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**TOWN OF SOUTHBOROUGH  
DEPARTMENT OF PUBLIC WORKS**

**Tel: 508-485-1210  
Fax: 508-229-4444**

**147 Cordaville Road  
Southborough, MA 01772**



**DATE: December 9, 2015**

**MEMORANDUM**

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**TO: Southborough Board of Selectmen  
CC: Mark Purple, Town Administrator  
FROM: Karen Galligan, DPW Superintendent  
SUBJECT: Water Utility Easement at 70 & 72 Turnpike Road**

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As you all know the Town funded the replacement of the 1931 cast iron water main on Turnpike Road (Route 9) from White Bagley Road to the Framingham Town Line. Work on this project began this fall with the intention of completing the replacement of the most problematic piece of water main, the section between Oak Hill Road and Brook Lane.

The new main layout was designed to keep the water main in the shoulder of the MassDOT right-of-way and out of the travel lanes wherever possible. The specification plans call for the main to be installed in the travel lanes where the shoulder is not available; however we have been working to get easements in these locations.

The area along 70 and 72 Turnpike Road is one area where the shoulder is too crowded and the main won't fit in the shoulder. The owner of the properties has agreed to grant the Town a utility easement for the water main in exchange for restoring the property and performing the improvements outlined in the easement. The Contractor will be performing the work in the easement and on the property under the contract line items. Based on the work being done and the savings the Town will get from not laying the main in the MassDOT right-of-way, I believe the Town will see a small cost savings in this section of the contract.

The easement has been reviewed by Town Counsel and the property owner's attorney. All parties have agreed to the easement conditions.

**AGREEMENT**  
**70 AND 72 TURNPIKE ROAD, SOUTHBOROUGH, MA**

This Agreement is entered into by and between: (1) Gloria M. Aspesi, acting individually and as Trustee of the Gloria M. Aspesi Realty Trust, u/d/t dated January 18, 2001 and recorded with the Worcester County Registry of Deeds at Book 23477, Page 188, which owns the property known as 70 Turnpike Road, Southborough, Massachusetts; and Gloria M. Aspesi and Peter M. Aspesi, Trustees of the Seventy Two Turnpike Road Realty Trust, u/d/t dated October 15, 2009 and recorded with the Worcester County Registry of Deeds at Book 44970, Page 325, which owns the property known as 72 Turnpike Road in Southborough, Massachusetts (collectively, the "Owners"); and (2) the Town of Southborough, a Massachusetts Municipal Corporation with an address of 17 Common Street, Southborough, Massachusetts (the "Town")

WHEREAS, this Agreement relates to the real property (located at 70 and 72 Turnpike Road, Southborough, Massachusetts (the "Property")).

WHEREAS, as part of on-going Rt. 9 Water Main Improvements Project, the Town prefers the installation of two 12 inch water mains across various properties, including the Owner's Property, rather than under Turnpike Road, and, therefore, requires easements from Owner for such purposes.

WHEREAS, in exchange for and in consideration of the grant of such easement, the Town is willing to undertake the restoration and improvement of the Property, at the Town's sole cost and expense.

NOW THEREFORE, for valuable consideration, as described herein, the parties agree as follows:

- I. In exchange for the conveyance of a permanent easement to install and maintain the above described water mains in and across the Property, said easement to be in the form as attached hereto as Exhibit A, the Town will undertake the following restoration and improvements of the Owners' Property, as follows:
  - a. Restoration
    1. All disturbed grassy areas, with the exception of the clearing being performed at the western property edge of 72 Turnpike Road, will be restored with 4" of loam and new sod. The Town will water the new sod for a period of no less than 4 months following installation of the sod. Watering will be done one day per week with a hose provided by the Town and a water supply provided by the Owners (assuming an outside hose bib is available for use). Mowing and other maintenance will be provided by the Owners.

2. The driveway at 72 Turnpike Road will be replaced with a new asphalt driveway. The entire existing gravel driveway will be removed to a depth of 15" below grade and a 12" gravel subbase and a 3" asphalt driveway will be installed. The new driveway will match the approximate dimensions of the existing driveway, including the gravel parking area in the back. The limits of the new driveway are shown on the attached figure. The driveway will be sloped to promote drainage toward Rt.9.

3. All the flagstone that makes up the existing walkway in front of 70 Turnpike Road will be carefully removed by hand and stored onsite prior to the start of construction. Once construction has been completed, the walkway will be restored to its original condition with the flagstones that were previously removed. In the event that any of the flagstone is broken in the removal process, the Town will provide and install replacement flagstone of comparable quality.

4. The driveways at 70 and 72 Turnpike Road will be temporarily repaired upon the execution of this agreement with asphalt until the spring, at which time a permanent repair will be installed (see Property Improvements 5, 6, and 7, below and Restoration 2, above).

b. Property Improvements

5. The pavement around the existing drain cover by the back steps of 70 Turnpike Road will be removed and replaced with 3 inches of new pavement. The new pavement will be sloped to promote run-off toward the drain cover.

6. The asphalt driveway at 70 Turnpike Road will be crack-sealed and then seal-coated.

7. The Town will increase the height of the asphalt driveway apron of 70 Turnpike Road by approximately 3" to reduce roadway runoff from Route 9 entering the driveway. The apron will be sloped to allow for a gradual transition from the roadway to the driveway. The transition will be accomplished by removing a portion of the driveway, near the roadway, and installing a new 3" asphalt driveway to achieve the necessary transition.

8. The Town will clear an area 50 feet by 25 feet along the western property edge of 72 Turnpike Road, an area that is currently overgrown and which collects road debris and litter. The Town will spread 4" of loam and grass seed over this area. The Town will water the grass for a period of no less than 4 months following seeding. Watering will be done one day per week with a hose provided by the Town and a water supply provided by the Owners (assuming an outside hose bib is available for use). Mowing and other maintenance will be provided by the Owners. No tree removal is being proposed.

II. The Owner hereby grants, to the Town, the right to enter upon the Property to undertake and complete the above-described "Restoration" and "Improvements."

The Owner agrees to release hold the Town harmless from all claims for injuries to persons and property relating to such activities, provided that such activities are performed in accordance with this Agreement and otherwise in a good and workmanlike manner in compliance with all applicable laws, regulations, bylaws and codes. As may be permitted under law, the Town agrees to indemnify, subject to appropriation, and hold the Owners harmless from any and all property damage and personal injury incurred by any town personnel or those working for the Town while on the Owners' Property. The Town and its personnel, during any time upon the Owners' Property, assume the risk of any property damage or personal injury.

- III. Owner hereby warrants and represents that the right to use and occupy the Property is under the exclusive control of Owner, and Owner has full right and authority to enter into this agreement and to grant the rights herein granted.
- IV. This Agreement may be executed in multiple counterparts. This Agreement is a Massachusetts Contract and may only be enforced in a Massachusetts State Court of competent jurisdiction.
- V. This Agreement is not assignable or transferrable and may not be amended, except in a written instrument executed by all parties hereto. This Agreement is binding upon the parties' various heirs, successors, officers, agents, and employees.

Witness our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Town of Southborough,  
By Mark Purple,  
Town Administrator,  
Duly Authorized

\_\_\_\_\_  
Gloria M. Aspesi, Individually  
and as Trustee of the Gloria M.  
Aspesi Realty Trust; and as Trustee  
of the Seventy Two Turnpike Road  
Realty Trust

\_\_\_\_\_  
Peter M. Aspesi, Individually and  
As Trustee of the Seventy Two  
Turnpike Realty Trust

## EXHIBIT A

### AGREEMENT GRANT OF PERMANENT WATER LINE EASEMENT

THIS AGREEMENT FOR GRANT OF EASEMENT ("Grant") is made as of this \_\_\_ day of \_\_\_, 2015, between (1) Gloria M. Aspesi, acting individually and as Trustee of the Gloria M. Aspesi Realty Trust, u/d/t dated January 18, 2001 and recorded with the Worcester County Registry of Deeds at Book 23477, Page 188, which owns the property known as 70 Turnpike Road, Southborough, Massachusetts; and Gloria M. Aspesi and Peter M. Aspesi, Trustees of the Seventy Two Turnpike Road Realty Trust, u/d/t dated October 15, 2009 and recorded with the Worcester County Registry of Deeds at Book 44970, Page 325, which owns the property known as 72 Turnpike Road in Southborough, Massachusetts (collectively, the "Grantors"); and (2) the Town of Southborough, with principal offices located at Southborough Town Hall, 17 Common Street, Southborough, Massachusetts (hereinafter the "Grantee").

#### RECITALS

WHEREAS, as stated above, Grantors is the owner of two parcels of land known and numbered as 70 and 72 Turnpike Road in Southborough, Massachusetts, said land shown as Map 38, Parcel 77 and Map 39, Lot 53 on the Town of Southborough Assessor's Maps, as described in the deed filed in Worcester County Registry of Deeds as follows: (a) 70 Turnpike Road: Book 23477, Page 196 (the "Property"); and (b) 72 Turnpike Road: Book 44970, Page 126; and

WHEREAS the Property fronts on a public way known as Turnpike Road (Route 9); and

WHEREAS, Grantee is in the process of improving the water lines within Turnpike Road, and Grantor desires to grant to Grantee permanent water line easements to install and maintain said water lines, with the location of the water line and approximate limit of disturbance depicted on a certain plan entitled "Town of Southborough Rout 9 Water Main Replacement," prepared by Pare Corporation, dated October, 2015 (the "Plan", a sketch copy of which is attached hereto as Exhibit A).

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors and Grantee agree as follows:

#### SECTION I CONVEYANCE OF EASEMENT

Grantors hereby grant and convey to Grantee, its heirs, successors, and assigns, the perpetual right to use and enjoy the an easement in the approximate area depicted on the Plan for the purpose of installing, constructing and maintaining water line infrastructure and related utilities in the Way.

**SECTION II**  
**EASEMENT COVENANTS**

**1. Condition of Easement.** Grantors, their heirs, successors, and assigns, shall continue to be able to use the Property in the location of the easement area but shall not be permitted to disturb said area in a manner that would impede the maintenance or function of the water line installed therein. The Grantee shall have the right to use this Water Line Easement in all ways consistent with its purpose of allowing the Grantee to construct and maintain a water service infrastructure and related utilities in the easement area.

**2. Covenants Run with the Land.** All of the provisions, agreements, easements, rights, powers, covenants, conditions and obligations contained in this Grant of Easement shall be binding upon and shall inure to the benefit of the Grantee and its agents, contractors, officers and representatives. The Water Line Easement created by this Grant of Easement is appurtenant to the Grantors' Property, and all of the provisions of this Grant of Easement shall constitute equitable servitudes and be covenants running with the land pursuant to applicable law.

**3. Restoration.** The Grantee shall use all due care in installing, constructing and maintaining the sewer infrastructure and related utilities within the Property. Any disturbance to the Property shall be promptly repaired and replaced upon the installation of such infrastructure, so that the Grantors may retain the ability to use the easement area in a manner that is consistent with this Easement and utilities.

**4. Assumption of Risk/Indemnification.** At any times the Grantee, or its employees, agents, contractors and personnel enter upon the Property pursuant to the terms hereof, the Grantee shall assume all risk of personal injury and property damage. As permitted by law, the Grantee agrees to indemnify, subject to appropriation, and hold the Grantors harmless from any and all property damage and personal injury incurred while at or on the Property.

**SECTION III**  
**MISCELLANEOUS**

**1. Termination and Amendment.** This Grant of Easement may be canceled, changed, modified or amended in whole or in part only by written and recorded instrument executed by the Grantors and the Grantee, or their respective heirs, successors and assigns, as evidenced by the public record as of the date of recordation of such amendment.

**2. Severability.** Invalidation of any of the provisions contained in this Grant of Easement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstances and the same shall remain in full force and effect so long as the

determination of invalidity did not result from or by reason of any action taken by either party, or their successors and assigns, hereto.

**3. Entire Agreement.** This Grant of Easement and the accompanying Plan described herein contain all the representations and the entire Grant of Easement between the parties hereto with respect to the subject matter hereof. The provisions of this Grant of Easement shall be construed as a whole according to their common meaning and not strictly for or against any party.

**4. Governing Law.** This Grant of Easement shall be construed in accordance with the laws of the Commonwealth of Massachusetts and any applicable federal laws and regulations.

IN WITNESS WHEREOF, the parties have executed and acknowledged this Grant of Easement as of the date first above written.

**Grantors:**

**Grantee:**

\_\_\_\_\_  
Gloria M. Aspesi, Trustee  
of the Gloria M. Aspesi Realty Trust  
and Trustee of the Seventy Turnpike  
Road Realty Trust

\_\_\_\_\_  
Peter M. Aspesi, Trustee of the  
Seventy Two Turnpike Road  
Realty Trust

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned notary public, personally appeared Gloria M. Aspesi, Trustee of the Gloria M. Aspesi Realty Trust, and Trustee of the Seventy Two Turnpike Road Realty Trust and proved to me through satisfactory evidence of identification, which was a Massachusetts drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned notary public, personally appeared Peter M. Aspesi, Trustee of Seventy Two Turnpike Road Realty Trust and proved to me through satisfactory evidence of identification, which was a Massachusetts drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

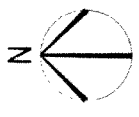
On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned Notary Public, personally appeared the members of the Southborough Board fo Selectmen:

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, proved to me through satisfactory evidence of identification which was  photo identification  personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public:

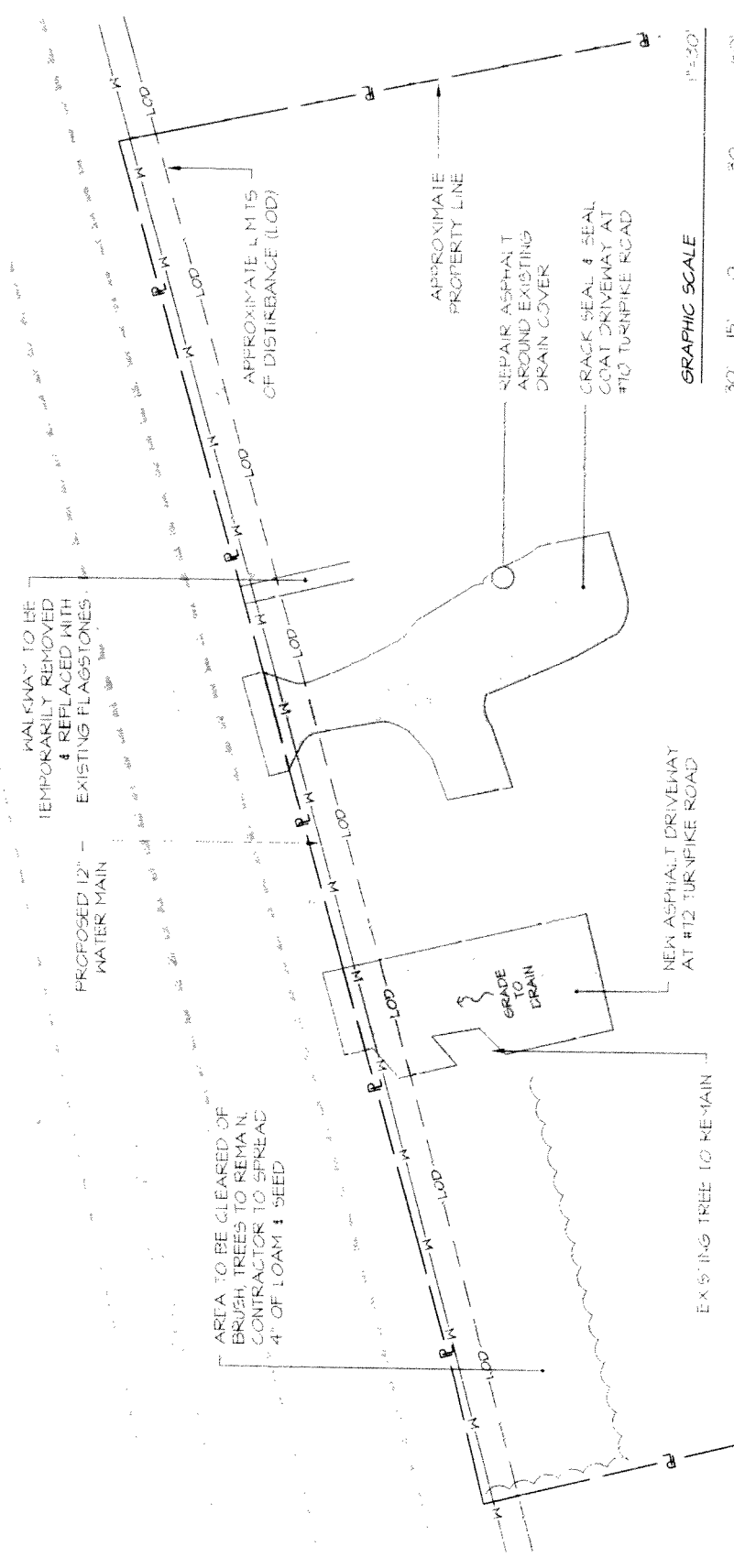


My Commission Expires:  
Notary Name:



**LEGEND**

|                      |                      |
|----------------------|----------------------|
| <b>EXISTING</b>      | <b>PROPOSED</b>      |
| PROPERTY LINE        | PROPERTY LINE        |
| UTILITY LINE         | UTILITY LINE         |
| EDGE OF PAVEMENT     | EDGE OF PAVEMENT     |
| DRAIN LINE           | DRAIN LINE           |
| WATER LINE           | WATER LINE           |
| GAS LINE             | GAS LINE             |
| UNDERGROUND ELECTRIC | UNDERGROUND ELECTRIC |
| TELEPHONE LINE       | TELEPHONE LINE       |
| DRAIN MANHOLE        | DRAIN MANHOLE        |
| LATCH BASIN          | LATCH BASIN          |
| TELEPHONE MANHOLE    | TELEPHONE MANHOLE    |
| UTILITY POLE         | UTILITY POLE         |
| PISTONANT            | PISTONANT            |
| WATER GATE           | WATER GATE           |
| MONITORING WELL      | MONITORING WELL      |
| ENCLOSURE            | ENCLOSURE            |
| LIMIT OF DISTURBANCE | LIMIT OF DISTURBANCE |



WALKWAY TO BE TEMPORARILY REMOVED & REPLACED WITH EXISTING FLAGSTONES.

PROPOSED 12" WATER MAIN

AREA TO BE CLEARED OF BRUSH, TREES TO REMAIN. CONTRACTOR TO SPREAD 4" OF LOAM & SEED

EXISTING TREE TO REMAIN

NEW ASPHALT DRIVEWAY AT #12 TURNPIKE ROAD

GRADE TO DRAIN

CRACK SEAL & SEAL COAT DRIVEWAY AT #10 TURNPIKE ROAD

REPAIR ASPHALT AROUND EXISTING DRAIN COVER

APPROXIMATE PROPERTY LINE

APPROXIMATE LIMITS OF DISTURBANCE (LOD)

GRAPHIC SCALE 1" = 30'

30' 15' 0 30 60'

**PARE CORPORATION**  
 ENGINEERS - SCIENTISTS - PLANNERS  
 8 BLENKINSOP SQUARE  
 LINCOLN, MASSACHUSETTS 01903  
 401-334-4100

**PARE**

Town of Southborough  
 Route 9 Water Replacement  
 Southborough, Massachusetts

|                |              |
|----------------|--------------|
| SCALE:         | 1" = 30'     |
| DATE:          | OCTOBER 2015 |
| PROJECT NO.:   | 0817611      |
| DESIGNED BY:   | TPT          |
| DRAWN BY:      | SPD          |
| CHECKED BY:    | TPT          |
| DRAWING TITLE: | FIGURE 1     |

DRAWING NO. FIG. 1  
 SHEET NO. 1 OF 1