

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT/MITIGATION COVENANT
BY
NORTH SHORE CONSTRUCTION & DEVELOPMENT, INC. AND
STEVEN F. CUTTER AND DANIEL PICARIELLO, TRUSTEES OF THE
FORTY-TWO PLEASANT STREET NOMINEE TRUST
WITH
THE TOWN OF STONEHAM
REGARDING
42 PLEASANT STREET, STONEHAM, MA**

This First Amendment to the Development Agreement/Mitigation Covenant dated January 12, 2015 recorded at Middlesex South District Registry of Deeds at Book 64801, Page 550 by North Shore Construction & Development, Inc. and Steven F. Cutter and Daniel Picariello, Trustees of the Forty-Two Pleasant Street Nominee Trust with the Town of Stoneham (“Development Agreement/Mitigation Covenant”) is made this ___day of _____, 2015 by North Shore Construction & Development, Inc., a Massachusetts Corporation, having its principal office and place of business at 215 Salem Street, Woburn, Massachusetts 01880 (“North Shore”) and Daniel Picariello, Trustee of the Forty-Two Pleasant Street Nominee Trust having its principal office and place of business at 42 Pleasant Street, Stoneham (“42 Pleasant”) with the Town of Stoneham, a municipal corporation located in Middlesex County, Massachusetts, with its Town Hall at 35 Central Street, Stoneham, Massachusetts 02180 (the “Town”).

NOW, THEREFORE, North Shore and 42 Pleasant and the Town hereby agree to amend said Agreement by deleting Section 12 of said Agreement and by substituting a new Section 12 to read as follows:

12(a). In the event that North Shore or 42 Pleasant proceed with the MFD upon obtaining a building permit from the Town of Stoneham to construct the first of the twenty-one (21) condominium units at the property, then North Shore or 42 Pleasant shall as a mitigation impact fee **construct a concrete cement sidewalk and grass strip and granite curbing on the west side of William Street in Stoneham, Massachusetts from the end of the sidewalk work to be performed by the owners of the property at 38 Pleasant Street, Stoneham, Mass. to Pomeworth Street approximately Three hundred Fifty-eight (358) feet and beginning again at the end of the new sidewalk installed by the developer of the Pomeworth Place Condominium approximately Five Hundred Sixty-six (566) feet to the existing concrete sidewalk and granite curbing on Williams Street approximately Ninety (90) feet from Central Street.**

However, the Town may by majority vote of the Board of Selectmen on or before May 1, 2016 require that North Shore or 42 Pleasant perform the improvements at the Pleasant and Spring Street intersection shown on the attached Conceptual Design Plan entitled “Intersection Improvements Pleasant Street at Spring Street, Stoneham, Massachusetts” drawn by MDM Transportation Consultants, Inc. as was required in the initial Mitigation Covenant, together with a separate contribution of \$20,000.00 by North Shore toward the Town’s sidewalk fund, in which event the sidewalk work on the west side of William Street referenced in the preceding paragraph will not be required to be performed by North Shore or 42 Pleasant Street.

North Shore and 42 Pleasant may alternatively and/or additionally perform other improvements at the Pleasant and Spring Street intersection related to the impacts of the MFD or any other improvements related to the impacts of the MFD if mutually agreed upon by North Shore and/or 42 Pleasant and the Town.

All work required in this Subparagraph 12(a) of and by North Shore and/or 42 Pleasant Street shall be completed no later than August 31, 2017, unless extended in writing by the Town Administrator. No occupancy permit may be requested, nor issued until the work/improvements have been completed to the satisfaction of the Town Engineer and Town Administrator.

(b) In the event that the MFD is approved by the Town of Stoneham for a total of less than the requested twenty-one (21) condominium units, then North Shore or 42 Pleasant Street and the Town will negotiate in good faith toward a mutually agreeable reduction in the mitigation work and/or payments to the Town referenced in paragraph 12(a) above, with the selection of the particular reduced alternative to be made in the sole discretion of the Town by the Board of Selectmen.

(c) In the event that North Shore or 42 Pleasant do not proceed ahead with the MFD for a reason(s) of their own volition, rather than as a result of an action by the Town described in Section 12(f) below, North Shore or their successors or assigns agrees to pay to the Town the amount of Twenty Thousand Dollars (\$20,000) payment shall be made to the Town by North Shore or 42 Pleasant as liquidated damages for time and expense expended by the Town in the permitting of this project. For purposes of this provision, the phrase “does not proceed ahead” shall include the failure of North Shore or 42 Pleasant to: (i) apply for all necessary permits and approvals from the Planning Board, Board of Selectmen, Board of Appeals and if needed from the Conservation Commission, within nine (9) months of the earlier of the date of approval by the Attorney General of the Commonwealth of Massachusetts of Article 2 or the expiration of the 90-day period of time for the Attorney General to approve said zoning bylaw; or (ii) alternatively if North Shore or 42 Pleasant do not apply for a building permit within twelve (12) months of obtaining all Town permits and/or approval needed to apply for and be granted a building permit, unless so prevented by the Town as described in Section 12(f) or by an appeal of a necessary prerequisite for such application(s), or unless such

delay is outside the control of North Shore (such as the failure of tenants to leave the premises) in which event the parties shall reasonably agree upon an extension hereof which shall not exceed **nine (9) months**. No such payment to the Town shall release North Shore or 42 Pleasant from its other obligations under this Agreement, including the obligations set out in Subparagraph 12(a) above in the event of construction of multifamily dwelling units, except as otherwise specifically provided in this Agreement.

(d) The above-referenced payments do not include water and sewer connection fees to the Town or any other fees customarily imposed by or pursuant to applicable laws or Town By-Laws or regulations or standard policies, including, any betterment fees or charges that may be imposed by the Town under applicable law, bylaw or regulation. Nor shall the above-referenced payment include any amount or payment made to the Town by North Shore or 42 Pleasant, their predecessors and/or successors in interest, including, but not limited to any payment(s) pursuant to any other agreement with the Town so long as said agreements are necessary to obtain a building permit for the premises referenced herein; and

(e) No occupancy permit may be issued for the MFD by the Building Inspector until the sidewalk work on the west side of William Street (referenced in Subparagraph 12(a) above) has been installed to the satisfaction of the Town Engineer of the Town of Stoneham, or unless a sufficient surety bond is filed by North Shore covering the cost of such work, to the satisfaction of the Town Engineer of the Town of Stoneham. In the event that the Board of Selectmen vote by May 1, 2016 to require the Spring and Pleasant Street construction rather than the William Street sidewalk work then the Spring and Pleasant Street improvements shall be completed to the satisfaction of the Town Engineer of the Town of Stoneham.

However, in the event that North Shore or 42 Pleasant is prevented from performing either the Williams Streets sidewalks or the traffic intersection improvements at said Spring and Pleasant Street as described above by an appeal or other legal action or any other circumstances outside the control of the parties, the purpose of which is to prevent the construction of said public improvements, then North Shore shall pay the Town the sum of seventy thousand (\$70,000.00) dollars in complete fulfillment of North Shore or 42 Pleasant's obligation to construct the improvements at Spring and Pleasant Street. No occupancy permit shall be requested, nor issued until said payment is made.

(f) In the event that there is a change to any provisions of the Town Zoning By-Laws applicable to the Property and the proposed MFD subsequent to the zoning amendment vote by the Special Town Meeting of January 12, 2015 pursuant to Article 2 which prevents or substantially changes the proposed MFD, then North Shore and/or 42 Pleasant may terminate this Agreement, however in any such instance or case, neither North Shore nor 42 Pleasant may proceed ahead with the MFD or any other multi-family development at the Property absent a written

agreement allowing multi-family development specifically entered into by the Board of Selectmen and the Town Administrator with North Shore and/or 42 Pleasant.

This Amendment only amends Paragraph 12 of the Development Agreement/Mitigation Covenant. Paragraphs 1-11 and Paragraphs 13-27 of the Development Agreement/Mitigation Covenant remain unchanged and are hereby ratified and confirmed.

This Agreement may be signed in any number of counterparts, and each thereof shall be deemed to be an original, and all of such counterparts are one and the same Agreement.

[Signature Pages Follow]

EXECUTED as a sealed instrument, covenant and agreement as of this ____ day of December, 2015.

NORTH SHORE CONSTRUCTION & DEVELOPMENT, INC.

By: **Ronald A. Lopez,**
its President & Treasurer

by: Ronald A. Lopez, President & Treasurer

Forty-Two Pleasant Street Nominee Trust

Daniel Picariello, Trustee

TOWN OF STONEHAM

By its Board of Selectmen

Thomas A. Boussy, Chairman,

Caroline Colarusso, Selectwoman

John F. DePinto, Selectman

Ann Marie O'Neill, Selectwoman

Frank A. Vallarelli, Selectman

By its Town Administrator

David Ragucci, Town Administrator

By its Planning Board

August S. Niewenhous, Chairman

Terrence P. Dolan

Kevin M. Dolan

Daniel J. Moynihan

Thomas J. O'Grady

Approved as to legal form:

William H. Solomon, Town Counsel

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____ 2015, before me, the undersigned notary public, personally appeared Ronald A. Lopez, President and Treasurer, of North Shore Construction & Development, Inc, who proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that he signed it voluntarily for its stated purpose.

(official seal)

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____ 2015, before me, the undersigned notary public, personally appeared Daniel Picariello, Trustee, Forty-Two Pleasant Street Nominee Trust who proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document(s), and acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Trustee of the Forty-two Pleasant Street Nominee Trust.

(official seal)

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ___ day of _____ 2015, before me, the undersigned notary public, personally appeared Thomas Boussy, Chairman of the Board of Selectmen, Town of Stoneham, Caroline Colarusso, John F. DePinto, Ann Marie O'Neill and Frank Vallarelli, all members of the Board of Selectmen, and David Ragucci, Town Administrator, who proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document(s), and acknowledged to me that they signed it voluntarily for its stated purpose.

(official seal)

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ___ day of _____ 2015, before me, the undersigned notary public, personally appeared August S. Niewenhous, Chairman of the Planning Board, Town of Stoneham, Terrence P. Dolan, Kevin M. Dolan, Daniel J. Moynihan, and Thomas J. O'Grady, all members of the Planning Board, who proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document(s), and acknowledged to me that they signed it voluntarily for its stated purpose.

(official seal)

Notary Public
My Commission Expires: