

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT**

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”) enter into this First Amendment to Development Agreement as of the ____ day of November, 2008 (the “First Amendment”).

WHEREAS, the Developer and the Town and for those provisions specifically enumerated, the Sharon Conservation Commission, entered into a Development Agreement dated as of May 2, 2007 (the “Agreement”);

WHEREAS, the Developer and the Town each desire to clarify and/or amend certain provisions of the Agreement;

WHEREAS, there is a difference of opinion whether any of the changes or amendments in this First Amendment relieve either party of a material obligation; and

WHEREAS, these changes or amendments do not concern Section 6.2 of the Agreement and therefore do not require the assent to this First Amendment by the Conservation Commission.

NOW THEREFORE, in consideration of the commitments contained herein and other good and valuable consideration, the receipt, sufficiency and delivery of which are hereby acknowledged, the Developer and the Town (sometimes referred to together as the “parties”) hereby agree to amend the Agreement as follows:

1. Replace the Exhibit A first referenced in the introductory paragraph with the Exhibit A-1 attached hereto. All references to Exhibit A in the Agreement shall be deemed to reference Exhibit A-1. (*updates Site Plan*)

2. In Section 1.4, delete the word “three” in the second sentence and insert in place thereof the following:

“two or more” (*clarifies that First Phase may include two or more residential buildings*)

3. In Section 1.4, delete the word “three” in the third sentence. (*clarifies that First Phase may include two or more residential buildings*)

4. In Section 2.3, delete the text after the fifth sentence and insert in place thereof the following:

“For each payment for actual reimbursement made, the Developer shall also simultaneously deposit an additional 50% of said amount with the Town Treasurer. The

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remaining amount due (50% of the particular cost) shall be paid not later than one year after the Town incurs such cost or expense. At the issuance of a final Occupancy Permit for the last residential unit constructed at each Phase of the Project, in the event such payments have not previously been paid for costs relating to such Phase, 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 Town agrees that it will not engage consultants to undertake reviews or inspections that are duplicative of work performed above, and this provision shall not apply to consultants engaged prior to the filing of a building permit for the Project. The Town agrees a reasonable estimate for the review fees referenced in this Section 2.3 (prior to the two (2) times multiplier) is \$ _____, subject to unforeseen or unanticipated circumstances or delays in commencement of construction, and, prior to the Town exceeding this amount, the parties shall meet and discuss a method to limit any costs in excess to this estimate to reasonable amounts.” For purposes of this Section 2.3, the payments herein are intended to be a replacement for, and in substitution of, all building permit fees, connection fees (except as otherwise referred to herein), plan review and construction inspection fees, costs and expenses of any kind whatsoever customarily assessed in the building process. ***(clarifying building permit fee reimbursement mechanism - Town still gets two times costs)***

5. Replace the Exhibit D first mentioned in existing Section 3.3(a) with the Exhibit D-1 attached hereto. All references to Exhibit D in the Agreement shall be deemed to reference Exhibit D-1. ***(update waterline exhibit depicting water line to Coach Lane with exhibit depicting waterline to Coach Lane and Boulder Lane)***

6. In Section 3.3(a), delete the text following “(a)” up to the first period and insert in place thereof the following:

“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-1, attached hereto and incorporated as if fully set forth herein, and then (i) to the center of Coach Lane, subject to relocation within the existing roadway based on boring results or other engineering reasons, and to the Sharon sideline of Bay Road; and (ii) to the center of Boulder Lane, subject to relocation within the existing roadway based on boring results or other engineering reasons, and to the Sharon the sideline of Bay Road to allow Project abutters to connect to Town water.” ***(conforming change to treat Boulder Lane waterline similar to Coach Lane waterline)***

7. In Section 3.3(a), delete the second paragraph and replace with the following:

“In connection with the above described water lines, 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), 1 Coach Lane (Apse), 1 Boulder Lane (Tarasenko), 2 Boulder Lane (Kurland), 5 Boulder Lane (Huh), 9 Boulder Lane (Kamara), 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

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perform the work) the actual reasonable cost of connection for the nine 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).” ***(conforming change to treat Boulder Lane waterline similar to Coach Lane waterline)***

8. In Section 3.3(b), delete the following text after the words “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 Section 6.1 and 6.2 hereof and further.” ***(updates language to reflect waterline south of Project Site will run in Mountain Street, not through future Town conservation land)***

9. Replace the Exhibit E first referenced in Section 3.3(b) with the Exhibit E-1 attached hereto. All references to Exhibit E in the Agreement shall be deemed to reference Exhibit E-1. ***(updates plan to reflect waterline south of Project Site will run in Mountain Street, not through future Town conservation land)***

10. In the first sentence of Section 3.4, insert after the two occurrences of the words “water line” the following:

“(or lines)” ***(conforming change to treat Boulder Lane waterline similar to Coach Lane waterline)***

11. Insert at the end of the second sentence of Section 3.5 the following:

“for work it is to undertake” ***(clarifies that Developer pays for work it is to construct)***

12. In Section 5.1(a)(i), delete the words “on or before June 30, 2008” and insert in place thereof the following:

“-- Paid” ***(acknowledges that Developer has previously paid these funds)***

13. In Section 5.1(a)(ii), insert after the words “June 30, 2009” the following:

“, provided however, if the Developer has obtained all necessary permits and approvals for the Project, on or before April 30, 2009.” ***(Developer to advance future payment if permits and approvals obtained; otherwise, payment obligation and timing unchanged)***

14. In Section 5.1(b)(v), delete the text after the words “installation of lighting” and insert in place thereof the following:

“-- Paid” ***(acknowledges that Developer has previously paid these funds)***

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15. In Section 5.1(c), insert at the end of the existing last sentence the following:
“and shall conform to the scope of work attached as Exhibit M.” *(clarifies design scope of fire sub-station)*
16. In Section 5.1(c), insert as a new last sentence the following:
“The Developer shall provide septic and water service to the fire sub-station as described in Exhibit M with electrical service to be provided by a NSTAR.”
(clarifies design scope of fire sub-station)
17. In Section 5.1, insert a new subsection (e) after existing subsection (d) as follows:
“If the 150 bed nursing facility should become owned by a non-profit entity, or for any reason the owner becomes an entity or the nursing facility becomes located upon realty exempt by law from the payment of real estate taxes, the Developer agrees that the nursing facility owner will enter into a payment-in-lieu-of-taxes (PILOT) program with the Town whereby the nursing facility owner will pay to the Town payments equivalent to the estimated tax payments that would be due from such facility if it were not owned by a non-profit entity at the times tax payments are due and payable in Town. The obligation in this Section 5.1(c) will be contained in any deed, lease or other document transferring ownership of the nursing facility to such entity and shall provide such obligation shall be enforceable by the Town.” *(provides for payment-in-lieu-of-real estate taxes - if nursing facility is owned by a non-profit)*
18. Replace Exhibit H with the Exhibit H-1 attached hereto. All references to Exhibit H in the Agreement shall be deemed to reference Exhibit H-1. *(updates privately restricted area plan to reflect updated site plan)*
19. Delete the first two sentences in Section 6.3 and insert in place thereof the following:
“Upon the issuance of the first certificate of occupancy (i) for any residential unit in the First Phase, the Developer shall restrict the use of approximately 12 acres of the Site from further development by buildings or roads; (ii) for any residential unit in the Second Phase, the Developer shall restrict the use of an additional approximately 12 acres of the Site from further development by buildings or roads; and (iii) for any residential unit in a subsequent phase or nursing home constructed at the Project, the Developer shall restrict the use of an additional approximately 12 acres of the Site from further development by buildings or roads. It is intended that approximately 36 total acres of the Site are ultimately restricted pursuant to this Section 6.3, as generally shown on Exhibit H-1. The restriction shall be through a recorded deed restriction or other instrument, in a form acceptable to Town Counsel which may be in the form of an initial instrument with amendments thereto to restrict the later acreage”. *(clarifies that Project will be constructed on a phased basis and open space will be restricted on a phased basis. The total amount restricted remains unchanged.)*

20. Insert a new Section 7.2 after Section 7.1.3 as follows:

“Rock Processing Mitigation: The Developer shall undertake the following mitigation measures to minimize noise, dust or vibration impacts to neighbors and abutters from the rock processing operations planned as part of the Project:

1. Locate the rock processing operation to maximize buffer distances from abutters.
2. Locate the rock processing operation in a “bowl” created by approximately 15 feet of excavated rock.
3. Strategically stockpile excavated soils and processed materials to create “sound barriers” of earth materials to assist in sound mitigation.
4. Use rubber or similar material chutes and screener covering, subject to reasonable availability, to muffle stone “tumbling” sound.
5. Properly maintain rock processing equipment, including muffler and exhaust sound control devices.
6. Create a vibration buffer consisting of a prepared pad of semi compacted soil materials beneath the rock crushing equipment.
7. Dust mitigation through hydration on a daily and as needed basis.”
(insert new section concerning mitigation for rock crushing)

21. Replace the Exhibit K first referenced in Section 8.1 with the Exhibit K-1 attached hereto. All references to Exhibit K in the Agreement shall be deemed to reference Exhibit K-1. *(updates Traffic Report)*

22. Insert a new sentence at the end of Section 8.1 as follows:

“The traffic study attached as Exhibit K-1 will be subject to peer review and comment, including without limitation by the Police Chief, Fire Chief and Department of Public Works, during the site plan approval process.” *(clarify peer review provision)*

23. Insert as a new Section 8.3 as follows:

“Mountain Street Construction and Site Preparation Access: The parties acknowledge and agree that the Developer has worked to approximately “balance” the earthwork (cuts and fills) on the Site, which will limit truck traffic on and off the Site of export and import materials. The parties further acknowledge and agree that the bridge crossing to Bay Road and the access drive to Bay Road should be constructed from Mountain Street to Bay Road in a west to east progression. Accordingly, Mountain Street may be used for construction and site preparation access to and from the Site **[timing and the extent of**

construction of the access road and site preparation to be discussed- further details to be added]

The use of Mountain Street for construction and site preparation access to and from the Site shall be subject to the mitigation protocols set forth on Exhibit N.

As a further mitigation for the use of Mountain Street for construction access, the Developer agrees to the following:

1. Design of the six residential buildings as LEED certifiable using the LEED for New Construction Checklist Version 2.2.

The Board of Selectmen and Developer acknowledge and agree that the Project, including issues concerning construction access, is subject to site plan review by the Zoning Board of Appeals. The Board of Selectmen further acknowledge and agree that the issue of construction access to the Site (including the use of Mountain Street) has been peer reviewed by responsible, third-party professional engineers and other experts and subject to the restrictions in this Agreement find the mitigation proposed for Mountain Street reasonable and appropriate to mitigate any impacts from such use.” *(insert new section concerning Mountain Street construction access)*

24. In Section 11.6, replace the last sentence with the following:

“The Town and Developer shall cooperate in good faith and with diligent efforts in achieving the Project depicted on Exhibit A-1 (as the same may be changed pursuant to the terms of this Section) and the goals set forth in this Agreement.” *(clarify cooperation language)*

25. Capitalized terms not defined in the First Amendment shall have the definitions provided in the Agreement.

26. To the extent there are any conflicts between the Agreement and the First Amendment, the provisions of the First Amendment shall control.

27. The Agreement, as modified by the First Amendment, is hereby ratified and confirmed and all references to the Development Agreement shall mean the Development Agreement as modified by the First Amendment.

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: Richard Powell
Its: Chair
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this ____ day of _____, 2008, before me, the undersigned notary public, personally appeared John Kusmiersky, 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 the Managing Member of Brickstone Sharon, LLC.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this ____ day of _____,

EXHIBIT A-1

[updated Site plan attached]

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EXHIBIT D-1

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

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EXHIBIT E-1

[Updated plan showing Water line extending south from water tank down Mountain Street to Mountain Street Extension attached]

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EXHIBIT H-1

[Updated plan showing areas of 36 acres to be privately restricted attached]

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EXHIBIT K-1

[updated Traffic Impact and Access Study attached]

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EXHIBIT M

[Fire Sub-Station Design Criteria]

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EXHIBIT N

[Mountain Street Access Mitigation]

Use of Mountain Street for construction and site preparation access to and from the Site shall be mitigated by implementation of a Construction Management Plan to be reviewed and approved during the site plan approval process, subject to the receipt of all necessary permits and approvals for the implementation of such Plan. The Construction Management Plan shall incorporate the following measures:

- A. For construction traffic generally, the following mitigation measures will be implemented:
1. Designated truck routes will be established to govern how trucks access the Project Site. The goal is to avoid minor residential streets to the extent practical. Police detail officers will be used as necessary and as required by the Town to facilitate and maintain the safe and efficient movement of vehicles and pedestrians during construction activities.
 2. Full or partial street closures will be avoided to the extent possible. Should a partial street closure be necessary in order to transport or off-load construction materials and/or to complete construction –related activities, the closure, to the extent possible, will be limited to off-peak periods so as to minimize the impact on vehicles and pedestrians.
 3. During construction activities, police details are suggested at the following locations, when and to the extent necessary:
 - Bay Road and Mountain Street at the construction entrances
 - Bay Road at East Street and Andrew Circle
 - Bay Road at Plain Street
 - East Street at Billings Street
 - Pond Street at Billings Street

The exact location, number and duration of the police details will be determined in consultation with the public safety department.
 4. Implement a construction phase traffic monitoring program to monitor construction traffic volumes and operating conditions during the construction phase of the Project as noted in the Sharon Hills Construction Phase Traffic Impact Assessment prepared by Vanasse & Associates, Inc. dated October 22, 2008.
 5. The safety-related improvements detailed in the September 2008 Traffic Impact and Access Study prepared by Vanasse & Associates, Inc., attached hereto as Exhibit K-1, that were identified for the intersections of Mountain Street at Morse Street, East

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Street at Billings Street and Massapoag Avenue at East Street and Quincy Street will be completed in conjunction with the construction phase of the Project.

6. Secure fencing and protection will be provided in on-site areas affected by construction to protect nearby pedestrian and vehicular traffic.
 7. Implement a Traffic Demand Management Plan including the following:
 - Secure on-site storage will be provided for tools and equipment in an effort to minimize construction-related vehicles trips to the Site.
 - Construction worker parking will be provided on the Site and prohibited along adjacent roadways.
 - Contractors working on the Project will be encouraged to subsidize the purchase of MBTA *Charlie Cards* for qualified employees to the extent allowable under IRS regulations in order to encourage use of public transportation (Commuter Rail) and reduce construction-related traffic.
 - The General contractor will be encouraged to offer a shuttle service between the Site and the Sharon Center Commuter Rail Station.
 - Contractors working on the Project will be encouraged to implement a carpool/vanpool program.
 8. Construction vehicles above a gross vehicle weight of 45,000 pounds will be restricted from use of Mountain Street near the Sharon Middle School during the morning and afternoon Middle School peak traffic hours.
- B. For construction access along Mountain Street, where the cross-section of Mountain Street narrows to 16 to 18-feet between Sherwood Circle and the unpaved portion of Mountain Street, the following mitigation will be implemented:
1. Vegetation located within the public right-of-way will be trimmed and maintained in order to improve sight lines and provide a clear zone area adjacent to the edge of the travelled-way.
 2. Edgeline pavement markings will be provided along both sides of the roadway in order to clearly delineate the edge of the travelled-way.
 3. “Road Narrows” warning signs in conjunction with travel speed advisory signs (20 mph suggested) will be placed in advance of the narrowed cross-section in order to inform motorists of the change in the roadway width. These signs will be accompanied by reflective markers installed along the edge of the travelled-way in the transitional areas to the pavement reduction in order to provide positive guidance for motorists.
 4. Police details will be provided at the following locations along Mountain Street to control traffic while large construction trucks are entering and exiting the Mountain Street construction access:

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- Construction access road
- Hampton Road
- Morse Street
- Tisdale Road

The exact location, number and duration of the police details will be determined during the approval process and in consultation with the Sharon Police Department.

5. “Pavement Ends” warning signs will be installed in advance of the termination of the paved section of Mountain Street.

6. Signs and pavement markings along Mountain Street between East Street and Bay Road will be reviewed, maintained, replaced and supplemented as necessary.

C. For construction access along the unpaved portion of Mountain Street, the following mitigation will be implemented:

1. The gravel surface of the roadway will be maintained with densely graded base (DGB) material and regraded on a periodic basis as may be necessary to maintain the travel surface.
2. An initial rehabilitation of the gravel roadway surface will be undertaken prior to the commencement of construction activities, including the replacement and recompaction of the gravel surface, as may be necessary.
3. Dust control measures will be implemented, as may be necessary.

D. The Developer will also prepare for review during the site plan approval process, the following additional materials:

1. Prepare a detailed plan evaluating the feasibility of possible modifications to the segment of Mountain Street between Sherwood Circle and the Sharon Hills driveway, including the following:
 - a. Selective brush and tree pruning under the direction of a licensed arborist in order to avoid damage to significant public shade trees and maintain the rural character of this portion of Mountain Street; and
 - b. Constructing, to the extent permitted, approved and found necessary in the site plan approval process, 4 to 6 foot wide pull outs provided significant public shade trees and stone walls will not be impacted.
2. Prepare a detailed plan evaluating the feasibility of modifications to the segment of Mountain Street between the Sharon Hills driveway and the intersection with Bay Road at the Townline including the following:

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- a. Supplementing and regrading the roadway within the existing right-of-way to improve vertical sight distance limitations; and
 - b. Spot clearing and realigning Mountain Street to improve horizontal sight distance limitations.
3. Prepare a study analyzing the feasibility and necessity of restricting Mountain Street truck traffic to one-way options, on an alternative or permanent basis.

Should it be desired by the Town, and if approved by necessary authorities, the mitigation measures described in this Exhibit N installed along Mountain Street to mitigate construction vehicle use, will be removed after Project related construction has ended.

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