer from exercising Developer's rights to use the Site alternatively for the uses and purposes currently allowed under the current Zoning By-Law if and to the extent the Developer does not elect to exercise its rights under the Rezoning Articles.

11.3 The Town and Developer acknowledge that references to building permit(s) contained herein refer to permits associated with the Senior Dwelling Units contemplated and defined in the Rezoning Articles and do not mean permits associated with Site preparation, foundation or utility work.

11.4 No special permits are required for the Project, as presented and substantially shown on the attached Exhibit A, under the existing Zoning By-Law or the proposed Rezoning Articles.

11.5 Upon issuance of the first building permit for the residential units to be constructed at the Project, the Developer shall cause the pending Housing Appeals Committee proceeding with respect to the existing comprehensive permit to be withdrawn, mooted or otherwise dismissed and the Town shall reasonably cooperate in that regard and with regard to dismissal of any pending lawsuit concerning such 40B comprehensive permit.

11.6 The Developer intends to permit and construct the Project substantially in accordance with Exhibit A. The Town and the Developer acknowledge that Exhibit A is a preliminary plan and, therefore, subject to all of the use, dimensional and other restrictions contained in the Rezoning Articles, the Project design, engineering, Site conditions, or local and state permitting processes and similar such matters may result in changes to the proposed Project layout and program. The Developer shall not relocate structures more than one hundred (100) feet in any direction unless resulting from the Project design, engineering, Site conditions (including topography and geotechnical matters), or local and state permitting processes and similar such matters. No such relocation shall occur without approval during the Site Plan Approval process. The Town and Developer shall cooperate in achieving the

Project depicted on Exhibit A (as the same may be changed pursuant to the terms of this Section) and the goals set forth in this Agreement.

11.7 In the event that further Town Meeting authorizations or State approvals are needed to effectuate the terms and intent of this Agreement, the Town and Developer shall mutually cooperate to obtain such authorizations or approvals.

11.8 Documentary Production

Concurrent with the presentation of this Agreement, the Developer shall provide representation from the Managing Member of Brickstone Sharon, LLC that it intends, subject to Section 11.10, to maintain said LLC as a going concern able to discharge its responsibilities hereunder.

11.9 Forbearance from Suit

Developer shall forego any actions at law or equity attempting to contest the validity or prevent the enforceability of any provisions of this Agreement and shall procure written acknowledgment that such forbearance shall bind any successor or assign. Such forbearance shall not preclude the Developer from bringing any action for breach of contract on the part of the Town or acts of intentional misconduct on the part of the Town with respect to matters contemplated herein.

11.10 Successors and Assigns

The Developer may assign the rights and obligations contained in this Agreement. Notice of the transfer shall be provided to the Town upon such transfer. All terms of this Agreement, including the Land Transfer provisions relating to those portions of the land owned by the Developer not included in the Rezoning Articles and shown on Exhibits F and G, attached hereto and incorporated as if fully set forth herein (the "Land Transfer Parcels"), shall bind and inure to the benefit or burden of any successor or assign of this Agreement or any successor or assign of land within the Site or Land Transfer Parcels and referenced in this Agreement and shall run with the land. Notice of this Agreement (the "Notice"), in a form reasonably acceptable to Town Counsel and counsel for the Developer, shall be recorded at the Registry of Deeds, at no cost to the Town, within twenty-four (24) hours of the approval of the Rezoning Articles at Town Meeting. In the event that the Rezoning Articles are not approved by the Attorney General's Office, the parties agree to immediately record a release of Notice. In the event that the Developer determines that it does not intend to proceed with the Project generally as contemplated hereunder, or fails to obtain permits therefor, or for any other reason, the Developer shall so notify the Board of Selectmen of such event. The Town shall, within six (6) months of the receipt of such Notice, determine whether or not to seek Town Meeting approval to amend the actions of the May 7, 2007 special town meeting and shall call a town meeting for such purposes within such six (6) month period. During said six (6) month period, nothing contained herein shall hinder or prohibit the Developer from transferring the Site or the Land Transfer Parcels or seeking any and all permits or approvals for uses permitted under the Zoning By-Law as existing prior to being amended by the Rezoning Articles. If

the Town does not seek town meeting approval to amend the actions of the May 7, 2007 special town meeting, or such town meeting does not amend such actions of the May 7, 2007 special town meeting within the six month period, the Attorney General otherwise rejects the Rezoning Articles, or otherwise upon the expiration of six (6) months from the receipt of Notice, the Town shall thereafter cause to be recorded in the registry of deeds a suitable instrument in the registry of deeds releasing the aforesaid Notice. Failure by the Town to record such a release within seven (7) days of such six (6) month period (or within seven (7) days of the Attorney General's rejection of the Rezoning Articles), shall entitle the Developer to record a release of said Notice. A release of the Notice, fully executed by the parties, in recordable form, shall be delivered in escrow to be held by counsel to the Developer at the time the Notice is recorded at the registry of deeds.

11.11 Notices

Unless otherwise specified herein, all required Notices hereunder shall be deemed sufficient if sent registered mail to the parties at the following addresses:

Town: Town of Sharon
 Town Hall
 90 South Main St.
 Sharon, MA 02067
 Attn: Town Clerk

with a copy to

Richard A. Gelerman, Esq.
Gelerman & Buschmann, P.C.
30 Walpole Street
Norwood, MA 02062

Developer: Brickstone Sharon, LLC
 c/o The Brickstone Companies
 The Plaza at Continental Park
 2101 Rosecrans Avenue, Suite 5252
 El Segundo, CA 90245
 Attn: John Kusmiersky

with a copy to:

The Brickstone Companies
The Plaza at Continental Park
2101 Rosecrans Avenue, Suite 5252
El Segundo, CA 90245
Attn: John G. Baker, Esq.

and

Goulston & Storrs, P.C.
400 Atlantic Avenue
Boston, MA 02110-3333
Attn: John E. Twohig, Esq.

For the purposes of this Section, the date of receipt shall be the date of mailing.

11.12 Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereby consent to non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the Counties of Norfolk or Suffolk.

11.13 Amendments to this Agreement

Amendments to the terms of this Agreement may be agreed to on behalf of the Town by the Board of Selectmen, or with regard to Section 6.2 only, by the Commission, provided that no such amendment shall relieve the Developer of any material obligation without prior approval of Town Meeting.

11.14 Indemnity

Developer agrees to indemnify and hold harmless the Town, its officers, agents and employees from and against all claims and liabilities, including reasonable attorney's fees and expenses incurred in the defense thereof, relating to personal injury or property damage to the extent arising out of the acts or omissions of the Developer and/or its officers, directors, employees or agents in connection with their duties under this Agreement.

11.15 Miscellaneous

The Developer acknowledges and agrees that this Agreement shall be binding upon the Developer and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Project. As and when requested by the Developer, the Town will promptly advise, in writing, the status of the Developer's obligations or satisfaction thereof under this Agreement for the benefit of existing and prospective mortgagees of all or a portion of the Project and such other persons as the Developer may designate.

The Developer shall not be considered to be in breach of this Agreement for so long as the Developer is unable to complete any work required hereunder due to a force majeure event or other events beyond the reasonable control of Developer. In the event that the Town

believes that a breach by Developer under this Agreement exists, it shall give written notice of the same to the Developer and give the Developer a reasonable period of time to cure such breach before taking any action on the same.

Except as specifically contemplated herein, this Agreement shall become effective at such time those Articles 1, 2 and 3 (the "Rezoning Articles") to be considered at the May 7, 2007 Town of Sharon Special Town Meeting are approved by Town Meeting and the Attorney General's Office of the Commonwealth of Massachusetts. In the event that the Attorney General's Office approves the Rezoning Articles, or the same is deemed approved, but a third party commences legal proceedings claiming invalidity of one or more of the Rezoning Articles and as a result of such proceeding one or more of the Rezoning Articles are finally adjudicated to be invalid, either in whole or in part, by a decision of a court of competent jurisdiction (and all appeal periods with respect to such decision have lapsed), then this Agreement, at the option of the Developer may be terminated by notice to the Town and shall thereupon be of no further force or effect. It is expressly agreed that the Agreement may only be so terminated if the Developer abandons all efforts to construct the Project pursuant to the Rezoning Articles by like written notice to the Town. In the event that only a part of one or more of the Rezoning Articles are finally adjudicated to be invalid, and the Developer wishes to proceed with or authorize others to proceed with construction of the Project or other substantially similar improvements on the Site pursuant to the Rezoning Articles, it shall give written notice of such intent to the Town and such written notice shall ratify and confirm this Agreement. The parties agree to cooperate and to act in good faith for the purpose of carrying out the provisions of this Section.

11.16 Any fuel source, boiler and/or emergency generator located on the site for use by the proposed nursing care facility shall be constructed above-ground in accordance with all applicable federal, state and local requirements.

11.17 The Developer shall comply with all laws associated with the on-site generation, storage and disposal of medical, infectious and radioactive materials and shall comply with all applicable federal, state and local requirements governing such materials.

EXECUTED under seal as of the date and year first above written.

[Signatures on next following pages]

BRICKSTONE SHARON, LLC

By: _____
Name: John Kusmiersky
Its: Managing Member
Hereunto Duly Authorized

TOWN OF SHARON BOARD OF SELECTMEN

By: _____
Name: William A. Heitin
Its: Chair

Hereunto Duly Authorized

TOWN OF SHARON CONSERVATION COMMISSION
(as to Section 6.2 only and for no other provisions or
purposes)

By: _____
Name: Margaret Arguimbau
Its: Chair

Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this ____ day of _____, 2007, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as _____ of _____, LLC.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this ____ day of _____, 2007, before me, the undersigned notary public, personally appeared William A. Heitin, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chair of the Town of Sharon Board of Selectmen.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this ____ day of _____, 2007, before me, the undersigned notary public, personally appeared Margaret Arguimbau, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chair of the Town of Sharon Conservation Commission.

Notary Public
My Commission Expires:

EXHIBIT A

[Site Plan Attached]

EXHIBIT B

[Rezoning Articles Attached]

EXHIBIT C

[Plan of Water System Improvements Attached]

EXHIBIT D

[Plan of Water line running through Site to Site boundary and off-Site down Coach Lane
Attached]

EXHIBIT E

[Plan showing waterline extending south from water tank down Mountain Street to Mountain Street Extension Attached]

EXHIBIT F

[Plan showing 3 acre water tank/fire substation parcel Attached]

EXHIBIT G

[Plan showing approximately 249 acre parcel to be deeded to Conservation Commission
Attached]

EXHIBIT H

[Plan showing areas of 36 acres to be privately restricted Attached]

EXHIBIT I

[Brickstone Blasting Plan Attached]

EXHIBIT J

[Plan showing properties for “pre-blasting” survey Attached]

EXHIBIT K

[Traffic Impact and Access Study Brickstone at Sharon, prepared by Vanesse & Associates
Attached]

EXHIBIT L

[Plan showing location of Waste Water Treatment Facility and Soil absorption systems
Attached]