

DEVELOPMENT AGREEMENT

May 5, 2008

This Agreement dated as of May 5, 2008, is entered into by and between the Town of Easton, acting by and through its Board of Selectmen (“Easton”) and Douglas A. King Builders, Inc., with a principal place of business located at 115 Main Street, Suite 1D, North Easton, MA 02356, a Massachusetts corporation (“King”).

RECITALS

King has asked Easton to consider amending the Easton Zoning Bylaw (“Zoning Bylaw”) by adopting Article __, “Quset Smart Growth Overlay District” (QSGOD) pursuant to G.L. Chapter 40R and Chapter 40A, a copy of which is attached as **Exhibit A**, at a Town Meeting to be held May 19, 2008 (“Town Meeting”) and to include in the QSGOD a parcel of land consisting of approximately 60.7 acres, more or less, (the “Property”) owned by King and more particularly shown on the plan attached hereto as **Exhibit B** and incorporated by reference. The adoption of the QSGOD and the inclusion of the Property within the QSGOD would enable King to apply to the Easton Plan Approval Authority (“PAA”) for Plan Approval as required under the proposed QSGOD for development of a Smart Growth Project on the Property (the “Project”).

AGREEMENT

Now, therefore, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, Easton and King agree that, if, and only if, the QSGOD is adopted at the Special Town Meeting in the form attached hereto as **Exhibit A**, without modification which materially affects King’s rights as set forth herein and King applies for and is issued a building permit in accordance with Plan Approval granted by the PAA for a Project as described in the QSGOD, then Easton and King shall each perform the actions as set forth herein; provided, however, that with respect to the actions described in Sections I.1 King shall perform its obligations regardless of the action of such Special Town Meeting, or the status of any building permit application; furthermore, with regard to the actions described in Sections I.2 and I.3, King shall perform its obligations at the time of the application for Plan Approval or application for a building permit, whichever applies.

A. DEPOT STREET FIRE STATION EXPANSION AND REHABILITATION

King shall, in accordance with plans approved by the Town, completely renovate and expand the Town fire station located on Depot Street, as per the mitigation phasing schedule attached hereto as **Exhibit C**, and as hereinafter described. Work shall consist generally of the description and concept plans attached hereto as **Exhibit D**. King shall submit to the Town for approval the 25% design plans for the renovation and expansion within 60 calendar days of the Town Meeting vote approving the QSGOD. King shall submit final design consistent with the Town’s approved 25% plans within 60 calendar days of a permit for the development issued by the PAA. King shall obtain a building permit for the fire station renovation and expansion from the Inspector of

Buildings prior to obtaining the first building permit for phase II of the development as approved by the PAA. Construction of the fire station and issuance of the certificate of occupancy therefor shall be completed no later than the receipt of the first occupancy permit for phase II of the development as approved by the PAA.

A. The Town agrees to provide King with an instrument survey of the fire station site and to waive all permit fees that the Board of Selectmen may legally waive.

B. MUNICIPAL WATER SUPPLY

1. Compliance. All fire service lines, domestic water lines and lateral connections from the water main(s) to the individual buildings within the Project shall comply with the requirements of both the Easton Department of Public Works and the Fire District.

C. SEWER FACILITIES

1. Standard. The wastewater disposal system serving the Project shall be a state of the art membrane bio-reactor (MBR) system with ultra-violet disinfection capabilities as permitted by the Massachusetts Department of Environmental Protection (DEP) under 314 CMR 5.00, Groundwater Discharge Permit Program, and shall treat the wastewater to water reuse standards in accordance with DEP Interim guidelines on Reclaimed Water (Policy # BRP/DWM/PeP-P00-3) as suitable effluent discharges within a municipal water supply Zone II aquifer recharge area. Said system shall be constructed by King in accordance with the mitigation phasing schedule attached hereto as **Exhibit C**.

2. Leaching Fields. The leaching fields for the first phase of the Project shall NOT be located in Zone II of the public water supply. Furthermore, the leaching fields for treated effluent shall be utilized in the following order of preference, as shown on **Exhibit E**.

- * King shall first utilize the existing leaching fields for the existing facilities, as hereinafter defined (approximate capacity of 22,000 gpd all outside of Zone II);
- * King shall second utilize each of two new 50,000 gpd leaching fields that are located outside of the Zone II of the public drinking water supply, and
- * King shall third utilize the remaining 50,000 gpd leaching field which may be partially located in Zone II of the public drinking water supply.

3. Operation and Maintenance. The operation and maintenance of the wastewater disposal system serving the Project shall be the responsibility of King, its heirs, successors, and assigns, subject to fees tendered by the Town to King for connection to and use of said system, as provided in Section C.5 of this Agreement.

4. Excess Capacity. As shown in the record plans, the wastewater disposal system for the Project has the potential capacity to treat approximately 150,000 gallons per day (gpd). At least 50,000 gpd of this capacity is not necessary to serve the Project (the "Excess Capacity"). Such

Excess Capacity shall be reserved for the use of the Town of Easton. In the event the Board of Selectmen provide written notice to King of its intent to use such Excess Capacity, King shall, within thirty (30) days of receipt of such notice, grant the Town an easement, for the purpose of providing access by the Town to the wastewater treatment plant on the Property. Such easement(s) shall be conveyed to the Town for One Dollar (\$1.00). The Town shall bear the expense of any permitting. The Town shall bear the cost of expanding the wastewater disposal system and leaching fields and any other construction costs; provided, however, that King shall initially construct the building at the size necessary to accommodate a system with 150,000 gpd treatment capacity. The Town shall repair any damage to the private roadways within the Project caused by the connection to the wastewater disposal facility.

5. Sewer Fees. In the event that the Town elects to use the Excess Capacity, the Town and King shall, prior to the commencement of construction, agree on a mutually acceptable fee schedule for connection to and use of the wastewater disposal system.

6. Existing Facilities. King is the owner of the following parcels located within the QSGOD:

MAP 33U	PARCEL 1
MAP 33U	PARCEL 103

King shall cause the existing facilities located on these parcels to be connected to the wastewater disposal system within six months of initial operation of the system.

7. Public Information. King shall provide an annual gift of \$3,000.00 to the Town pursuant to G.L. c. 44, s. 53A. The Town will use said funds to prepare and mail an instructional guide for residents regarding the proper disposal of pharmaceuticals and other matters concerning the public water supply. Said \$3,000.00 annual gift shall be provided on March 1 of each year, the first such \$3,000.00 gift being provided, as per **Exhibit C**, following receipt of the first occupancy permit for the fourth phase of the Project, as approved by the PAA.

D. TRAFFIC IMPROVEMENTS

1. Off-Site and Site Access Traffic Improvements. King shall pay for planning, permitting, and design, and shall, to the extent not funded by a state or federal agency, construct at its sole expense, such off-site and site access traffic improvements and mitigation (the “Traffic Improvements”), as previously agreed to and as may be further required by the Massachusetts Highway Department (MHD). King agrees to pursue pre-approvals by the MHD for such Traffic Improvements located at and in between Route 123 and Roosevelt Circle, which are described on the **Exhibit F**, attached hereto. Easton agrees that it will reasonably cooperate with King in its efforts to obtain this MHD approval, and in making application for any reasonably available state or federal grants, including the execution of any documents required therewith. At least 14 days prior to the preliminary submittal of materials for such Traffic Improvements to MHD, King shall provide copies of the proposed Traffic Improvements to the Town of Easton for its review.

A. Upon receipt of pre-approval from MHD and the Development’s MEPA Certificate, King shall provide funds for the survey and final design of the Traffic Improvements to

Easton. Easton will advance the design, make the formal submittal for any necessary MHD permit(s) and provide plan documents to King for its use in constructing such Traffic Improvements, if construction is not funded by a government agency.

B. King shall provide all funds for land acquisitions, including appraisal, engineering and legal costs, as may be required to meet with designs. King will also make available any land owned by King for such Traffic Improvements at no cost to the Project.

2. Other Traffic Mitigation. King shall pay for planning, permitting, and design, and shall install and construct at its sole expense such traffic mitigation as may be required by the PAA (the “Other Traffic Mitigation”). Construction of the Other Traffic Mitigation shall be completed as required in schedules established by the PAA, or MHD, or as established during the MEPA permitting process.

3. Specifications. Traffic control equipment provided as part of the Local Traffic Improvements shall be as per PAA approval, including, without limitation, ornamental, post-mounted signal poles painted as prescribed by the PAA, and shall include control preemption equipment for emergency vehicles at the sole expense of King.

4. Further Analysis. During the PAA’s review of the application for Plan Approval, King shall be required to perform new traffic analyses consistent with the instructions of the PAA.

5. Private Facilities. King shall construct the streets and parking areas within the Project. All such streets and parking areas shall remain privately owned. King will maintain streets and parking areas at its sole cost and expense.

6. Completion. It is anticipated by and between the parties that some Traffic Improvements or Other Traffic Mitigation may not be completed prior to the issuance of a certificate of occupancy for any building constructed as part of the Project on the Property. To the extent that for any reason the Traffic Improvements or Other Traffic Mitigation are not completed prior to King’s application for a certificate of occupancy, King agrees that the PAA may require, as a condition for the issuance of any such certificate of occupancy, security for such incomplete work in the manner provided for securing construction of ways and the installation of municipal services set forth in G.L.c. 41, §81U, paragraphs (1) and (2). The amount of such security shall be determined by Easton, through the PAA, after consultation with King and shall be sufficient to cover the design and construction of any such incomplete work whether required under the Plan Approval or any MHD permit. Easton agrees that any incomplete work secured pursuant to the provisions of this Section shall be deemed complete for the purpose of approval of any certificate of occupancy.

7. Easton Welcome Sign. King shall provide a sign at a location established by the Town and to the design specifications of the Town welcoming motorists to Easton, with space for additional messages as deemed suitable by the Town. Said sign shall be installed in accordance with the mitigation phasing scheduled attached hereto as **Exhibit C**.

E. PROJECT DESIGN

1. Aggregate Limits. King's application for Plan Approval pursuant to the QSGOD shall propose a Project with the following aggregate limits:

- A. not more than 60 dwelling units located in Subzone A, of which 4 shall be Affordable;
- B. not more than 83 Assisted Living Units in Subzone B, of which 17 are required to be Affordable;
- C. not more than 137 Apartment dwelling units in Subzone B, of which 35 shall be Affordable;
- D. No less than 110,000 gross square feet of floor area of nonresidential space in Subzones B and C. It is expressly understood by the parties that King intends to apply to the PAA for 116,000 gross square feet of floor area of nonresidential space in Subzones B and C, and King's request for a waiver to that effect from the provisions of the QSGOD shall not be considered excessive.

The Project shall be phased in accordance with the phasing schedule attached hereto as **Exhibit G**; provided, however, that King may elect to develop said phases in any order approved by the PAA.

2. Percentage of Affordable Units. Any building with dwelling units for rent, excluding dwelling units located in an assisted living facility, shall have at least 25% of such units set aside as Affordable Units, in order that all of the dwelling units shall count towards the Department of Housing and Community Development's Subsidized Housing Inventory. Any building with dwelling units for condominium ownership shall have at least 6.7% of such units set aside as Affordable Units. Any building with dwelling units located in an assisted living facility shall have at least 20% of such units set aside as Affordable Units. "Affordable Unit" shall mean any unit defined as such in the QSGOD.

3. Underground Utilities. King shall install all utilities serving the Project underground, including, but not limited to, water, sewer, gas, electric, telephone/teldata, and cable.

4. Commercial Component. King has proposed a "Subzone C" in the QSGOD exclusively for commercial use. Subject to the approval of the PAA and the limits set forth above, King shall have the right to modify the location and the size of the proposed buildings.

5. Low Impact Development. King shall design and develop the Project using Low Impact Development (LID) methods, including: (a) pervious surfaces for all sidewalks and walkways, unless otherwise approved by the PAA; (b) pervious surfaces for paved areas within the 100' buffer zone of a wetland resource area, to the extent feasible and appropriate; and (c) rain gardens, grass swales and bio-retention cells for stormwater management.

F. OPEN SPACE AND TRAIL SYSTEM

1. Open Space. Prior to the issuance of the first certificate of occupancy, King shall convey to the Town for One Dollar, in its undisturbed state and for the purpose of aquifer protection, the 8.0+/- acre parcel shown approximately on **Exhibit H**, attached hereto. King shall bear the costs associated with Planning Board approval pursuant to G.L. c. 41, s. 81P regarding such parcel. Following said Planning Board approval and conveyance, the Town shall place a conservation restriction on such parcel.

2. Trails. Prior to the issuance of the first first certificate of occupancy for the third phase of the Project, as shown on the mitigation phasing schedule attached hereto as **Exhibit C**, King shall design and install the trails shown approximately on **Exhibit I**, attached hereto. King shall consult with the Board of Selectmen prior to such design. The Board of Selectmen will facilitate any access by King to any Town-owned parcel for the purposes of such installation.

G. SITE SERVICES

King shall be solely responsible for the maintenance and operation, including but not limited to refuse and trash removal, snow removal, road and sidewalk maintenance, lighting, landscape maintenance and similar activities of the Project to be built on the Property.

H. PUBLIC SAFETY

1. Fire Suppression Plans. King shall prepare and submit detailed fire suppression and detection plans for review by an independent fire protection engineer selected by the Easton Fire Department, with the cost of this review paid by King via an escrow account, as set forth in Section A.3 of this Agreement.

2. Alarms. Each building built as part of the Project shall contain an alarm for smoke or fire detection connected to the Fire District via either a fire alarm signal wire or via wireless technology, as shall be determined by the Fire District.

3. Security Plan. King shall provide a Security Plan for review and approval by the Chief of Police, prior to implementation. To the extent permissible under law, for security reasons, such plan shall not be considered a public document.

4. Construction Phase. King shall be responsible for site security during and following construction. The King shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Property, as well as during particularly busy periods when the Project has been completed and is in operation, such as holiday shopping seasons.

I. ENGAGEMENT OF CONSULTANTS; REIMBURSEMENT FOR COSTS

1. Payment of Consultants and Special Legal Counsel during the Rezoning Process. Within thirty (30) days of the execution of this Agreement, King agrees to replenish the existing escrow

account(s) in the office of the Easton Treasurer in an amount sufficient to pay for all documented costs of Easton's consultants and special legal counsel in the rezoning process up to and including the conclusion of the Special Town Meeting at which the QSGOD is considered.

2. Payment for Review of Plan. At the time of the submittal of the application for Plan Approval required by the QSGOD, King shall deposit with the Easton Treasurer the amount of \$15,000 (the "Plan Escrow Account") which shall be used pursuant to G.L.c. 44, §53G by the PAA to engage a traffic engineer, civil engineer, attorney, landscape architect, architect, urban designer, and other reasonably necessary consultants to provide technical assistance during the review of the application for Plan Approval. The Plan Escrow Account shall be replenished by King at the request of the PAA when the balance falls to \$5,000.00.

3. Payment for Review of Plans and Documents Before and during Construction. At the time King submits its first application for a building permit with respect to the Project, King shall deposit with the Easton Treasurer the amount of \$25,000, (the "Construction Escrow Account") which shall be used pursuant to G.L.c. 44, §§ 53G by Easton to engage a landscape architect, architect, code consultant, building inspector, civil engineer, wastewater engineer, wetlands specialist, traffic engineer, attorney, fire protection engineer, structural engineer, and other reasonably necessary consultants to provide technical assistance and inspections before and during the construction of the Project. Such account shall be used to pay for reasonably necessary outside consultant costs and expenses associated with document or plan review and inspections required by the PAA, Building Commissioner, Board of Selectmen, Road Commissioners, Fire Department, Police Department, Conservation Commission, and Board of Health to review building permit applications and to conduct conformance review during and following the completion of construction in connection with the development of the Project.

J. MISCELLANEOUS PROVISIONS

1. Invalidity. Easton and King agree that if the Town's adoption of the proposed QSGOD is determined to be invalid, illegal, or unconstitutional by the Attorney General of the Commonwealth of Massachusetts or by a court of competent jurisdiction prior to the performing of the actions described herein, then the provisions of this Memorandum and each of the agreements and documents referenced herein shall be null and void; provided, however, that the provisions of Section I.1 shall survive any such determination and shall continue to be in full force and effect.

2. Compliance. King agrees that during the Plan Approval process it shall submit all necessary evidence, to the satisfaction of the PAA, to show compliance with the terms of this Agreement.

3. Intent to Bind Successors, Heirs and Assigns. The foregoing obligations shall run with the land now owned by King, in Easton, Massachusetts and shall be binding upon and inure to the benefit and burden of King, its heirs, successors, and assigns.

4. Effect; Amendment. This Agreement shall not take effect until voted and executed by the Board of Selectmen of the Town of Easton. Upon such vote, this Agreement shall not be amended in any material respect except by a further majority vote of the Board of Selectmen.

5. Sale to Tax Exempt Entity. King understands that the Town supports this Agreement, in part, due to the fact that the proposed development of the Property will generate significant revenue benefiting the Town, including without limitation, real property tax revenue. In order to assure the Town of the continuation of such revenue in an amount proportional to the tax revenue anticipated from the Property during the period of this Agreement, in the event the Property during such period is sold to an entity or organization that is exempt from paying local real property taxes, King, on behalf of its heirs, successors, and assigns, hereby agrees that it shall, within sixty (60) days after the expiration of all appeal periods, make a payment to Easton in the amount of Two Million Dollars (\$2,000,000) which sum the parties fix and settle as liquidated damages for a default under this paragraph and the receipt of which shall be Easton's sole remedy against King under this Agreement, at law or in equity.

6. Required Notice. Unless otherwise specified in this Agreement, any notice to be given under this Agreement shall be in writing and signed by the party (or the party's attorney) and shall be deemed to have been given (a) when delivered, if delivered by hand, or (b) two business days after the date mailed, if mailed by registered or certified mail, all charges prepaid, in either event addressed as follows:

In the case of the Town, to:

David Colton
Town Manager
Town Hall
136 Elm Street
North Easton, MA 02356

In the case of King, to:

Douglas A. King
115 Main Street
Suite 1D
North Easton, MA 02356

By such notice, either party (or such party's attorney) may specify a new address, which thereafter shall be used for subsequent notices.

7. Default and Notice.

A. **By King.** If King shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to King (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Easton shall have the right to (i) terminate this Development Agreement; (ii) withhold any Approvals issued by Easton; or (iii) exercise any other remedy available at law or in equity, including commencing an action for specific performance. Easton agrees that if, within ten (10) days after King's receipt of a notice of a claim of default, King shall give notice to Easton

that King contests the same, then Easton shall not have the right to exercise any of the foregoing rights in respect thereto until such claim shall have been finally adjudicated in such contest. King agrees to diligently prosecute any such contest and if such adjudication is in favor of King, then King shall be reimbursed its reasonable legal fees and other expenses in prosecuting such contest by Easton; if such matter is determined adversely to King, King shall have thirty (30) days (or such longer period of time as shall be reasonable under the circumstances) to effect such cure and in addition thereto, King shall reimburse Easton its reasonable legal fees and other expenses in defending any such contest.

B. *By Easton.* If Easton shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Easton (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), King shall have the right to (i) terminate this Development Agreement; or (ii) exercise any other remedy available at law or in equity, including commencing an action for specific performance.

8. Effective Date of Agreement. This Development Agreement shall be effective as of the date it shall be executed by both King and Easton.

9. Dispute Resolution. Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, Easton and King agree that such disputes shall be first subject to nonbinding arbitration or mediation, for a period not longer than ninety (90) days.

10. Applicable Law; Construction.

A. This Development Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Massachusetts.

B. This Development Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

Executed under seal as of the date first above written.

TOWN OF EASTON

By: _____
Selectman _____, Chairman

By: _____
Selectman _____

By: _____
Selectman

By: _____
Selectman _____

By: _____
Selectman

DOUGLAS A KING BUILDERS, INC.

By: _____
Its duly authorized Chief Executive Officer

SCHEDULE OF EXHIBITS

Exhibit A:	QSGOD
Exhibit B:	Map of Property
Exhibit C:	Mitigation Phasing Schedule
Exhibit D:	Depot Street Renovation and Expansion Concept Plans
Exhibit E:	Present Zone II Delineation with Leaching Field Locations
Exhibit F:	Traffic Improvements
Exhibit G:	Phasing Schedule
Exhibit H:	8 Acre Open Space Parcel
Exhibit I:	Trail System