

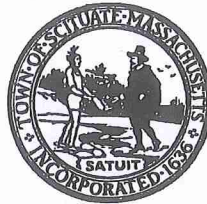
TOWN OF SCITUATE
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TOWN OF SCITUATE

Planning Board



600 Chief Justice Cushing Hwy
Scituate, Massachusetts 02066
Phone: 781-545-8730
FAX: 781-545-8704

**Common Driveway Special Permit and Stormwater Permit
3 Common Driveways at 443 – 461 Chief Justice Cushing Highway
Decision: NOT APPROVED**

Owner: Seven H Trust, William Harrington, Jr. and Angela Harrington, Trustees
Address: P.O. Box 1773, Manomet, MA 02345
Applicant: David MacCready
Address: 266 Main Street, Suite 34, Medfield, MA 02052
Date: June 2, 2020
Location: Vacant land off of Chief Justice Cushing Highway known as 443 – 461 Chief Justice Cushing Highway
Assessor's Map: # 47-2-26A to 26 J
Hearing dates: August 22, October 10, November 14, December 19, 2019 and January 23, February 13, April 9, and May 14, 2020
Plans and Reports: Proposed Common Driveways, Lots 1-8 Chief Justice Cushing Highway (Assessor's Parcel: 47-2-26A To J) Scituate, Massachusetts prepared by Morse Engineering Co., Inc., dated 4/24/19 with revisions through 1/29/2020 Sheets 1 – 7 - Overall Layout Plan, Easements Plan, Erosion Control Plan, Construction Details I, Construction Details II, Sight Distance Plan, Landscaping Plan; Existing Conditions Plan dated 10/1/19 revised 1/29/2020 and included as Sheet 1 of 8 in the plan set; Cut & Fill Plan dated 10/25/19; Common Driveway Special Permit Application, Deed, Project Narrative; Authorization from Seven H Trust - William Harrington, Jr. and Angela Harrington, Trustees for David MacCready to file for permits dated 4/25/19 revised 6/20/19; Legal documents including Common Driveway Agreement Wade Commons Condominium, Wade Commons Condominium Trust, Master Deed of Wade Commons Condominium and Grave Access Easement; Stormwater Report & Calculations prepared by Morse Engineering Co., Inc., dated

4/24/19 revised 9/25/19, 10/24/19, 11/11/19, 1/7/2020 and 1/21/2020 including pre and post development watershed plans; Post Construction Phase Operation & Maintenance Plan; Proposed signage for common driveways at C J Cushing Hwy; Response to comments dated 9/26/19; 10/25/2019, 11/12/19, 1/10/2020, 1/21/2020 and email dated 1/29/20 by Morse Engineering Co., Inc.; Statement of Stormwater Quality by Gregory J. Morse of Morse Engineering Co., Inc dated 10/25/2019 revised 2/4/20; email from Gregory J. Morse, PE dated 9/25/19 with forwarded information from Tom Cook of Tetrattech on location of Zone A and Front Elevation, Side Elevation and Rear Elevation Type A, Front Elevation Type B Unit, Front Elevation Type C Unit, Side and Rear Elevation Type B & C Units, First Floor Plans Type A, B and C Units; Mounding analysis dated 1/28/2020; Revised Plan of land in Scituate, MA Showing a Division of Parcels 47-2-26A To 26J Chief Justice Cushing Hwy, Scituate, MA latest revised dated 1/29/2020; Surety estimate for Common Driveway Servicing Lots 6, 7, 8 dated 3/25/20.

Engineering Peer Reviews for Town of Scituate from Merrill Engineers and Land Surveyors dated 8/14/2019, 10/8/2019, 11/8/2019, 1/15/2020 and 2/5/2020.

Members Hearing Special Permit Application: Ann Burbine, Stephen Pritchard, Patricia Lambert, William Limbacher and Benjamin Bornstein.

Background: The project site consists of approximately 15.3 acres which has been subdivided into eight (8) Approval Not Required (ANR) lots. The property is located on the westerly side of Chief Justice Cushing Highway just to the north of Tack Factory Pond. The property is located in the R-1 Residential District and the Water Resource Protection District (WRPD). The lower portion of the site is in the Zone A of the WRPD and in the Scituate Floodplain and Watershed Protection District. The topography slopes from the northerly end of the property at elevation 112 toward the southern portion of the property at elevation 46. The property is currently undeveloped and heavily vegetated with mature trees.

The proposed project consists of the construction of three (3) common driveways from Chief Justice Cushing Highway to service (8) residential building lots. Each lot will have a two family dwelling with utilities, septic systems, stormwater management systems, grading and landscaping. The proposed stormwater management system for the project consists of subsurface infiltrators for roof runoff and grassed depressions and rain gardens for control of stormwater runoff. The stormwater management system for all three common driveways is interconnected and a drainage easement has been proposed encompassing the drainage land area.

A Form A Plan submitted under the provisions of MGL Ch. 41 S 81P was endorsed by the Planning Board on June 10, 2019 to re-divide the existing eight lots into eight new lots for this project.

Procedural Summary: This request for a Common Driveway Special Permit and Stormwater Permit was filed with the Town Clerk and the Planning Board on June 21, 2019. A Public Hearing before the Planning Board for this Special Permit and Stormwater Permit was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The Public Hearing was opened on August 22, 2019 and continued until October 10, 2019 (no testimony taken – immediate continuance), November 14, 2019, December 19, 2019, January 23, 2020 continued until February 13, 2020, April 9, 2020 (immediate continuance – no testimony taken) and May 14, 2020 when the Planning Board did not approve the Special Permit with conditions. All members were present at

each hearing session or missed one meeting and filed a Mullin Rule Certification for missing only one meeting.

Hearing Summary: The applicant's representatives, Jeffrey Hassett, P.E. and Gregory P. Morse, P.E. of Morse Engineering Co., Inc. were present at the August 22, 2019 public hearing representing David MacCready. Peter Palmieri of Merrill Corporation was present as the Planning Board's consulting engineer. Mr. Morse reviewed the property and its current zoning and status. He indicated the proposal was to construct three common driveways with eight duplex units for a total of 16 units. He reviewed the common driveways as allowed under Section 720 of the Scituate Zoning Bylaw and indicated the driveways serve the purpose of decreasing curb cuts onto the street, protecting sensitive areas, and reducing the amount of stormwater runoff. He indicated Plans, the application and maintenance agreement were submitted. He reviewed the standards of common driveways according to the bylaw and how the plan complied with them. He indicated that 100% of the roof runoff will be infiltrated and runoff from the driveways will be collected and treated in a series of catch basins, swales and rain gardens. He indicated that sight distance is provided for all three driveways. He noted that they will be doing additional soil testing for the septic system and drywells, that additional information on erosion controls would be provided, that they would not be discharging any additional water onto the state highway of Chief Justice Cushing Highway, there would be a blanket drainage easement over the entire property for the purposes of maintaining the drainage system, the driveways would be private and never accepted as public roads and that the common driveway drainage system relies on each down gradient system and all the owners would have the obligation to maintain the system.

Town Planner, Karen Joseph, indicated it would be advisable for the applicant to provide information from Mass DOT that three curb cuts would be allowed onto the state highway. She asked why the site was not being permitted as a subdivision and thought a site visit would be in order. In addition to addressing comments from departments, she indicated information on impervious areas for each lot is needed, she expressed concern over septic systems being within 400' of Tack Factory Pond and expressed concern over sight distances and the stormwater system.

Mr. Palmieri indicated that Mr. Morse and Ms. Joseph had summarized many of his concerns from his review letter; however, he indicated that the cross easements should be clear as to rights to drain as the system relies on all the lots to function and grading would be important to make sure the water flows in the direction it is now going. He expressed concern over the sight distance calculations as his differed based on speed and grade of the existing road. He opined the rain gardens should not impact abutters to the west and that driveways should remain untreated for snow removal to not impact the reservoir. He said the drainage system needs to have a means of stopping the runoff going into the infiltration basins so that the reservoir is not impacted.

The Board expressed concern about the number of homeowners under one homeowner agreement and asked why this was not a subdivision. Mr. Morse indicated there was frontage and access that is why this is not a subdivision plan. The Board was concerned about provisions for renters in light of the maintenance and homeowners' agreement. Mr. Morse reviewed the plan for the dedicated open space in response to questions about proximity to abutting properties.

Mr. Bill Richardson of 45 Cedarwood Road asked about open space, setbacks to abutters, the septic systems and the number of legal lots existing and proposed. There was a discussion about when the percolation tests were done and if the previous ones had expired and been witnessed. Ms. Judi Aronson of 19 Cudworth Road expressed concern about the percolation tests as she believed they were never witnessed. Mr. Morse said they do not expire and they will do more in response to the Board and abutters concerns. Mr. Steve Young of 5 Old Forge Road indicated that the percolation tests conducted for the previous proposal in 2004 only worked in the northern part of the site. He indicated that the amount of water that runs into the reservoir was amazing and was concerned about where the water from the state highway goes. Mr. Morse and Mr. Limbacher both opined that there is no treatment now for the stormwater from the state highway going into the reservoir. Mr. Palmieri said he has not seen the previous percolation test results and asked for them to be submitted.

Mr. Giovanna Sheehan of 35 Stearns Road asked for clarification of where the eight septic systems are going and if they would be mounded as he did not want to see any water going to the Stearns Road neighborhood. Mr. John Warner of 50 Brook Street expressed his concerns about how the project would impact the Town's water supply and noted that he did not see the project's drainage system as an improvement. He asked to see the 400' requirement be upheld for being in the Water Resource Protection District (WRPD). He opined the plan does not protect the town's drinking water supply and he did not understand why all the runoff was not being retained on the site and further opined that surface water pollutants will end up in the reservoir. He does not encourage the Board's approval of the project. Mr. Young pointed out differences between the previous approved plans and this plan being that water was pumped uphill, and there were overflow ponds to make sure nothing flowed into the reservoir. Ms. Angela Harrington, a trustee of Seven H Trust, indicated there were approvals for this property in the past and this plan is nothing new.

The Board expressed concern over the extent of clearing on the site, if the phasing would be so it was all done at the same time, how the drainage will be maintained to make sure it is functioning, NPDES requirements and stormwater staying on-site during construction, grading and the septic systems and cut and fill. The hearing was continued.

The public hearing session of October 10, 2019 was an immediate continuance with no evidence or testimony taken.

At the public hearing session of November 14, 2019, Mr. Morse and Mr. Hassett were present along with applicant David MacCready. Mr. Morse reviewed that the application is for three common driveways and a stormwater permit. He indicated that the stopping sight distance and intersection sight distances have been studied and comply with the requirements. He said the cut and fill plan has been provided and that the drainage is meeting the requirements of the Scituate Zoning Bylaw Section 751 and the DEP requirements. He indicated they are proposing a treatment stream for stormwater that has over 90% TSS removal, all roof runoff is being infiltrated and the pre and post development rates and volumes of runoff are being matched. He indicated additional percolation tests were done with some septic systems being moved a bit further away from the Stearns Road abutters. He said MassDOT will not review an application until there is local approval; however Mr. Morse said they wanted driveways at 24' wide and curb radii at 30'. He indicated they have met the Fire Department requirements with the driveways and will have signage with large lettering for 911

identification. He said they have provided condominium documents and they have provided an easement and parking for the two historical gravestones. He said the development is 45% of the parcel and there is 12% impervious area over the site. He indicated they are not proposing working in the Zone A area which has been confirmed to be 200' from the edge of Tack Factory Pond.

Mr. Palmieri indicated the proposal is getting close to having peer review comments addressed; however, there remain concerns about stormwater management and erosion control during construction. He said not all of the stormwater management has pretreatment before it reaches the bioretention facilities and is critical in this area. He expressed concern of the cascading effect of the stormwater management system as it relies on the system above it to be effective. Mr. Morse said there is about 15,000 cu yards of fill material being brought to the site. Ms. Joseph indicated that legal documents were being reviewed, DPW and Traffic Rules had not commented yet, she questioned the impervious area if it was for each lot or the whole site, what happens with the groundwater and future estimated seasonal high groundwater and if a hydrogeological study had been done. She recommended the Board consider demarcation of the limit of work during construction to avoid over clearing and the Board consider impacts to the water supply due to proximity to Tack Factory Pond. She questioned how much of the proposed impervious surface is being recharged as it is a requirement of the WRPD.

The Board again expressed concern over the interrelationship of the rain gardens and how they will be managed if one component is missing and how much infiltration will be taking place. It also discussed the differences between a special permit and a subdivision. Mr. Morse said the plan is not substantially different from the plan approved previously where the permits expired; however, this plan now has ANR lots with rattails to create a permanent open space buffer to the abutters and to Tack Factory Pond which is a benefit as it provides for less impervious area, less fill and less land disturbance. Ms. Joseph indicated since the previous plan was approved there have been changes to the WRPD bylaw and the previous plan had 15 units versus the 16 units here. The Board indicated they were very concerned with the water supply, the density of the project, the greenbelt to Route 3A, that the water moratorium at Special Town Meeting just held was defeated by just 12 votes and this project is uphill of Tack Factory Pond, the number of septic systems located so close to the water supply, the proximity of the development to the north end of the Stearns Road neighborhood, and that there would be no affordable units.

Mr. Robert Chessia of 9 Stearns Road questioned if rain gardens are allowed for peak rate of runoff control, if the site is in compliance with State and Town stormwater regulations, how the existing septic systems of abutters will be impacted due to the site being glacial till and his concern for the Town's water supply as related to quality and quantity as the development is uphill of a very sensitive area. Judi Aronson said she grew up in the house at the bottom of the hill and is concerned with the project as it is in a sensitive area and water already flows off the hill onto the family property and into Tack Factory Pond. Patricia Butler, who lives in the same aforementioned house, said the previous approved development had a large berm at the bottom of the hill to catch water and is concerned there is no berm shown on the proposed plan. Mike Sheehan of 35 Stearns Road said he is also concerned with water running downhill as in his development the storm drains are eroded and caving in due to the amount of water they handle. He questioned what happens if the Homeowner's Association does not maintain the drainage system and it impacts the Town's water

supply. David McCormack of 21 Stearns Road said the previous plan had the large common septic system to the north and this plan has individual systems and he is also concerned about the amount of water runoff from the development and if all the percolation tests were valid and witnessed. Nora McCormick said she is also concerned about the water drainage and the traffic. She said it is difficult to get out of her development which is on the same side of the road as the proposed development. She opined it is already unsafe.

Ms. Joseph inquired if there would be a traffic study and indicated that the Water Resource Committee did not feel their comments were addressed. She asked about the phasing. Mr. Morse indicated the lower driveway would be done first as it does not rely on the upper drainage systems and opined the proposed system meets the Town bylaw standards as it is low impact drainage with decentralized practices and that there is a large buffer between the end of the system and Tack Factory Pond to act as a filter. He indicated the impervious area is for the development and indicated the individual lots will comply. Mr. Morse said revised plans had been submitted and would like specifics from the Board as to what they would like to see related to density, greenbelt requirements and specific overlay districts and their requirements. Mr. Morse opined the Board has approved projects in sensitive areas previously and would like the same standards applied here as to other projects in town. The Board indicated this is one of the most sensitive areas in Town. Mr. Morse indicated he drinks the Town water and argued that the project is not proposing work in the Zone A, they are not proposing work within 150' of a tributary, they are not working in the buffer zone to any wetland and they are under the 15% threshold for the project for requiring infiltration and they are providing 10 times more infiltration than required. He indicated the common driveways provide less impervious area and the densities proposed are per the zoning bylaw. Mr. Morse said the greenbelt requirement has been met as buildings are set back 100 feet from Chief Justice Cushing Highway. It was indicated that all the units are 3 bedrooms for a total of 48 bedrooms. He indicated they have met the buffer requirements and the requirements of the Zone A and have accounted for the proposed future increase in elevation of Tack Factory Pond by 18". The public hearing was continued.

At the 12/19/2019 public hearing session, Mr. Morse and attorney Jim O'Brien were present for the applicant. Mr. O'Brien indicated he and Mr. Morse have met with Ms. Burbine and Ms. Joseph to discuss the project. Mr. O'Brien indicated that there was an ANR Plan approved in 1987; however the applicant does not feel it is a good plan which is why they are pursuing the plan with three common driveways as opposed to 8 individual driveways. He indicated they are meeting the intent of the bylaw by protecting wetlands, reducing the number of driveways and providing more green space. He said since the last meeting they have increased the size of the buffer on the north lot, turned the houses away from the abutters there and reduced the length of the north driveway.

Ms. Joseph indicated that she and Ms. Burbine met with the applicant's representatives after the last meeting and suggested the development was too dense, that they should respect a 400' buffer to Tack Factory Pond and they discussed the erosion control and construction sequencing. The Board liked that the development was pulled away from the abutters to the north. The Board wanted to see several things incorporated into the plan including redundancy and a safeguard in the stormwater system to ensure the stormwater infrastructure will always do its job as rain gardens are subject to failure, as much vegetation preserved as possible as it provides a buffer to Tack Factory Pond,

reduced density, assurance from MassDOT about the number of driveways they would permit. They expressed concerns over safety with the speed on Chief Justice Cushing Highway with regards to site distance and access to the new driveways, that there is no place for children to play, removing all septic systems out of the 400' buffer, the amount of cut and fill with the site being almost all in fill with approximately 1,000 cu yards of fill per unit, respect of the 400' buffer and maintenance of the open space and training homeowners how to maintain the system. The Board also asked for verification that there were no tributaries on site which would have additional buffers of 150'. Ms. Joseph indicated the previous approval asked for a hydrogeological study.

Robert Chessia asked that his comment letters be read into the record and opined if the previous approval with its conditions could have been met, the site would be developed today. He also questioned the lot sizes for duplex units and if it was met. Mr. Morse confirmed the duplex lots with 8 individual driveways would be a "by right development" and it respects the 200' buffer to Tack Factory Pond. He opined the "by right plan" is not a good plan, thus the applicant is seeking the common driveways. He opined the applicant is voluntarily putting in a permanent restriction on the open space so there is a buffer to the pond. He said he will address the erosion control and construction sequencing in the next submittal.

Judi Aronson asked for clarification on where the 200' setback is measured from. Mr. Morse said it was taken from the Town's plans for the reservoir expansion which were reviewed by DEP. Attorney O'Brien confirmed this is the best plan that the applicant wants to proceed with. The Board opined they agree the 3 common driveway plan from a design and planning advantage makes the most sense; however, they are concerned about the disturbance and the stormwater system pushing the envelope and public outcry once trees start to be cleared. The Board opined they thought the plan could be improved. A continuance will be necessary.

At the 1/23/2020 public hearing session, Mr. Morse indicated that they have rotated the buildings on Lots 1 and 2 reducing the driveway length and providing more setback area and have increased the buffer at the rear property line from 20' to 40'. He said they have altered the overland flow going into the rain gardens by having deep sump catch basins and forebays and the driveway for Lots 6, 7 and 8 now has a particle separator so everything is in accordance with 90% TSS as required in the WRPD. He indicated the septic systems are now out of the 400' buffer. He said they have increased the sizes of the temporary construction basins.

Ms. Joseph indicated that a comment was received from DPW and the Water Resource Committee who agree that while Tack Factory Pond is a tributary it should be treated as a surface water supply. She asked about the impervious cover for dwellings and roof infiltration in the 400' buffer and asked that the swale on Lot 8 be moved out of the 400' buffer. She said at the last meeting the applicant was asked to move everything out of the 400' buffer and this has not been done. Mr. Morse said his understanding was that the Board wanted the septic systems outside of the 400' buffer and that has been done. He said the regulations required 200' and that is provided. He said all of the roof area is being recharged into drywells. He also indicated that they are providing the recharge for the other impervious area and all the lots are under the required 15% impervious cover.

Robert Chessia asked for the mounding analysis for the roof drywells. Patricia Butler submitted photographs of standing water on the project site. Mr. Morse said the water is in the no disturb area and they are not adding additional water.

Mr. Palmieri indicated he has not reviewed the temporary sedimentation basin calculations; however, it does appear that the drainage easements have been added to the plans and the documents shall indicate the Town is the beneficiary with the Town able to step in and fix the drainage if there is a problem and back charge the Homeowner's Association.

Mr. Morse clarified that catch basins were added at the driveways and they do not impact any slope of the driveways. He reaffirmed each system provides 90% TSS removal. He indicated all the basins over top in the 100 year storm but they are discharging less water in the post development condition than the pre development condition. Mr. Morse said the undisturbed land area is now 60% from 55% previously as the limit of clearing for Lot 8 was reduced. The Board again asked about intermittent tributaries. Mr. Morse said he reached out to DEP who didn't think there were any and did not think it necessary for a site visit based on what was previously reviewed for Tack Factory Pond.

Judi Aronson asked about drainage at the back of the lot and previously there was a berm at the bottom. She is concerned about a tributary with water flowing downhill and the soil. Mr. Morse said there was no drainage along the back. Mr. Palmieri confirmed that any untreated water is less than the predevelopment condition. Becky Malamut, Chair of the Water Resources Commission, clarified her comments with respect to the 400' buffer by adding that in a Zone A the maximum impervious cover is 20% with artificial recharge. She expressed concern on the swale on Lot 8 as it drains downhill and there would likely be pollutants. The Board questioned the functionality of the rain gardens. Mr. Morse said they were essentially a detention basin with plantings to absorb pollutants. The Board questioned the pipes that go under the driveways as being the points of failure. Mr. Morse said the water would back up into the depression and not the road. The Board discussed inlet grates and determined that maintenance was key and water should not back up onto Route 3A.

Nora McCormick of Stearns Road surmised the condominium association is responsible for the maintenance and the condominium board must make sure they have the money and professional maintenance to keep the system as designed. Ms. Aronson expressed concern about rain gardens on the slope of the hill. The Board asked for the information for the mounding analysis, that the erosion control plan be double checked and the concern where children will play. A continuance is required.

At the 2/13/2020 public hearing session, there was a request for an immediate continuance until 4/9/2020.

The 4/9/2020 public hearing session was immediately continued with no testimony or evidence taken due to the Coronavirus Pandemic - Covid19 and Governor's State of Emergency.

At the 5/14/2020 hearing session which was done by remote participation, Mr. Morse reviewed the changes since the previous session. He indicated that homes on Lots 1 and 2 were relocated

allowing for 40' of green space to the abutters and the driveway is shorter; the septic system for Lot 8 has been moved to be greater than 400' from Tack Factory Pond; 2 parking spaces and an easement has been provided to the historic graves; and a construction estimate was provided for each of the three phases totally \$721,000 which they would like to provide in separate phases. He indicated that the Town's consulting engineer was satisfied and any comments remaining are minor and could be addressed through conditions.

The Board asked for the 400' setback line to be shown to them and if any buildings were in it. Mr. Morse confirmed there were buildings in it; however, the 400' setback is arbitrary and not a regulatory requirement although it is required for the septic systems and is met. The Board discussed the construction estimate and indicated the Board's engineer had indicated the prices were low and that the fill alone was over \$581,000 based on MassDOT pricing. Mr. Morse said the numbers provided were from a contractor who would likely do the work. The Board questioned the phasing of the project. Mr. Morse said the phases are designed so the applicant does not have to outlay all the money at once and the Board seemed to prefer phasing so impacts could be limited and monitored for each phase, especially with the stormwater. The Board discussed the applicant's approach of starting the phasing from the bottom of the slope closest to the pond as the drainage is a linear train from one phase to the next. Mr. Morse said there would be erosion controls and temporary sedimentation basins at each phase as well. Mr. Morse reinforced that the lower system handles Lots 6-8 and will have 90% TSS removal and provides the infiltration for the 3 lots. He indicated this is the same with the middle driveway, He said there are overflows from one system to the next overland via swales. He said there is redundancy in the system to provide for contaminant in the drainage system or spills. Mr. Morse said the roofs all have their own infiltration devices with adjacent natural vegetation and topography. He indicated each phase operates on its own and meets the rate and volume limitations.

The Board inquired about reserve septic systems and where they are shown. Mr. Morse indicated they would be shown on the Board of Health plans and indicated that the reserve system for Lot 8 would be behind and along the proposed system.

Robert Chessia of 9 Stearns Road read his submitted letter outlining his concern that a mounding analysis was not done for the roof infiltration chambers. He indicated the project is in a sensitive area and would be better addressed with fewer units and reduced impacts and could potentially have an adverse impact to the water supply. Pat Butler of 439 Chief Justice Cushing Hwy said she lives at the bottom of the hill and is concerned about water flowing onto her land from a major rainfall event as Mr. Morse previously indicated water will flow in the southerly direction toward her property. Mr. Morse said water does flow downhill, but there will be no increase in rate or volume to the Butler property as the drainage calculations show. He said the stormwater outfalls are directed away from the Butler house and there is a natural vegetated buffer of 150'. Ms. Butler said she believes water will flow onto her property in the back where none flows now and asked about seeing the flow of water. Mr. Morse reviewed the existing conditions and indicated all the contours point to the Butler property now; he reviewed the locations of the pond edge and the projected future edge as well as the FEMA floodplain line. Mr. Morse reiterated they are retaining enough stormwater on site so there will be no increase in flow and will have a level spreader and a natural buffer. Ms. Joseph

asked where the level spreader is shown. Mr. Morse said it will be on Lot 8 but is not included in the plans yet.

Karen Canfield of 39 Surfside Road and a member of the Board of Selectmen indicated she thought under the Stormwater Regulations that all stormwater was to be retained on site for new developments. The Board indicated there can be no increase in rate or volume from pre-development to post development across property bounds. Mr. Morse concurred and provided a slide of the discharge rates for design point 1 at the Butler property and design point 2 out on Route 3A. Ms. Canfield asked if the impact of the development changes where the discharge of water flows assuming it is the same amount of water potentially going to a new place from its original place. Mr. Morse said it was not a finite point along the Butler property, but a flat contour several hundred feet in length. He said the water after it passes through the stormwater system will be sheet flow set back into the property. Mr. Morse confirmed that every point along the Butler property was analyzed and there will be no increase in rate or volume. Mr. Morse said the buffer would not be enhanced with vegetation in response to Ms. Canfield's inquiry. The Board expressed concern about additional clearing by the homeowner's up to the easement lines. Ms. Canfield opined the curb cuts on Route 3A are problematic. The Board indicated they have no correspondence from MassDOT and the Applicant indicated there would be none until the special permit was approved. Ms. Canfield expressed that the development is very close to the public water supply.

Jim Hunt of 66 Mann Lot Road opined that the Board should defer this project until the current pandemic restrictions are eased and the project can be discussed in a face to face meeting instead of electronically. Ms. Burbine said there is an upcoming election in June and if the Board were to defer the project there could possibly be two new members and the process would have to start over again. She said the Board appreciates the comment, but there have been five public hearing sessions on the project already. Mr. Hunt opined that the significance of the impacts to the town's water supply should not be relegated to the expedience of the upcoming election as the issue is an important one with limited public participation.

Ms. Butler inquired that since the slope of the hill would be changed in the middle by bringing in fill and clearing, how will there be less water going down the hill. Mr. Morse showed the areas of flat surfaces and stormwater devices promoting infiltration. Ms. Butler reiterated her concern if there was a way to capture some of the water if it overflows onto her property. Mr. Morse said there will still be water flowing to her property; they will not capture it all. Judi Aronson of 19 Cudworth Road, who grew up in Ms. Butler's home, said the buffer is wider along Route 3A and gets narrower as the property goes back. She opined the water is going to flow over the small area in back and go into the drinking water supply. She indicated her research shows that rain gardens and retention basins are not suitable for slopes over 20 degrees. She feels there will be more water running from the hill after it is cleared. The Board inquired if infiltration credit was being taken for the rain gardens and grass depressions. Mr. Morse said it was as they comply with the 3' to groundwater requirements. The Board asked about infiltration across the lower portion of the site in the buffer. Mr. Morse said there will be some natural infiltration, but not a significant amount given the contours.

The Board expressed concern how the stormwater devices and cleared lawn and landscape areas are not going to be overly compacted so that infiltration that is credited in the design calculations occurs. Mr. Morse said someone will be on site to ensure protocols are done and there are temporary basins for construction. He said the temporary basins at groundwater level and will hold water from uphill areas. Mr. Morse said stormwater calculations have been done for the temporary basins for a 10 year storm and the final development stormwater system. He confirmed with using the temporary basin calculations, there is no increase in rate or volume along the Butler property. In response to the Board's question, Mr. Morse opined in a 100 year storm during construction water would not flow to the drinking water as there is over 300' of natural vegetation separation and erosion control. Mr. Morse said there was back up for a catastrophic event; however, it was not indicated. The Board was concerned that a Homeowner's Association would not have the knowledge to maintain such a complicated system.

The Board discussed the project after the Findings of Fact were voted and Conditions read. The Board opined that the findings of fact do not meet the zoning, a 400' buffer has not been met, some of the specific common driveway requirements are not met, the sensitivity to the water supply and protection of wetlands has not been met, reliance on three rain gardens for the stormwater devices, maintenance with a Homeowner's Association is a concern and phasing are fatal flaws to the Board. Mr. Morse indicated other projects have been approved for the property, the project reduces impervious areas by clustering development, the regulatory setback is 200' not 400' and the bylaw does not prohibit land clearing or houses within 400' to Tack Factory Pond. Ms. Joseph said that the Board expressed the desire for the 400' buffer based partly on the Secretary of Environmental Affairs saying the pond was a public water supply and other comments received. She opined common driveways are supposed to protect sensitive areas from disturbance including stormwater runoff and the findings of fact 1-8 elaborate that. The Board opined that protecting the Town's water resources is important now more than ever.

Public Comment: See hearing summary for public comment during individual hearing sessions. Written comments were received from the following Town entities: Board of Health, Water Resources Committee, Historical Commission, Fire Department, DPW/Engineering Department, Conservation Commission and Merrill Engineers and Land Surveyors as the Town's Consulting Engineer. Written comments were received from the following citizens: Steve Litchfield, Patricia Butler, Robert Chessia (several) and Stacey Szklut.

Findings of Fact: Following a motion duly made and seconded, the Planning Board voted to make the following Findings of Fact for the Common Driveway Special Permit and Stormwater Permit for 443 – 461 Chief Justice Cushing Highway:

1. David MacCready (the "Applicant") filed an application for a special permit and stormwater permit for three common driveways serving eight lots at 443 – 461 C J Cushing Highway known as Assessor's Map/Block/Lot 47-2-26A-26J (the "Property") with the Town Clerk on June 21, 2019. The Property is owned by the Seven H Trust, William Harrington, Jr. and Angela Harrington Trustees. Kathleen P. Muncey of Delaney & Muncey, P.C. signed the letter of authorization to file for her client Seven H Trust. The Applicant's deed is recorded

with the Plymouth County Registry of Deeds at Book 16306, p.11. The public hearing dates and the plans are listed in the procedural summary and plan summary.

2. Three common driveways are proposed. According to the application each driveway is measured from the property line. The first driveway, located at the south end of the site is 339 feet long and serves 3 lots. The second driveway, located in the middle of the site is 243 feet long and serves 3 lots. The third driveway, located at the north end of the site is 140 feet long. It serves 2 lots. The common driveways will serve 8 duplex units or 16 units in total. The property is intended to be developed in a condominium form of ownership administered by a condominium unit owners trust (hereafter Wade Commons Condominium Trust).
3. The Property has an area of approximately 15.3 acres. The Property is located in the Residence R-1 Zoning District and in the Water Resource Protection District with the southern portion of the Property also located in the Zone A Surface Water Protection Zone. A small portion of the Property along its southern border is in the Floodplain & Watershed Protection District. The Property was divided into eight parcels in accordance with a Form A Plan, which plan was endorsed by the Planning Board on June 27, 2019.
4. Old Oaken Bucket Pond is a Class A water body and has a 400-foot surface water protection zone in accordance with the Drinking Water Regulations in 310 CMR 22. The Applicant, however, claims that Tack Factory Pond is a tributary to Old Oaken Bucket Pond and is therefore, a tributary to the surface water source, which sources require only a 200-foot protection zone. The Applicant's engineer indicated, in a letter to the Planning Board dated 2/4/2020, that Tack Factory Pond is not a surface water supply. Upon further review, the Town's zoning bylaw under Section 520.2 A. and G. states that "Old Oaken Bucket Pond, Tack Factory Pond and The Reservoir and their watersheds and tributaries, and the groundwater underlying Scituate are the primary source of Scituate's existing and future drinking water supply;" and it is "of critical importance to the Town that both the surface water supply and its Zones of Contribution to the public water supply wells be protected from contamination by human activities to the greatest extent possible." In addition, the Town's Zoning Bylaw establishes a Water Resource Protection District "to include areas significant to the Town's drinking water supply source which require zoning protection." Based on this information, the Water Resources Commission, Department of Public Works (DPW), DPW Engineering Division and Water Department commented (see comments from the DPW Engineering Division dated 12/11/2019 and from an email from Becky Malamut, Chair of the Water Resources Committee dated 1/23/20) that, while Tack Factory Pond is a tributary to a public water supply, it is in itself a Surface Water Source as that term is defined in regulations and should be treated as such. According to 310 CMR 22, a tributary has a specific definition as follows: "Tributary" means any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A Surface Water Source, as defined in 314 CMR 4.05 (3)(a): Class A. Tack Factory Pond does not fit this definition as it does not run in a definite channel but rather has the characteristics of a Class A Surface Water Source, a naturally impounded water body that is contained by naturally created boundaries.

Consequently, DPW and the Water Resources Committee recommended that the 400-foot protection zone be maintained and such protection zone be measured from the proposed Tack Factory Pond expansion project boundaries (as described immediately below).

Furthermore, the Applicant appropriately identified that the future water's edge of the drinking water supply will be approximately 18" higher than the existing water edge. This elevation increase estimate was provided by the Town of Scituate DPW (and its consultant) as was filed for in the Reservoir Dam Water Storage and Fish Passage Improvements project, EEA Number 15711. This project proposes to raise Reservoir Pond and Tack Factory Pond maximum water levels by 1.5 feet in order to provide greater surface water storage capacity for the Town's drinking water. In the ENF Certificate issued by the Certificate of the Secretary of Energy and Environmental Affairs in response to the Environmental Notification Form (ENF) for that project dated July 21, 2017, the Secretary stated that the project described in the ENF is intended to "provide water storage for the Town of Scituate's public water supply and improve fish passage at the Reservoir Dam fishway and downstream locations." The Secretary's Certificate further provides that according to the ENF the reservoir dam was constructed as a storage reservoir for the Town of Scituate's public water supply. The Certificate also states that "Reservoir Pond and Tack Factory Pond are classified as Zone A Surface Water Supply Protection Areas and Outstanding Resource Waters (ORW) of the Commonwealth to protect the public drinking water supply." Based on this information, the Board concluded that i) the protection zone should be 400 feet; and ii) such protection zone should be measured, as proposed by the Applicant, from the water's edge created by the 1.5 feet increase in the reservoirs' maximum water elevation.

5. The Project shows on-site waste disposal systems including 8 septic systems but the systems do not all show the reserve systems as required by Title V. All of these systems are located inside the Water Resource Protection District; but they are located out of the 400-foot protection zone. As not all the reserve systems are shown, there is no information to show that all of the reserve systems are out of the 400-foot protection zone.
6. The Water Resource Protection District requires all runoff from impervious surfaces to be recharged on the site, diverted toward areas covered with vegetation from surface infiltration to the extent possible or as otherwise directed from the Scituate DPW. The DPW has commented, in a letter to the Board dated 12/11/2019, that "the density and future loading on the parcel with a 400 foot protection setback should be considered and elimination of the development of Lots 1 & 2 (the northernmost parcels) will allow the development to shift uphill and provide a greater buffer to the drinking water supply." This would help with a purpose of the common driveway bylaw to protect "sensitive natural areas from disturbance, including stormwater runoff".
7. The zoning bylaw (in Section 520.5F) restricts the rendering of impervious surface of any lot/parcel to no more than 15% or 2,500 sq. ft., whichever is greater, unless a system of artificial recharge of precipitation is provided that meets the design requirements of Section 520.5 F. The bylaw further restricts the rendering impervious in Zone A to no more than 20% with artificial recharge. The Applicant states that no more than 12.3% of the property is rendered impervious for the entire development and the water quality will not be degraded as evidenced in a signed and stamped statement by engineer Gregory P. Morse, dated 10-25-19. Subsequently, on 2-4-20, Mr. Morse submitted a revision to the original statement, which

revision stated that the overall impervious coverage is 13.3% of the Property and that with Lot 4 and Lot 7 exceeded the 15% limit, at 23% and 26% respectively; but, indicated a system of artificial recharge has been provided. 1" of roof runoff is recharged and the first inch of runoff is recharged for all impervious areas according to DEP requirements.

8. The zoning requirements of a common driveway require that the location and construction of any common driveway should minimize soil disturbance, vegetation removal, and drainage impacts, and preserve existing trees over 12" caliper and other natural features of special significance. The plan shows soil disturbance and vegetation removal as generally limited to what is necessary for constructing the common driveways, their drainage systems, 8 duplexes for a total of 16 units and 8 septic systems. The proposed stormwater management system has been reviewed by the Town's consulting engineer, Merrill Engineers and Land Surveyors whose comments indicate the stormwater system has been adequately addressed with the latest revised plans; although no mounding analysis was provided for the subsurface roof infiltration units. The Applicant states that soil disturbances are minimized, vegetation removal is minimized as there is proposed an undisturbed buffer, in excess of the Applicant's proposed 200-foot buffer, which varies in width from approximately 60 feet to 160 feet in width confined to one area at the south end of the site closest to Tack Factory Pond. Project Engineer, Gregory Morse also maintains drainage impacts are minimized as the drainage system mitigates impacts so that post construction rates and volumes are less than preconstruction rates and volumes, that trees over 12" caliper are only disturbed in the development area and other natural features of special significance are protected, i.e. Tack Factory Pond. Sedimentation sumps are provided to minimize erosion and sedimentation during construction. Although, their proposed sizing meets SWPPP/NPDES requirements of 3,600 cubic feet of storage per acre, it does not address the Town's concerns regarding protecting the drinking water supply and Tack Factory Pond as natural features of special significance. Moreover, the plan does not afford protection of adjoining premises against detrimental methods of utilizing the site as a purpose of a common driveway is also to protect "sensitive natural areas from disturbance, including stormwater runoff". Based on the Findings of Fact presented in numbers 1-8, the common driveways **does not meet** the standards of Section 720.7A.
9. The proposed common driveways are 24 feet in width with two-foot grass shoulders on each side. There is a one-foot wide bituminous concrete berm at the entries of the common drives on the south side of them to direct water away from the site entries of the state highway to the site drainage system. The common driveways meet the requirements of Section 720.7B.
10. The common driveways are proposed to access Chief Justice Cushing Highway, a public road in Scituate and a State Highway that is owned and controlled by the Massachusetts Department of Transportation (MDOT), which access requires a permit from MDOT. The common driveways are not connected to each other and are not allowed, by the zoning bylaws, to be connected. A permit from MDOT has not been obtained yet for the 3 driveways as the Applicant has indicated a permit will not be issued without Town approval of the development. There is also no correspondence or permit applications with MDOT, as requested by the Board, to evidence that MDOT would consider permitting the curb cuts for the proposed common driveways or eight curb cut permits for Form A lots. The common driveways **does not meet** the requirements of Section 720.7 C.

11. A common driveway is required to be located in an easement that allows space for both the driveway and for the installation of water lines and utilities. A water line is shown on each common driveway plan in the easement along with a gas and an electric line. Thus, water lines and utilities are shown as underground utilities. The common driveways meet the requirements of Section 720.7 D.
12. The common driveway cross section shows a top course of 1 ½" of bituminous concrete top coarse Type I-1 over a 1 ½ bituminous base Type I-1 over a 12" processed gravel base Type C gravel borrow per Mass DOT Spec M1.03.1. The common driveways meet the requirements of Section 720.7 E.
13. The common driveways are approximately 339', 243' and 140' long measured from end of cul-de-sac to the Property line. Each distance is less than 1,000 feet and meets the requirements of Section 720.7 F.
14. The Applicant has indicated there will be no increase in rate or volume of runoff to abutting properties for the 1, 2, 10 and 100 year 24 hour storm events. The Town's consulting engineer, Merrill Engineers and Land Surveyors, indicated the stormwater management system is satisfactory and runoff draining to abutting properties will not exceed that which existed prior to construction of each of the common driveways. Therefore, the common driveways meet the requirements of Section 720.7 G.
15. No impervious areas are located above the major components of the proposed septic systems. The common driveways therefore meet the requirements of Section 720.7 H, as no impervious areas are above the proposed septic systems.
16. The common driveways are proposed to be buffered from Chief Justice Cushing Highway by a 50-foot "no disturbance" buffer. This will provide better traffic safety and reduce visual impacts on abutting properties due to the setback from the property with existing trees providing a buffer. The common driveways meet the requirement of Section 720.7 I for screening.
17. Turnarounds for emergency vehicles shall be provided with a minimum length of 30' and width of 20' in locations approved by the Fire Chief. The common driveways each have cul-de-sacs that enable sufficient turnaround area for the Scituate Fire Department. The Scituate Deputy Fire Chief stated that the Fire Department had no issue with the cul-de-sacs. The common driveways meet the requirements of Section 720.7 J.
18. The Town's consulting engineer has indicated that stopping sight distance requirements and intersection sight distances at each common driveway entrance meet American Association of State Highway and Transportation Officials (AASHTO) standards. The plans also indicate that vegetation within the sight triangles will be removed and such removal maintained as necessary to ensure adequate site distances are provided. The common driveways meet the requirements of Section 720.7 K.
19. Lot width for the lots served by each common driveway may be measured parallel to a common driveway, except in the case of fifty foot frontage lots. The lot width of lots 2, 3, 5, 6 and 8 are measured parallel to the common driveway. The common driveways meet the requirements of Section 720.7 L.

20. Two historic graves have been identified on site in an area surrounded by stone wall at the northwest corner of the site. Foot access as well as vehicular access for repairs and maintenance will be provided to the graves so that the Town may maintain them.
21. Based on these findings and information submitted by the Applicant and reviewed by the Board, the common driveways **do not meet** the requirements of Section 720 of the Scituate Zoning Bylaw.

Decision: Based upon the testimony presented at the Public Hearing, plans, documents and comments submitted and the Findings of Fact, the Board did not vote to approve the special permit for three common driveways at 443 – 461 Chief Justice Cushing Highway subject to with the following conditions:

1. Three Common Driveways shall be constructed according to plans entitled Proposed Common Driveways Lots 1-8 Chief Justice Cushing Highway Assessor's Parcel 47-2-26A – 26 J, prepared for The Applicant by Morse Engineering Co., Inc. dated 4/24/19 with revisions through 1/29/2020 consisting of 8 sheets and as further revised to meet these conditions.
2. Lots 1 and 2, Lots 3, 4 and 5 and Lots 6, 7 and 8 shall access over the three Common Driveways as depicted on the plans. No additional extensions or attachments of any other roadways or Common Driveways, or access to any lot other than those specifically created by and shown on the plan shall be permitted. The Common Driveways shall remain private in perpetuity and shall never be considered for acceptance as a Town road. All maintenance and repair of the Common Driveway and drainage facilities shall be the sole responsibility of the property owners who comprise the Condominium Association. A note shall be placed on the plan and deed for each lot serviced by the Common Driveway stating the above with proof provided to the Planning Board prior to occupancy of the first unit.
3. The Applicant shall mean the current applicant and all its successors in interest (the Applicant). This special permit shall lapse within two years from the date of its issuance, which shall not include such time required to pursue or await the determination of any appeal under M.G.L. c. 40A, from the grant thereof unless substantial use or construction has commenced prior to that time in accordance with M.G.L. c. 40A, s. 9. The Planning Board may extend such period, for good cause shown, upon receiving a written request from the Applicant prior to the expiration of said period, which shall provide a detailed description of good cause necessitating an extension.
4. The Applicant shall be responsible for maintaining all driveways, stormwater systems and utilities within the development until such time as maintenance becomes the responsibility of the Condominium Association which shall then maintain all driveways, stormwater systems and utilities. Such responsibility includes, but is not limited to, the period when and if individual lots are sold for, and are under construction of homes by other builders. As party of this transfer of responsibility, the Applicant shall provide the Condominium Association the initial amount of \$25,000 as insurance against any rain garden or stormwater issues occurring in the first three years. At the end of the third year, the balance shall be refunded to the Applicant, if all the units have been sold. If all of the units are not sold, then an agreed upon prorated portion shall remain in the account and be funded by the Applicant. This money is not intended to replace any other

project requirement, but rather augment it by creating an initial base level. The Condominium Association shall furnish proof to the Town Planner that the funds are in an account and to meet their responsibilities on an annual basis.

5. The Post Construction Operation and Maintenance Plan shall be strictly adhered to so that 90% Total Suspended Solids (TSS) is achieved at all times. An annual report shall be provided to the Planning Board yearly by March 30 certifying all required maintenance has been completed per the Plan by a licensed stormwater professional. The Condominium Association shall contract to provide bi-annual street sweeping and bi-annual inspection and maintenance including vacuuming of the roof drywells. Turf management contracts shall also be provided with a prohibition on use of pesticides, herbicides, fungicides and fertilizers.
6. The Applicant shall obtain the endorsement of the Planning Board on the special permit plans within 180 days of expiration of the appeal period and this decision becoming final.
7. There shall be no further division or subdivision of any lot shown on the plan for purposes of constructing additional units or buildings. There shall be no further expansion of any building or impervious surface on the site. No additional dwelling units other than the 16 approved by this permit and served by the three Common Driveways, as shown on the Plans, shall be constructed. The total number of bedrooms in these units shall not exceed 48. No additional expansion of the limit of work is allowed without further approval of the Scituate Planning Board. These restrictions shall be contained in the Master Deed for the condominium association and shall be noted on the plans to be signed by the Board and recorded at the Registry of Deeds.
8. The Applicant shall allow members and Town officials from the Planning Board and other persons acting under the Planning Board or its agents, to enter upon any lands and carry out such surveys and inspections as may be deemed necessary, and place and maintain monuments. The Applicant shall cooperate with the Planning Board and Town officials and assist them in their effort to verify that the layout, design and construction work for the special permit are satisfactory and conform to Town specifications and requirements of the Board.
9. Prior to the pre-construction conference, the Applicant shall obtain all necessary approvals from the Board of Health (BOH), Conservation Commission, Fire Department, Building Department and Department of Public Works (DPW), and these shall be deemed conditions of the Planning Board approval. Any state and federal permits must be obtained including Mass DOT and NPDES permits and supplied to the Planning Office prior to scheduling the preconstruction conference and are also deemed to be conditions of the Planning Board approval.
10. Construction shall meet all requirements of the Scituate Zoning Bylaw. All conditions of approval shall be inscribed on the special permit plan prior to Planning Board endorsement. All contractors are responsible for all conditions shown on the plan and in the written decision.
11. No new in ground irrigation systems are allowed to connect to the Town's water distribution system or in any manner use municipal water. In accordance with this policy rule, all irrigation systems installed in Scituate must be supplied by on-site sources at the expense of the property

owner. Fines for violating this rule may be levied on the homeowner as well as the system installer.

12. Prior to the preconstruction conference, the Applicant shall retain a professional geologist, water resource engineer, hydrogeologist or hydrologist approved by the Planning Board to confirm there are no direct or intermittent tributaries on site that would constitute a tributary to Tack Factory Pond and, therefore, require a 150-foot buffer as required by the Water Resource Protection Zoning Bylaw. Said professional opinion must be supported by a review of current data and actual site information. Should a tributary be found, a modification of the special permit will be required.
13. Two historic graves on the site, which are currently surrounded by stone walls, shall be preserved. The Applicant is providing a Grave Access Easement for the Town to maintain the graves. The Applicant has provided two parking spaces at the end of the Lot 1 and Lot 2 cul-de-sac for grave parking. Access to the graves is by foot with vehicular access to be provided for repairs and maintenance only. A sign shall be provided by the Applicant that the parking is for the exclusive use for access to the graves. A grave access easement shall be recorded with the deed to the property, special permit plans, decision, condominium master deed and condominium association.
14. The septic systems shall be located no closer to Tack Factory Pond than the approximate 405 feet to the liner of the proposed system on Lot 8 as shown on the Plan, including a reserve area. The septic system shall meet all the requirements of Title V and 310 CMR 22 including locating the reserve area outside of the 400' buffer. If required by the BOH, the Applicant shall also provide phosphate removal and additional treatment to insure the protection of water quality of Tack Factory Pond. The final septic system design and provisions for inspection and maintenance shall be subject to approval by the BOH. Any changes to the Plan necessitated by compliance with any BOH provision, requires written notification to the Town Planner to determine if the change is significant and requires further input from the Planning Board prior to obtaining a building permit.
15. The Master Deed for the Condominium Association shall specifically require an annual Title V inspection of the septic system(s) and provide yearly funding for replacement, repair and pumping costs of the system in an amount to be provided by the Applicant subject to approval by the BOH. Provisions for maintenance of the systems shall be the responsibility of the Condominium Association.
16. No unit shall contain a garbage disposal. The Master Deed shall include a prohibition on the installation and use of garbage disposals for all units on the site.
17. All areas identified in the vegetated easement are non-disturbance areas. This includes the area in the 50 foot buffer to C J Cushing Highway except as needed for access as part of the common driveway easement. No removal of trees or vegetation is allowed in the area except for removal of dead trees by hand. The Condominium Association shall maintain sufficient funds to replace screening as shown on the Plans between common driveways to maintain an effective screen in

perpetuity. A physical delineation on the ground shall be provided with signage and fencing and or boulders/rocks so that the no disturbance zone is clearly marked. The signage and fencing/boulders/rocks/ shall be installed prior to issuance of the first building permit at approximately 50 foot intervals. The signs shall be white with dark green lettering, constructed of durable weatherproof material, a minimum of 1 sq. ft. in area and 4' in height or as otherwise approved by the Town Planner. The signs shall state Open Space/No Disturb Zone.

18. No additional alteration is permitted in the drainage easement area other than the drainage as shown on the Plan.
19. No work is allowed beyond the limit of work/tree line without prior written approval of the Planning Board. The entire limit of work is to be staked with erosion control during each phase of the Project. Any disturbance beyond the limit of work shall be fully restored in accordance with a restoration plan submitted to and approved by the Planning Board; and a fine of \$5,000 as well.

Common Driveway Agreement

20. A Common Driveway Agreement shall assign to the owners of Lots 1 - 8 the responsibilities and costs of maintenance and repair of the Common Driveways (including snowplowing), as well as the catchbasin(s), rain garden, drainage devices, grading and all other improvements for stormwater management in the Common Driveway Easement and drainage easements.

The responsibilities of maintenance in the Common Driveway Agreement shall include all requirements of the Operation & Maintenance Plan, which shall be attached to the Agreement together with other typical maintenance such as snow-plowing, driveway repair and any cape cod berm repair.

The Agreement shall require annual certification by a certified licensed engineer that the stormwater system is being properly inspected and maintained per the Operation & Maintenance Plan. The Operation & Maintenance Plan shall also be provided to the Planning Board as a stand-alone document.

The standard format from the Planning Office shall be used. A final draft of the Agreement shall be provided to the Planning Board within two weeks of the approval of this special permit. The Agreement shall be recorded at the Registry of Deeds and any material changes to the Agreement shall require Planning Board approval prior to any such change.

21. The Applicant has provided the Planning Board with a Common Driveway Agreement for Wade Commons Condominium, a Wade Commons Condominium Trust, a Master Deed for Wade Commons Condominium and a Grave Access Easement governing the development. The Applicant shall file the final executed Condominium Trust document, which shall not vary substantially from the document provided to the Board, with the Registry of Deeds. The filing shall occur prior to the first occupancy permit. The Applicant shall provide the Town Planner and Building Inspector with copies of duly filed documents. Any material changes to the filed document shall require Planning Board approval prior to any such change.

22. The Master Deed filed with the Registry shall contain language granting an easement to the Town of Scituate consistent with the draft Master Deed language approved by the Planning Board, a copy of which is attached hereto.
23. The vegetated easement which is intended to remain in its undisturbed natural state, as depicted on the approved Plans, shall be incorporated into the Master Deed and Condominium Trust in perpetuity. The Condominium Trust is to be referenced in all deeds conveyed. This condition confers upon the Town of Scituate the right to enforce this easement in perpetuity. If the easement is altered in any way or manner, it shall be fully replicated and the Association fined.
24. A utility easement shall be provided to the Town of Scituate for maintenance of all stormwater and water infrastructure prior to occupancy.
25. The Applicant shall meet with the Design Review Committee for review of building design and materials prior to applying for a building permit.

Finalization of Documents

26. The plans for the Common Driveway shall be submitted to the Planning Board for their signature after the expiration of the twenty day appeal period of this Special Permit. The plans and special permit shall be recorded together at the Plymouth County Registry of Deeds. All plan sheets of the common driveway special permit shall be recorded.

Required Prior to Planning Board Signing Plans

27. The following notes and changes shall be added to the Plan in addition to other conditions:
 - The lots on this Plan shall not be further divided or subdivided;
 - The Common Driveways shall always be owned by the homeowners, shall always remain private and shall never be maintained by the Town or request to be accepted by the Town. A Common Driveway Agreement assigns to the owners of Lots 1-8 the responsibilities and costs of maintenance and repair of the Common Driveways (including snowplowing), as well as the rain garden, infiltration basin, grading and all other improvements for stormwater management in the Common Driveway Easement;
 - No new underground irrigation systems are allowed to connect to the Town's water distribution system or in any manner use municipal water, in accordance with the policy of the Board of Selectmen effective October 8, 2014. In accordance with this policy, all irrigation systems installed in Scituate must be supplied by on-site sources at the expense of the property owner;
 - The use of pesticides and fertilizers are strictly prohibited on the entire parcel. This prohibition shall also be incorporated in the Condominium Association documents;
 - Use of road salt is strictly prohibited;
 - The source of the contours on the Existing Conditions Plan shall be added to the plan;
 - Reserve areas for septic systems shall be shown on the Overall Layout Plan out of the 400 foot buffer to Tack Factory Pond;
 - Plan and calculations for restoration of temporary sedimentation areas;
 - Plan and detail for level spreader/energy dissipater at ends of rip rap swales;

- Revised Operation and Maintenance Plan to include organic mosquito control if required and road salt and fertilizer prohibition;
 - Delineation of no disturb zones with rocks/boulders/fencing and signage and no disturb areas noted on plans;
 - Revision of the drain lines at the entry of the common driveways for Lots 1 and 2 and 3, 4 and 5 to keep more of the 50-foot no disturb buffer to Chief Justice Cushing Highway;
 - Clear delineation of the projected border to Tack Factory Pond following the increase in the storage capacity of the Pond as well as the delineation of the 400 ft. buffer from such border.
28. The locations of the dwellings shown on the Plans show general location and grading of the dwelling to conform to the stormwater design and minimize impacts on surrounding neighbors. Any material deviations from the Plans require notification of the Town Planner and impacts from the proposed deviations shall be addressed prior to issuance of any building permits. Material deviations include but are not limited to moving of a dwelling by more than four feet and changing grading by more than 1 foot. The Applicant shall certify that such changes shall result in no impact on the drainage system and shall not increase runoff onto Chief Justice Cushing Highway, abutting lots, or the rate and volume of the post condition from the predevelopment condition.
29. Prior to the start of construction for each phase, the limits of work shall be staked in the field. No trespass into open space to be preserved or into an additional phase is allowed. The staked area shall include a buffer around mature trees that are intended to be saved to prevent damage from storing equipment or stockpiling loam. The location of the stakes shall be reviewed in the field by the Planning Board consulting engineer in conjunction with the Town Planner and DPW.
30. A mounding analysis shall be provided for the roof drywell infiltration units prior to any construction.
31. The project shall be phased according to the Applicant's Phasing Schedule. Phase 1 is lots 6, 7 & 8. Phase 2 is Lots 4, 5 and 6 and Phase 3 is Lots 1 and 2. The three phases are separate and distinct phases. Each phase must be completed, stabilized and occupied prior to commencing the next phase; this includes clearing and grubbing. The Applicant must appear before the Planning Board at a public meeting prior to being given permission to proceed with an additional phase.

For each of the three Common Driveways the following procedure is required:

Before any clearing or grubbing begins, a minimum of 3 test pits witnessed by the Town's designee shall be conducted to confirm the required three foot separation exists between the bottom of the rain garden, outlet and any drainage device and the maximum groundwater elevation as required for a drainage device in the Water Resource Protection District. The infiltration rates of the parent subsoil must also be confirmed.

The Applicant shall provide to the Planning Board an interim as-built plan, prepared and stamped by a licensed professional engineer, as soon as the rain garden is rough graded to further confirm

the required 3' separation between the bottom of the basin and the maximum groundwater elevation exists as required in the Water Resource Protection District. The interim As-Built Plans shall be reviewed and approved by the Planning Board or its agent. No further site work or construction shall take place until the required 3' minimum separation has been confirmed by an additional 3 test pits and the infiltration rates are confirmed. No building permits shall be issued until this has been verified by the Planning Board or its designee.

Construction of the Common Driveways, drainage systems and all utilities shall be supervised by a registered professional engineer approved by the Planning Board who shall certify in writing to the Planning Board during construction and at completion that the driveways, grading, drainage structures, utilities and dwellings were constructed in accordance with the approved Plans. This certification shall be accompanied by as-built plans, signed and stamped by a registered professional land surveyor and the supervising professional engineer. An additional 3 test pits shall be required to confirm that the required 3' minimum of separation to from the bottom of the rain garden to the maximum groundwater elevation exists. No further site work or construction (including going into an additional phase) shall take place until the required 3' minimum separation has been confirmed by the additional 3 test pits along with the infiltration rates.

Upon start and completion of subsequent phases, 3 additional test pits shall be taken in the lowest rain garden and outlet structure to verify the 3' of separation to groundwater is being maintained throughout the project along with the infiltration rates as certified by the Applicant's engineer and confirmed by the Town's consulting engineer.

32. A plan for restoration of the temporary sedimentation basin areas shall be provided prior and approved prior to endorsement. Since the basins require clearing of a substantial area and the ground cover will change in these areas from the existing woods to grass or other landscaping, the impact upon the stormwater management system calculations should be reviewed with updated calculations provided and approved prior to endorsement. A landscape plan, inclusive of evergreen and deciduous trees and shrubs, to restore the area should be provided stamped by a registered landscape architect and approved prior to endorsement.
33. The rip rap swales which discharge flows from the rain gardens will have significant velocities. A level spreader/energy dissipater shall be incorporated into the design at the end of each swale prior to endorsement. The design shall be reviewed and approved prior to endorsement.

Construction

34. A pre-construction conference will be required prior to the start of construction including the Planning Board's consulting engineer, a representative of DPW, the site design engineer, the Owner, the site contractor and the Town Planner.
35. Prior to scheduling the pre-construction conference, the Applicant shall provide to the Town Planner:
 - a. Proof that the endorsed plans and decision have been recorded at the Plymouth County Registry of Deeds;

- b. Copies of the NPDES Permit including the Stormwater Pollution Prevention Plan (SWPPP). The SWPPP must be submitted at least 21 days prior to any land disturbance. The authorized person doing the SWPPP inspections shall be noted;
 - c. An initial deposit with the Town Planner of \$ 30,000 under M.G.L. c. 44 s 53G to secure construction review and inspections by the Town of Scituate consulting engineer. The deposit shall be applied toward the cost of construction inspections for all three common driveways. The specific amount provided to the Planning Department shall be based on the consulting engineer's estimate and shall be subject to amendment from time to time and be supplemented by the Applicant as requested;
 - d. The Applicant shall provide surety for \$1,250,000.00 in a form acceptable to the Planning Board prior to beginning construction of the Common Driveways to guarantee completion of the common driveway(s), the drainage system(s), site work, landscaping and clean-up of the site. After the Town Planner has inspected the site and found grading, loaming and seeding, cleanup of earth materials and construction debris to be complete, these funds shall be returned to the Applicant; and
 - e. A schedule of construction activities including approximate dates for installation of erosion control and other site stabilization features for all phases of the project and all applicable items in the Subdivision Rules and Regulations 9.1.3 shall be given to the Town Planner and the Applicant shall provide funds to cover the cost of inspections and attendance at the pre-construction conference by the Town's consulting engineer.
36. The Town Planner shall be notified prior to commencement of construction and upon completion of construction.
37. Prior to scheduling the preconstruction conference, the Applicant shall provide the Town Planner with permits from the MDOT for access and utility crossings and the Scituate DPW for street openings and water system connections to the town's water system. Installation of all water mains and appurtenances shall be performed according to the specifications of the DPW Water Division. Any upgrades, modifications, or connections shall be at the Applicant's expense. The consulting engineer along with the Town shall review the construction activity to assure compliance with the Town's rules and regulations.
38. The property line and boundary of the limit of clearing shall be marked or flagged in the field under the direction of a licensed professional surveyor and notification given to the Town Planner and Consulting Engineer a minimum of five days prior to the start of construction.
39. A stabilized construction entrance as shown on the Plans must be installed prior to any earth disturbing activities on site including but not limited to clearing and grubbing. Construction access must be clearly identified with site signage approved by the Town Planner.
40. All clearing and earth moving operations shall only occur while erosion and sedimentation control measures, approved by the Town Planner and shown on the Plan are in place. Such control measures shall remain in place until the Town Planner determines that the danger of erosion or sedimentation no longer exists.

41. Erosion control shall remain in place and be maintained during the entire construction phase. Limits of disturbance shall be staked in the field and inspected prior to the start of any tree clearing and maintained throughout the project life. Special attention shall be made to the erosion control placed at the southerly limit of the Project until all slopes are vegetated and stable.
42. No additional disturbance beyond that shown on the Plan is allowed.
43. All lawns shall have a minimum of 6" of screened loam.
44. No use of hydrants on-site or on adjacent roads off-site is allowed for construction use. A hydrant is available at the water treatment plant for construction use.
45. There shall be no rock crushing onsite. Blasting, if necessary, shall only occur after all necessary permits have been obtained and all the requirements of the Scituate Fire Department have been met.
46. The plantings for the rain gardens shall be confirmed by a wetland scientist who shall field locate the plants in the rain gardens during construction and certify to the Planning Board that the size, amount and location are per the plans.
47. The rain garden and swales shall be fully constructed and fully vegetated before stormwater is directed to them.
48. All imported fill, compost, loam, soil amendments etc. must be accompanied by soil test results to verify physical characteristics and chemical composition. The Applicant must verify that materials used on the site do not contain contaminants such as excess nutrients, pesticides, metals, construction debris, invasive plant seeds or vegetation. Such materials shall be provided by a licensed supplier/processor and be accompanied by a statement of origin and/or bill of lading.
49. The inspections for this development shall be done in accordance with Section 9.1.3 of the Town of Scituate Subdivision Rules and Regulations. The Town's consulting engineer shall perform these inspections with costs paid by the Applicant. All required inspections shall take place and be inspected by the consulting engineer including water system components (along with DPW). Weekly reports shall be submitted to the Applicant and Planning Board stating the results of all required inspections including test pits unless more frequent reports are needed.
50. Construction of the Common Driveways, site drainage systems and water system shall be supervised by a registered professional engineer approved by the Planning Board who shall certify in writing to the Planning Board at completion that the driveways, grading, drainage structures and utilities were constructed in accordance with the approved Plans. This certification shall be accompanied by as-built plans, signed and stamped by a registered professional land surveyor and the supervising professional engineer. No Certificate of Occupancy shall be issued until the Planning Board is satisfied that access, construction of the

driveways, grading, installation of drainage structures and stormwater management features, installation of utilities and site stabilization are in full compliance with the approved Plans, special permit and 3' separation to the maximum groundwater exists. The stormwater system must be functioning in accordance with design requirements and the as-built certification must include a statement that any variation in grade is immaterial and does not materially alter the performance of the stormwater system.

51. Prior to the issuance of an occupancy permit, the Board's Consulting Engineer shall inspect the lots and notify the Board and Building Commissioner that the common driveways, grading drainage, site utilities and stabilization conforms to that shown on the Common Driveway Plan.
52. Construction work shall not begin prior to 7:00 am on weekdays and 8:00 am on weekends and shall cease no later than 7:00 pm or sunset whichever is earlier. No construction is permitted on Sundays and federal and state legal holidays. Construction work includes any operation of machinery and idling of vehicles. The name and phone number of a 24 hour contact shall be provided to the Town Planner, Building Department, Police Department and Department of Public Works to be used in the event of an emergency.
53. Police details may be required for construction access to the site. The Applicant shall notify the Town 48 hours in advance of significant equipment and construction material arrival to the site which may cause a safety hazard or material disruption of the public way such that a police detail is necessary to ensure safe passage. Any Police detail required shall be provided at the sole expense of the Applicant.
54. There shall be no parking, staging or idling of vehicles on Chief Justice Cushing Highway or adjacent public roads during construction.
55. Stockpiles shall be located as shown on the Plans and must be protected with erosion controls including but not limited to silt socks and temporary seeding.
56. Inspections and observations made according to the Stormwater Pollution Prevention Plan (SWPPP) shall be submitted to the Board within 48 hours after inspections. The Board reserves the right to require the consulting engineer to visit the site as frequently as necessary during times when construction inspections are further than one week apart. Because this is an environmentally sensitive area, an engineering/construction engineer shall be hired by the Applicant to ensure the project is built according to the plans before, during and after construction.
57. Construction activities shall be conducted in a workman like manner at all times. Noise mitigation and proper dust controls shall be taken so that levels conform to Mass DEP policies. All equipment that emanates sound shall be kept in proper working order through regular maintenance. Street sweeping shall be used to control dust from leaving the site. A wheel wash station may be required to prevent sediment from leaving the site. Blowing dust or debris shall be controlled by the Applicant through stabilization, wetting down or other proper storage and disposal methods.

58. Construction activities on site shall conform to Town of Scituate General Bylaws.
59. Signage shall be installed on each Common Driveway indicating that road salt is not in use to protect the Town's water supply. The Condominium Master Deed shall include the required perpetual maintenance of the signage and shall state that use of road salt on the Common Driveways is prohibited.
60. Signage identifying house numbers shall be provided as submitted unless otherwise recommended to be changed for 911 purposes. House numbers shall be reflective and visible from approaching the driveways from the north and south. Shop drawings shall be submitted for approval to the Town Planner who will forward them to appropriate 911 personnel for approval.
61. Sight lines on Chief Justice Cushing Highway shall be maintained per the Plans.
62. No construction other than the common driveway entrances shall be permitted in the 50 foot buffer to Chief Justice Cushing Highway. Except for driveways and approved landscaping shown on the Plans, the buffer shall be a non-disturbance zone.
63. All construction shall comply with all applicable requirements of the Water Resource Protection District. No finished slopes shall exceed 4:1.
64. Spill control provisions shall be provided for each common driveway a certification of such installation shall be provided to the Town Planner.
65. No Certificate of Occupancy shall be issued until both the Planning Board and Building Commissioner are satisfied that access, construction of the Common Driveway(s) and installation of necessary utilities are in full compliance with the approved Plans and the conditions of the Special Permit.
66. Any mosquito control required shall be organic in nature.

Administration

67. This special permit shall run with the land and be void if it is not recorded at the Registry of Deeds within 90 days of the expiration of the appeal period. The Applicant shall provide proof of this recording to the Planning Board.
68. Failure to comply with any condition of this special permit shall cause it to be deemed invalid.

Vote:

Based on the Findings of Fact and the evidence and information provided by the applicant and obtained through the public hearings, the members of the Planning Board hearing this application voted to not approve the Special Permit for a Common Driveway at Lots 1-8 Chief Justice Cushing Highway known as 443-461, Assessor's Map/Block/Lot 47-2-26 A – 26 J with the conditions noted above.

May 14, 2020

Date

SCITUATE PLANNING BOARD

Jenna Burbine
Patricia A. Lonsari
William L. Sabathier
Joseph R. Pritchard
B. J. O'Connell

This decision was filed with the Town Clerk on June 2, 2020
date

Appeal of this special permit may be made pursuant to M.G.L. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.

This special permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds, after the expiration of the appeal period of twenty (20) days.

The Planning Board certifies that it has complied with all statutory requirements of MGL Chapter 40A, Sections 9 and 11, and will file copies of this decision with the Town Clerk. The Planning Board further certifies that it has taken into consideration all testimony rendered at the Public Hearing, the comments and suggestions of other boards which have reviewed and made comments on the plans

MASTER DEED
OF
WADE COMMONS CONDOMINIUM

The undersigned Declarant (as hereinafter defined), being the sole owner of the land in Scituate, Plymouth County, Massachusetts described in Exhibit A attached hereto and made a part hereof, by duly executing and recording this Master Deed, does hereby submit said land together with the buildings and improvements and all easements, rights and appurtenances belonging thereto to the provisions of the Act (as hereinafter defined) and proposes to create, and hereby does create with respect to said premises, a Condominium to be governed by and subject to the provisions of the Act, and to that end the Declarant declares and provides the following:

1. Definitions and Condominium Phasing

A. Definitions.

The following terms shall have the following meanings in this Master Deed and in the Declaration of Trust of WADE COMMONS CONDOMINIUM TRUST:

The Act shall mean Massachusetts General Laws, Chapter 183A (“Condominiums”), as amended.

Building envelope shall mean the front, back and side setbacks of the condominium unit to the exclusive use area (E.U.A.) of his or her condominium unit. The building envelope shall include the patio, deck, porch (enclosed and open), if any, and overhangs.

The Condominium shall mean the Condominium created by this Master Deed.

Condominium Land shall mean land which has been made a part of the Condominium by this Master Deed or added to the Condominium by amendment to this Master Deed.

The Condominium Trust shall mean WADE COMMONS CONDOMINIUM TRUST, the Unit owners’ organization formed pursuant to the Act.

Declarant shall mean Wade Commons, LLC of 266 Main Street, Suite 34, Medfield, Massachusetts 02052 and its successors and assigns (except as limited as set forth in the definition of “successors and assigns” hereinbelow).

Dwelling shall mean a Unit intended exclusively for residential use.

E.U.A. shall mean an identified area, which may be used exclusively by the unit owner of the dwelling appurtenant thereto.

Owner shall have the same meaning as the term “Unit Owner” in Section 1 of the Act.

Site Plan shall mean a plan entitled, “Site Plan Wade Commons Condominium” in Scituate, MA”, Scale: 1” = 40’, Date: _____, 2020, prepared by Morse Engineering Co., Inc., 19 Union Street, Scituate, MA 02066, said Plan recorded with the Plymouth County Registry of Deeds herewith.

Successors and assigns shall mean the successors and assigns of the Declarant, but the term "successors and assigns" specifically excludes grantees of unit deeds and unit mortgages. The fact that a grantee acquires one or more Units in a unit deed or mortgage shall not render such grantee the successor or assign of the Declarant unless such deed, mortgage or other instrument, referring specifically to this Paragraph 1A of this Master Deed, so states.

Unit shall mean a Condominium Unit as that term is defined in Section 1 of the Act.

Unit Owner shall mean the person or entity owning a unit, including the declarant.

Open Space Land shall mean that portion of the land which is not part of any Exclusive use Area.

- B. The Condominium is to be developed as a phased condominium, each phase of which shall include one or more building(s) containing one or more Units or one or more common facilities or elements thereof.

Paragraph 16 hereof sets forth the procedure whereby the Declarant may amend this Master Deed, without the need for the consent (except as in said paragraph 16 already granted, or signature of any owner or any mortgagee or any trustee of the Condominium Trust, or any person claiming by, through or under any owner (including the holder of any mortgage or other encumbrance with respect to any Unit) or any other party, so as to add additional land and additional phases and additional Units to the Condominium. Said paragraph 16 also describes certain limitations on the Declarant's said rights to add additional land, additional phases and additional Units.

2. Name

The name of the Condominium shall be "WADE COMMONS CONDOMINIUM" (hereinafter sometimes referred to as the "Condominium").

3. Description of Land and Use Description

The premises which constitute the condominium consists of the land, buildings and improvements currently on the premises, or to be constructed on the premises, as described in Exhibit A attached hereto and made a part hereof.

4. Description of Buildings

The building(s) (hereinafter the "building or building(s)") on the Land are described in Exhibit B attached hereto and made a part hereof, as said Exhibit B may hereafter be amended pursuant the terms of this Deed and the Condominium Trust.

5. Designation of the Dwellings and Their Boundaries

- (A) The Condominium consists of sixteen (16) Dwellings in eight (8) duplex units. All units are single family and are located on the land described in Exhibit A. The designations, approximate areas, number of rooms, immediately accessible common areas and facilities and other descriptive specifications of each of the Units are set forth in Exhibit B, attached hereto, and as shown on the Site and floor plans of the Condominium, recorded herewith or to be recorded with the individual units. The said floor plans show the layout, locations, dwelling numbers and dimensions of the Units as built, indicate that the buildings are named "WADE COMMONS

CONDOMINIUM” and otherwise have no name, and bear the verified statement of a Registered Architect, all as required by the provisions of Section 8 of the Act.

- (B) Dwellings: Each Dwelling shall be a single family residence and shall have the exclusive use of that portion of the Condominium Land shown as depicted on the Site Plan and to that end, the boundaries of each of the Dwellings with respect to the floors, ceilings, walls, doors and windows thereof are as follows:
- (i) Concrete Floors: The plane of the lower surface of the concrete basement floor slab.
 - (ii) Stone, Brick, and/or Concrete Walls: The plane of the exterior finished surface of the concrete walls and the exterior finished surface of any stone or brick walls.
 - (iii) Roofs or Upper Boundaries: The plane of the exterior surface of roof shingles.
 - (iv) Walls, Doors and Windows: As to walls, the plane of the exterior finished surface of the exterior walls; as to entrance doors, door frames and window frames and the windows, the exterior finished surfaces thereof.
 - (v) Party Walls: Each duplex will have a party wall the ownership of same shall be to exterior plane of the studs separating said units.
- (D) Each Dwelling includes the roof, foundation, structural columns, girders, beams, supports, perimeter or exterior walls, concrete or wood floor slabs, window frames, door frames, lawns, plantings, driveways, parking areas, recreational facilities, decks, patios, stairs and landings if any, walks and all conduits, ducts, pipes, flues, wires, meter area and other installations or facilities for the furnishing of utility services or waste removal and all components of any of the foregoing which are situated within a Dwelling or which are situated in, on or within the area set aside for the exclusive use of said Dwelling.
- (E) All Dwellings are heated by means of a separate heating, ventilating and air conditioning system, all portions of which whether located within or without the unit, are a part of the unit which it serves.
- (F) Each Dwelling includes the ownership of all utility installations (including but not limited to a hot water heater) contained therein or on the Lot set aside for the exclusive use of said Dwelling, which exclusively serve the Dwelling.
- (G) Each Dwelling shall have as appurtenant thereto the right and easement to use, in common with the Dwellings served thereby, all utility lines and other common facilities which serve it, but which are located in or pass through the streets and

ways shown on the Plan herein referred to, the common areas and facilities, or other Exclusive Use Areas.

- (H) Each Dwelling shall have as appurtenant thereto the exclusive right and easement to use and enjoy certain portions of the Common Areas and Facilities which are designated as "Exclusive Use Areas" in paragraph 8 hereof.
- (I) Each Dwelling shall have as appurtenant thereto the right to use the Common Areas and Facilities, as described in paragraph 6 hereof, in common with the other Dwellings in the condominium, except for the Lots described in paragraph 8 hereof which are reserved for the exclusive use of the Units to which such Lots appertain.
- (J) Each Dwelling includes all portions thereof, specifically including both structural and non-structural portions. No part of any Dwelling shall be a part of the Common Areas and Facilities.

6. Common Areas and Facilities

The Common Areas and Facilities of the Condominium shall consist of the land described in paragraph 3 and Exhibit A hereof, including all improvements located thereon (other than the Units and The Unit's Exclusive Use Area), subject to easements and rights of certain Unit Owners to Lots as set forth in paragraph 8 hereof. Without limiting the foregoing language, the Common Areas and Facilities of the Condominium comprise and consist of:

- (A) In general any and all apparatus, equipment and installations existing for common use.
- (B) The lawns, plants, shrubbery, landscaping, driveways, roads and walkways on the Common Land, and the improvements thereto and thereof, including walls, retaining walls, railings, wood parapets, if any, stairways and lighting fixtures to the extent that any of the foregoing are not situated within a EUA, the exclusive use of which has been granted to a Unit.

All landscaping shall be installed by the Declarant, or its agents and assigns, in all common areas, including all E.U.A.s, but not including additional landscaping installed by Owner. The landscaping within the common areas and E.U.A.s shall be maintained in perpetuity by the Unit Owners' Association, so as not to impede the visibility of vehicles exiting the site. The Unit Owner shall be responsible for additional landscaping on his or her E.U.A. All additional planting shall be installed only with the permission and knowledge of the Trustees of the Condominium Trust. Additional planting are allowed provided they do not interfere with or affect the harmony of the overall planting scheme in the Condominium. Declarant, its agents and assigns, and Owners, their agents and assigns, shall only use organic fertilizer on all lawns, plants, shrubbery and landscaping.

- (C) All recreational facilities, if any, on the premises of the Condominium not situated within a Lot.

- (D) All other elements and features of the Condominium property, however designated or described, excepting only the Units and all other elements or property situated within a Lot as herein defined and described, and all other items, listed as Common Areas and Facilities in Section 1 of the Act, and located on the property and not referred to herein.
- (E) Each Unit Owner and the Trustees of the Condominium Trust shall have the right and easement to use the three common driveways on the property as shown, including related easements, on the Site Plan for all purposes for which streets and ways are commonly used in the Town of Scituate. The Trustees of the Condominium Trust (and not the Declarant) shall be obligated to maintain the common drive, including related easements, (including removal of snow and ice therefrom) and utilities therein, thereon and thereunder. The regular maintenance of the common drive shall include, but not be limited to, the cleaning of the catch basins and operation and maintenance of the drainage system in accordance with the Common Driveway Agreement with Scituate Planning Board. All private ways, utilities and services located within or outside the site or said easements and any private drainage facilities feeding into drainage structures within the site or easements shall not be the responsibility of the Town of Scituate, but shall be maintained by the Condominium Trust.
- (F) The Common Areas and Facilities shall be subject to the provisions of the by-laws of the Condominium Trust, and to all rules and regulations promulgated pursuant thereto with respect to the use and maintenance thereof.
- (G) In addition to and not in limitation of the rights of Owners as elsewhere herein set forth and as provided in the Act, the Owner or Owners of each Dwelling shall have, as appurtenant to such Dwelling, the rights and easements, in common with the Owners of all other Dwellings and subject to like rights and easements appurtenant to such other Dwellings, to use the common areas and facilities, including without limiting the generality thereof, all roads, driveways, walkways, paths, conduits, pipes, plumbing, cables, and other facilities for the furnishing of utilities and services, subject always, however to, (a) the exclusive rights and easements herein granted to particular Dwellings in certain facilities; (b) the restrictions and other provisions herein set forth; and (c) the rules and regulations promulgated by the Board of Trustees of the Condominium Trust.
- (H) The Trustees of the Condominium Trust have, and are hereby granted, the right of access, at reasonable times and consistent with the comfort, convenience and safety of owners, to such areas of each EAU as reasonably need to be entered for purposes of operation, inspection, protection, maintenance, repair and replacement of common areas and facilities, and correction, termination, and removal of acts or things which interfere with the common areas and facilities or are otherwise contrary to or in violation of the provisions hereof, and also a right of access for making emergency repairs as provided for in the Act.

- (I) Subject to applicable State and local regulatory authorities, the Trustees of the Condominium Trust shall also have, and are hereby granted, the exclusive right and obligation to maintain, repair, replace, add to, and alter the roads, ways, paths, walks, utility and service lines and facilities, lawns, trees, plants and other landscaping comprised in the Common Areas and Facilities, and the E.U.A.s provided said maintenance shall not substantially change the existing use of said E.U.A.s or interfere in the continued use of same, and to make excavations for such purposes; and no Owner shall do any of the foregoing in an area other than that set aside for said Unit's exclusive use without the prior written permission of said Trustees in each instance.
- (J) The costs and expenses for the performance of repairs to the onsite drainage system or any part thereof shall be borne by the Condominium Trust, and the Trust shall be responsible for the annual inspection and maintenance of said drainage.
- (K) The costs and expenses for the repair and maintenance of the exterior of the units, in an established common schedule, shall be borne by the Condominium Trust.
- (L) Subject to the exclusive use provisions of paragraph 8 hereof, the restrictions set forth in paragraph 9 hereof, and the reserved rights and easements as set forth in paragraphs 10 and 11 hereof, each Owner may use the Common Areas and Facilities in accordance with their intended purposes without being deemed thereby to be hindering or encroaching upon the lawful rights of the other owners.

7. Percentage Ownership Interest in Common Areas and Facilities

The percentage ownership of each Unit in the Common Areas and Facilities has been determined upon the basis of the approximate relation that the fair value of each Unit, measured as of the date of this Master Deed, bears to the aggregate fair value of all Units, also measured as of the date of this Master Deed. Each Unit shall be entitled to an appurtenant undivided ownership interest in the Common Areas and Facilities as set forth in Exhibit C attached hereto and made a part hereof.

8. Exclusive Use Areas

The following portions of the Common Areas and Facilities are hereby designated areas for the exclusive use of each Unit as hereinafter described and are referred to herein and in the Condominium Trust as an "E.U.A.":

- (A) Each Dwelling, shall have the exclusive right and easement for the use of so much of the Condominium Land being shown as an Exclusive Use Area (E.U.A.) and bearing a number identical to the Unit designation on the Plan of Land referred to in Exhibit A and in paragraph 5 hereof and upon which such Unit is situated.

9. Purpose and Restrictions on Use

The Condominium shall be used for the following purposes and shall be subject to the following restrictions:

- (A) Each Dwelling shall be used only for residential purposes and uses normally accessory thereto (as defined from time to time by the Scituate Zoning By-Laws) and for no other use.
- (B) Owners may not lease, rent or license the use of their Dwelling except as may be specifically allowed under the terms of the Condominium Trust and Bylaws.
- (C) No livestock, horses, cows, sheep, goats, pigs, poultry, bees or other barnyard animals of any description shall be kept or maintained on any E.U.A. appurtenant to a Dwelling, or in any structure thereon, but ordinary and usual domestic dogs, cats and birds may be kept in reasonable numbers, not to exceed two total, by any Dwelling Owner during such time as such Dwelling is occupied. No animal (including any dog or cat) which in the Trustees' judgment (or in the judgment of any authorized agent of the Trustees) interferes with any Unit Owner's use and enjoyment of his or her Unit or the common areas shall be kept in or brought upon any Unit or common areas. After due notice and hearing a majority of the Trustees may require any Unit Owner to dispose of any pet which has habitually violated any applicable law or regulation or has damaged property of any owner or occupant.
- (D) No trailers, tents, shacks, outbuildings or barns shall be erected at any time on a E.U.A. appurtenant to a Dwelling.
- (E) In the event of destruction of a Dwelling by fire or other casualty, the replacement Dwelling shall be at least equal in size to the original Unit.
- (F) No garage (other than the Dwelling Garage constructed by the Declarant), porch, bay window, terrace, fence, garden house, summer house, storage shed, accessory structure, or other building, structure, or improvement whatsoever shall be erected or installed on a E.U.A. appurtenant to a Dwelling.
- (G) No signs whatsoever, whether business, professional, designed for profit or altruism shall be maintained or permitted on any Dwelling or Lot appurtenant to a Dwelling, except the following: (i) a "for sale" sign not more than two (2) square feet in area shall be permitted; (ii) mailboxes, house signs, nameplates, quarter boards and the like, all of which shall be subject to the approval of the Trustees.
- (H) Garages attached to Dwellings ("Dwelling Garages") may be occupied by private non-commercial passenger vehicles only and may also be used for storage of furniture, ordinary household items, toys, bicycles, garbage barrels, boats and canoes and boat and canoe trailers, but only if all of the foregoing items are at all times kept within the confines of the Dwelling Garage in which the same are used (except when actually being transported). Dwelling Garages shall not be used for human habitation, nor shall Dwelling Garages be converted into any other accessory use without the prior written consent of the Trustees. The term "private

non-commercial passenger vehicles” as used in this section shall include automobiles, and to the extent customarily used primarily for the transportation of passengers rather than cargo, minivans, sport utility vehicles, and small pickup type trucks. The fact that a vehicle described in the immediately preceding sentence bears “commercial” license plate shall, in and of itself, not render such vehicle a commercial vehicle. Commercial vehicles, recreational vehicles, boats, trailers of any type, and any unregistered vehicles of any kind shall not be stored or parked on any E.U.A. or on the Street. There shall be no oil changes or major repairs of motor vehicles allowed on any E.U.A. or on the Street.

- (I) No so-called “satellite dishes” or similar apparatus shall be installed on any Dwelling or E.U.A. appurtenant thereto unless approved in advance by the Trustees.
- (J) No lawn statuary, monuments, or ornamental fixtures shall be erected, placed or maintained on an E.U.A.
- (K) No unlawful activity or activity reasonably deemed to be offensive and contrary to the expressed intent of this Master Deed, the Condominium Trust and the duly adopted rules and regulations of the Condominium Trust, shall be permitted on any E.U.A. or the Common Areas and Facilities of the Condominium. Owners of Units shall maintain their respective E.U.A.s in an orderly and clean manner and shall promptly dispose of all refuse, garbage and other waste in a sanitary fashion. No refuse, garbage or other waste, or container therefore, shall be stored outside of a Dwelling. All use and maintenance of Units and the Common Areas and Facilities shall be conducted in a manner consistent with the comfort and convenience of the occupants of the other Units. No Owner may use or maintain his Unit in any manner or condition which will impair the value or interfere with the beneficial enjoyment of the other Units. In the event that an Owner shall fail, after receipt of thirty (30) days prior written notice, to maintain his Unit in the manner and condition contemplated herein, the Trustees may undertake, at the Owner’s expense, to perform such work as they deem necessary to bring the Unit into compliance with the provisions of this Master Deed and Condominium Trust.
- (L) No clothes lines, including laundry, towels, rugs, drapes and the like, shall be located on the exterior or near a Dwelling or within an E.U.A. No tank for the storage of fuel may be maintained on a Lot unless it is maintained within an enclosed structure or used in conjunction with a portable propane grill.
- (M) No stone wall or tree shall be demolished, altered, or cut down on any E.U.A. appurtenant to a Dwelling without the prior written approval of the Trustees of the Condominium Trust.
- (N) No solar heating panels or other solar collection devices shall be placed, constructed or maintained on an E.U.A., nor any window unit air conditioner or “through the wall” air conditioner be placed or maintained in the front of any

structure on a Lot appurtenant to a Dwelling, without the prior written approval of the Trustees of the Condominium Trust.

- (O) Only accessories normally used for outdoor passive recreation shall be used or stored outside any unit in the Exclusive Use Area, such as lawn furniture, barbeque or similar apparatus as are commonly used or stored on residential properties in the Town of Scituate
- (P) No drainage appurtenances shall be disrupted, modified or filled without first obtaining in writing approval from the Scituate Planning Board.

10. Rights Reserved to the Declarant for Sales and Future Development

- (A) Notwithstanding any provision of this Master Deed, the Condominium Trust or the By-Laws to the contrary, in the event that there are unsold Dwellings or Lots, the Declarant shall have the same rights as the Owner of such unsold Units, as any other Owner. In addition to the foregoing, the Declarant reserves the right and easement for so long as it owns such an unsold Unit or Lot to:
 - (i) To use any Unit owned by the Declarant as a model for display for purposes of sale of Units; and
- (B) Notwithstanding any provision of this Master Deed, the Condominium Trust or the By-laws to the contrary, the Declarant and its authorized agents, representatives and employees shall have the right and easement to erect and maintain on any portion of the Condominium, including in or upon the buildings and other structures and improvements forming part thereof, (excepting a Unit owned by one other than the Declarant), and the Common Areas and Facilities, such sales signs as it shall deem necessary or desirable and in accordance with all applicable local, state and federal laws, bylaws and regulations.
- (C) Notwithstanding any provisions of this Master Deed, the Condominium Trust or the By-Laws to the contrary, the Declarant hereby reserves to itself and its agents, representatives, employees and contractors the right and an easement to enter upon all or any portion of the Common Areas and Facilities with workers, vehicles, machinery and equipment for purposes of constructing, erecting, installing, operating, maintaining, repairing, modifying, rebuilding, replacing, relocating and removing structures and their appurtenances, utilities of every character, roads, drives, walks and all such other structures and improvements as the Declarant shall deem necessary or desirable to complete the development of the Condominium. This easement shall include the right to store at, in or upon the Common Areas and Facilities temporary structures, vehicles, machinery, equipment, and materials used or to be used in connection with said development work for such periods of time as shall be conveniently required for said development work. This easement shall not be construed to limit or restrict the scope of any easements granted for the purpose of facilitating development and expansion of the Condominium under the

provisions of any other paragraph of this Master Deed or any other instrument or document, or under applicable law or regulation.

(D) Notwithstanding any provision of this Master Deed to the contrary, the Declarant shall have the right and easement to construct, modify, or demolish Dwellings, and other structures and improvements without the consent of any Unit Owner, mortgagee or the Trustees of the Condominium Trust.

11. Rights Reserved to the Condominium Trustees

Upon twenty-four hour advance notice (or such longer notice as the Condominium Trustees shall determine appropriate) to the Owner involved, or immediately and without notice in case of emergency or a condition causing or threatening to cause serious inconvenience to another Unit, the Condominium Trustees shall have the right of access to each Lot:

- (A) To inspect, maintain, repair or replace the Common Areas and Facilities contained therein or elsewhere.
- (B) To exercise any other rights or satisfy any other obligations they may have as Condominium Trustees.

12. The Unit Owners' Association

The organization through which the owners will manage and regulate the Condominium established hereby is WADE COMMONS CONDOMINIUM TRUST (hereinabove and hereinafter referred to as the "Condominium Trust") under a Declaration of Trust of even date to be recorded herewith. Each Owner shall have an interest in the Condominium Trust in proportion to the percentage of undivided ownership interest in the Common Areas and Facilities to which his Unit is entitled hereunder. As of the date hereof, the name and address of the original and present Trustee of the Condominium Trust (hereinabove and hereinafter the "Condominium Trustee") is as follows:

David MacCready
266 Main Street
Suite 34
Medfield, MA 02052

The Condominium Trustees have enacted the By-laws pursuant to and in accordance with the provisions of the Act.

13. Easement for Encroachment

If any portion of the Common Area and Facilities now encroaches upon any Unit, or if any Unit now encroaches upon any portion of the Common Areas and Facilities, or if any such encroachment shall occur hereafter as a result of (a) settling of the buildings; (b) alteration or repair to the Common Areas and Facilities or Lots made by or with the consent of the Condominium Trustees; (c) as a result of repair or restoration of the building or any Unit, after damage by fire or other casualty; or (d) as a result of condemnation or eminent domain

proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the building involved stands.

14. Units Subject to Master Deed, Unit Deed and Condominium Trust

All present and future owners, lessees, tenants, licensees, visitors, invitees, servants and occupants of Units shall be subject to, and shall comply with, the provisions of this Master Deed, the Condominium Trust, the By-Laws, the Unit Deed and the Rules and Regulations of the Condominium adopted pursuant to the By-Laws, as they may be amended from time to time, and the items affecting title to the land described in Exhibit A. The acceptance of a deed or conveyance of a Unit shall constitute an agreement that the provisions of this Master Deed, the Condominium Trust, the By-Laws, the deed of the Unit and said Rules and Regulations, as they may be amended from time to time, and the said items affecting title to the land, are accepted and ratified by such owner, lessee, tenant, licensee, visitor, invitee, servant or occupant; and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance thereof or lease, tenancy, license, or occupancy agreement or arrangement with respect thereto.

15. Amendments

This Master Deed may be amended by an instrument in writing, signed by the owners at the time holding not less than seventy-five percent (75%) of the total voting power of the Owners, as said voting power is defined in Section 4.3 of the Condominium Trust, or signed by a majority of the Condominium Trustees, in which case such instrument shall recite that it has been agreed to in writing by owners at the time holding at least seventy-five percent (75%) of said total voting power of the Owners, and duly recorded with the Plymouth County Registry of Deeds, provided that:

- (A) The date on which any such instrument is first signed by Owners shall be indicated thereon as the date thereof and no instrument of amendment shall be of any force and effect unless and until the same has been so recorded within six (6) months after such date.
- (B) No instrument of amendment which alters the dimensions of any Unit or E.U.A. shall be of any force or effect with unless signed by the Owner of the Unit or E.U.A. so altered.
- (C) No instrument of amendment which would alter the percentage interest to which any Unit is entitled in the Common Areas and Facilities shall be of any force and effect unless the same has been signed by all Owners whose percentage of the undivided interest is affected.
- (D) No instrument of amendment which alters this Master Deed in any manner which would render it contrary to or inconsistent with any requirements or provisions of

the Act, the Scituate Zoning By-Law, as amended from time to time, or the Common Driveway Agreement with the Scituate Planning Board, shall be of any force or effect.

- (E) No instrument of amendment which would adversely affect the Declarant's easements, and rights set forth in this Master Deed, including but not limited to the Declarant's easements, rights and ability to develop and/or market the Condominium shall be of any force of effect unless it is assented to in writing by the Declarant, and this assent is recorded with such amendment at the Plymouth County Registry of Deeds. The requirements for the Declarant's assent contained in this subparagraph (F) shall terminate upon a completion of construction and sale by the Declarant to third party purchasers of all of the Declarant's interest in the Condominium and the Land (who shall not be a successor to the Declarant's development interest in the Condominium as referred to in paragraph 18 of this Declaration).
- (F) Where and to the extent required under the provisions of paragraph 18 hereof, the instrument of amendment shall be assented to by the holders of first mortgages of record with respect to the Units in the manner set forth in paragraph 18.
- (G) Each instrument of amendment executed and recorded in accordance with the requirements of this paragraph 15 shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or that such amendment is not valid.

15.1 Termination and Removal from Condominium Law

- (A) Until such time as the Declarant has no remaining beneficial interest thereunder, Owners holding one hundred percent (100%) of the total voting power of the Owners as provided in subparagraph (B) hereof shall be required to approve the removal of the Condominium described herein from the provisions of the Act and thereafter the provisions of Section 19 of said the Act shall apply; provided, however, if during such time the Declarant holds a portion of the beneficial interest thereunder, the Declarant approves of such removal, the approval of Owners holding at least seventy-five percent (75%) of the total voting power of the Owners hereunder, together with consent in writing of the holders of all liens on the Units.
- (B) Upon the removal of the Condominium from the provisions of the Act in Accordance with the procedure therefor set forth in Section 19 of the Act, as Section 19 may be modified by subparagraph (A) herein, the Condominium Trust shall terminate, provided that on or before the date for termination:
 - (i) written consents to the termination are obtained from the holders of liens upon the Common Land and any of the Dwellings;
 - (ii) to the extent required by the applicable local zoning by-laws, written consents to the

termination are obtained by any local governmental entity or its agencies; and

16. Declarant's Reserved Rights to Construct and add Future Phases and to Amend

The Condominium is planned to be developed as a phased condominium, each phase of which shall include one or more buildings and Units. In order to permit and facilitate such development, the Declarant, for itself and all its successor assigns, hereby expressly reserves the following rights and easements:

- (a) The Declarant shall have the right and easement to add additional land to the Condominium at any time and from time to time by unilateral amendment to this Master Deed. Such additional land may include, at the Declarant's option, any land, not now shown on the Site Plan or now owned by the Declarant.
- (b) The Declarant shall also have the right and easement to construct, erect and install on the Condominium Land (including such additional land as the Declarant may add to the condominium, if any) in such locations as the Declarant shall in the exercise of their discretion determine to be appropriate or desirable.
 - (i) Additional building(s), and Units;
 - (ii) Additional roads, driveways, parking spaces and areas, walks and paths;
 - (iii) New or additional fences or decorative barriers or enclosures, and other structures of every character;
 - (iv) New or additional conduits, pipes, satellite dishes, wires, poles and other lines, equipment and installations of every character for the furnishing of utilities; and
 - (v) All and any other buildings, structures, improvements and installations as the Declarant shall determine to be appropriate or desirable to the development of the Condominium as a phased condominium.

For the purposes of such construction, the Declarant shall have all of the rights and easements reserved to it in subparagraph 10 c hereof.

Ownership of each building, together with the Units and appurtenances thereto, constructed by or for the Declarant pursuant to the said reserved rights and easements shall remain vested in the Declarant, who shall have the right to sell and convey the said Units as Units of the Condominium without accounting to any party (other than the Declarant's mortgagees) with respect to the proceeds of such sales.

Except as hereinafter expressly limited as to time and the maximum number of Units which may be added to the Condominium as part of future phases, the Declarant's reserved rights and easements to construct and add to the Condominium additional Units, together with Units, shall be unlimited.

The following sub-paragraphs (a) through (f) are set forth to further describe the scope of the Declarant's reserved rights and easements under this paragraph 16;

- (a) Time Limit After Which the Declarant May No Longer Add Additional Land and/or New Phases. The Declarant's reserved rights to amend this Master Deed to add all or any portion or portions of land to the Condominium and/or to add new Units to the Condominium as part of future phasing shall expire twenty-one (21) years after the date of the recording of this Master deed, provided that said reserved rights shall sooner expire upon the first to occur of the following events:
 - (i) The total Units then included in the Condominium by virtue of this Master Deed and subsequent amendments hereto pursuant to this paragraph 16 reach the maximum limit allowed by law but shall never exceed the maximum number of Lots and units approved by the Scituate Planning Board as shown on the a plan of land entitled "Proposed Common Driveways Lots 1-8 Chief Justice Cushing Highway (Assessor's Parcel: 47-2-26A to J) Scituate, Massachusetts", dated April 24, 2019, revised September 25, 2019; October 24, 2019; November 11, 2019; January 7, 2020; January 21, 2020 and January 29, 2020 *prepared by Morse Engineering Company, Inc. dated March 29, 2020 ("Common Driveway Plan")*; or
 - (ii) Declarant shall record with the Plymouth Registry of Deeds an unambiguous statement specifically limited or relinquishing his reserved rights to amend this Master Deed to add additional land and/or new Units to the Condominium.
- (b) Location of Future Improvements. Other than the restrictions imposed by the approved Common Driveway Plan limiting the number of Lots and the number of Units as approved on the Common Driveway Plan there are no other limitations imposed on the location of future buildings, structures, improvements and installations to be constructed, erected or installed on the Condominium Land pursuant to the rights reserved to the Declarant under this paragraph 16.
- (c) Size of Phase. Provided all Phases are in compliance with the Common Driveway Plan there are no minimum or maximum size limitations on the future phase(s) to be added to the Condominium. A phase may consist of any number of buildings, and Units, provided, however, that the maximum total number of permitted Units for the entire Condominium shall not exceed the number permitted by applicable law or the approved Common Driveway Plan. The Declarant shall have the right to construct Units and add same to the Condominium in any order, and the Declarant shall not be obligated to construct buildings in numerical order but may construct buildings in any order which the Declarant may desire. The Declarant shall

have the right and easement to add subphases.

- (d) Maximum Number of Units Which May be Added by Future Phases. The Declarant may amend this Master Deed to add new Units to the Condominium as part of future phases, however, the total number of Units in the Condominium shall not exceed the maximum number of Units permitted by the Approved Common Driveway Plan.

The Declarant may add future phase(s) and the building(s) and Unit(s) therein to the Condominium (provided said additional buildings shall comply with all applicable bylaws and statutes) by executing and recording with the Plymouth County Registry of Deeds amendment(s) to this Master Deed which shall contain the following information:

- (i) An amended Exhibit B describing the building(s) being added to the Condominium.
 - (ii) If the boundaries of the Units(s) being added to the Condominium vary from those described in said paragraph 5, the definition of the Common Areas and Facilities contained in paragraph 6 hereof shall be modified, as necessary, with respect to such Unit(s).
 - (iii) An amended Exhibit C describing the designations, locations, approximate areas, number of rooms, immediately accessible Common Areas and Facilities and other descriptive specifications of the Unit(s) being added to the Condominium, as well as describing any variations in the boundaries of such Units from those boundaries set forth in paragraph 5 of this Master Deed, and setting forth the new percentage ownership interest for all Units in the Common Areas and Facilities of the Condominium based upon the addition of the new Unit(s). Such percentage ownership shall be calculated in accordance with the Act.
 - (iv) a revised site plan of the Condominium showing the new Building(s), and floor plan(s) for the new Units being added to the Condominium, which floor plan(s) shall comply with the requirements of the Act.
- (e) It is expressly understood and agreed that no such amendments adding new phases to the Condominium or other amendments made pursuant to this Section 16 shall require the consent (except as in this paragraph 16 already granted) or signature in any manner by the Owner, any person claiming, by, through or under any Owner including the holder of any mortgage or other encumbrance with respect to any Unit, any Trustee of the Condominium Trust, any Mortgagee or any other party whatsoever, and the only signature which shall be required on any such amendment is that of the Declarant. Any such amendment, when so executed by Declarant and recorded with the

Plymouth County registry of Deeds , shall be conclusive evidence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or that such amendment is not valid. Each Owner understands and agrees that as additional phase(s) are added to the Condominium by amendment to this Master deed pursuant to the Declarant's reserved rights hereunder, the percentage ownership interest of his Unit in the Common Areas and Facilities, together with his Unit's concomitant interest in the Condominium Trust and liability for sharing in the common expenses of the Condominium, shall be reduced, and the value of his Unit will represent a comparable proportion of the estimated aggregate fair value of all Units then in the Condominium. In order to compute each Unit's said percentage ownership interest after the addition of a new phase, the fair value of the Unit measured as of the date of the Master Deed amendment shall be divided by the aggregate fair value of all Units (including the new Units being added to the Condominium), also measured as of the date of the Master Deed amendment. These new percentage interests shall then be set forth in the aforesaid amended Exhibit C which is to accompany each amendment to this Master deed which adds a new phase to the Condominium.

Every Owner by the acceptance of his deed to his Unit hereby consents for himself, his heirs, administrators, executors, successors and assigns and all other persons claiming by, through or under him (including the holder of any mortgage or other encumbrance) or any other party whatsoever, to the Declarant's reserved easements and rights under this paragraph 16 and expressly agrees to the said alteration of this Unit's appurtenant percentage ownership interest in the Common Areas and Facilities of the Condominium when new phase(s) are added to the Condominium by amendment to this Master Deed pursuant to this paragraph 16.

In the event that notwithstanding the provisions of this paragraph 16 to the contrary, it shall ever be determined that the signature of any Owner, other than Declarant, is required on any amendment to this Master Deed which adds a Unit(s), additional land and/or new phase(s) to the condominium, then the Declarant shall be empowered, as attorney-in-fact for the Owner of each Unit in the Condominium, to execute and deliver any such amendment by and on behalf of and in the name of each such Owner and each Owner; (whether his deed be from the Declarant as grantor or from any other party) and each Unit Owner hereby constitutes and appoints the Declarant as his attorney-in-fact. This Power of Attorney is coupled with an interest, and hence shall be irrevocable and shall be binding upon each and every present and future Owner of a Unit in the Condominium, and all other persons claiming by, through or under him (including the holder of any mortgage or other encumbrance(s) or any other party whatsoever.

Notwithstanding anything to the contrary contained in this Master deed or

the Condominium Trust, the Declarant does hereby reserve the right to amend, restate, reaffirm or otherwise take whatever steps which may be required to complete the Condominium and construction of the buildings, improvements and Units and the phasing of any of the same into the Condominium notwithstanding that any of the same may be required to be done beyond any time or period as may be otherwise provided herein so long as any such act or omission shall not be in violation of any rule of law, then in effect.

Notwithstanding anything to the contrary in this Master Deed or the Condominium Trust, the Declarant hereby reserves the right to amend this Master deed in order to (a) comply with the requirements of the Town of Scituate or any agency or department thereof, or (b) comply with the requirements of any governmental agency or body, or (c) comply with the requirements of any insurance underwriter or insurance regulatory body, or (d) comply with the requirements of Federal National Mortgage Association Federal Home Loan Mortgage Corporation or any other mortgagee or mortgage investor, or (e) correct typographical, mathematical or scrivener's errors.

All Units shall be substantially completed prior to being added to the Condominium by amendment of this Master Deed. All future phases will be consistent with the initial improvements in terms of quality of construction.

17. Declarant's Reserved Rights to Construct Future Common Use Facilities in the Common Areas and Facilities.

The Declarant, for himself and his successors and assigns, hereby expressly reserves the right and easement to construct, erect and install on the Condominium Land in such locations as he shall determine to be appropriate or desirable, one or more common use facilities to serve the Condominium, together with all such utility conduits, pipes, wires, poles and other lines, equipment and installations as shall be associated therewith. Such common use Facilities may include a sewage treatment system, parking units, community buildings, parks, playgrounds or facilities or any other facility for common use by the Owners which the Declarant shall deem necessary or desirable. Upon substantial completion of such common use facility, it shall become part of the Common Areas and Facilities of the condominium; and the Declarant shall turn it over to the Condominium Trust for management, operation and maintenance and the Condominium Trustees shall accept responsibility for such management, operation and maintenance. Nothing contained in this paragraph 17, however, shall in any way obligate the Declarant to construct, erect or install any such common use facility as part of the Condominium development

18. Definition of "Declarant"

- (a) For the purposes of the Master Deed, the Condominium Trust and the By-laws,

“Declarant” shall have the same meaning as set forth in Section 1A hereof.

- (b) All amendments of this Master Deed executed pursuant to the rights, easements and privileges of the Declarant in connection with phasing, specifically including the Declarant’s rights, easements and privileges set forth in paragraph 16 hereof shall be fully valid if executed by the Declarant.

19. Provisions for the Protection of Mortgagees.

Notwithstanding anything in this Master Deed or in the Condominium Trust and By Law to the contrary, the following provisions shall govern and be applicable insofar and for as long as the same are required in order to qualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA), as applicable, under laws and regulations applicable thereto and shall apply for the protection of the holders of the first mortgages (hereinafter “First Mortgagees”) of record with respect to the Units and shall be enforceable by any First Mortgagee:

(A) In the event that the Owners shall amend this Master Deed or the Condominium Trust to include therein any right of first refusal in connection with the sale of a Unit, such right of first refusal shall not impair the rights of a First Mortgagee to:

- (i) Foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or
- (ii) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or
- (iii) Sell or lease a Unit acquired by the First Mortgagee through the procedures described in sub-paragraphs (i) and (ii) above.

(B) Any party who takes title to a Unit through a foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Owners and incorporated in this Master Deed or the Condominium Trust.

(C) Any First Mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by law shall not be liable for such Unit’s unpaid common expenses or dues which accrued prior to the acquisition of title to such Unit by such First Mortgagee, except as many otherwise be set forth in the Act.

(D) Except as provided by the Act (and Section 5.6 of the Condominium Trust which conforms to said statute) in the case of condemnation or substantial loss to the Units and/or the Common Areas and Facilities of the Condominium, the Owners and the Condominium Trustees shall not be entitled to take the following actions unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each first mortgage owned) have given their prior written consent thereto:

- (i) By any act or omission, seek to abandon or terminate the Condominium; or
- (ii) Change the pro-rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or, determining the pro-rata share of ownership of each Unit in the Common Areas and Facilities; or
- (iii) Partition or subdivide any Unit; or
- (iv) (iv) By any act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas and Facilities; provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities shall not be deemed an action for which prior consent of the First Mortgagees shall be required pursuant to this clause; or
- (v) Use hazard insurance proceeds on account of losses to either the Units or the Common Areas and Facilities for other than the repair, replacement or reconstruction thereof, except as otherwise provided in Section 5.6 of the Condominium Trust which contains provisions dealing with substantial losses in conformity with the requirements of Section 17 of the Act.

(E) Consistent with the provisions of the Act, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of the Commonwealth of Massachusetts shall relate only to the individual Units and not to the Condominium as a whole.

(F) In no event shall any provision of this Master Deed or the Condominium Trust give an Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of such Unit and/or the Common Areas and Facilities.

(G) Upon written request to the Trustees of the Condominium Trust, identifying the name and address of the holder, insurer or governmental guarantor and the Unit number or address, any First Mortgagee or insurer or governmental guarantor of said first mortgage (hereafter the "Eligible Mortgage Holders" and "Eligible Insurers or Guarantors" as the case may be) will be entitled to timely written notice of:

- a. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;
- b. Any delinquency in the payment of easements or charges owned by an Owner of a Unit subject to a first mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of 60 days;
- c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trustees of the Condominium Trust;
- d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in this paragraph 16.

- (H) To the extent permitted by applicable law, Eligible Mortgage Holders shall also be afforded the following rights:
- (i) Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to eligible Mortgage Holder mortgages.
 - (ii) Any election to terminate the legal status of the Condominium after substantial destruction or a substantial taking in condemnation of the condominium property must be approved in writing by Eligible Mortgage Holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to Eligible Mortgage Holder mortgages.
 - (iii) When professional management has been previously required by any Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Trust shall require the prior consent of Owners of Units to which at least 67 percent of the votes in the Trust are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to Eligible Mortgage Holder mortgages.
- (I) Condominium dues or charges shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the Common Areas and Facilities that must be replaced on a periodic basis and shall be payable in regular installments rather than by special assessments.
- (J) No agreement for professional management of the Condominium or any other contract with the Declarant, developer, sponsor or builder may exceed a term of three (3) years, and any such agreement shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.
- (K) The Trustees shall make available to the Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Master Deed, Declaration of Trust, By-Laws, other rules concerning the Condominium and the books, records and financial statements of the condominium Trust. "Available" means available for inspection upon request, during normal business hours or under other reasonable circumstances.
- (L) Any holder of a first mortgage of a Unit shall be entitled upon written request to an financial statement for the immediately preceding fiscal year free of charge. Any financial statement so requested shall be furnished within a reasonable time following such request.

- (M) Except for amendments to the Condominium documents of termination of the Condominium made as a result of destruction, damage or condemnation as above set forth:
- (i) The consent of Owners of Units to which at least 67 percent of the votes in the Condominium Trust are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least 67 percent of the votes of Units subject to Eligible Mortgage Holder mortgages, shall be required to terminate the legal status of the Condominium; and
 - (ii) The consent of the owners of Units to which at least 67 percent of the votes in the Condominium Trust are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to Eligible Mortgage Holder mortgages, shall be required to add or amend any material provisions of the Condominium documents of the condominium, which establish, provide for, govern or regulate any of the following:

Voting;

Assessments, assessment liens or subordination of such liens; reserves for maintenance, repair and replacement of the Common Areas and Facilities (or Units if applicable);

Insurance or Fidelity Bonds;

Rights to use Common Areas and Facilities;

Responsibility for maintenance and repair of the several portions of the Condominium;

Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project;

Boundaries of any Unit;

The interests in the Common Areas and Facilities; convertibility of Units into Common Areas or of Common Areas into Units;

Leasing of Unit estates;

Imposition of any right of first refusal or similar restriction on the right of an owner to sell, transfer, or otherwise convey his or her Unit;

Any provisions which are for the express benefit of mortgage holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of first mortgages on Units.

Any First Mortgagee which does not deliver or post to the Trustees of the Condominium Trust a negative response within thirty (30) days of a written request by the Trustees for approval of any addition or amendment pursuant to this paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Trustees making reference to this paragraph, when recorded at the Plymouth County Registry of Deeds, shall be conclusive evidence as to the existence or non-existence of any fact, or to any conditions or precedent required for any action taken in connection with this paragraph, and may be relied upon by any person without being required to make independent inquiry.

The Declarant intends that the provisions of this paragraph shall comply with the requirements of FNMA and FHLMC with respect to condominium mortgage loans, and all questions with respect thereto shall be resolved consistent with that intention.

The provisions of this paragraph may not be amended or rescinded without the written consent of all First Mortgagees, which consent shall appear on the instrument of amendment as such instrument is duly recorded with the Plymouth County Registry of Deeds in accordance with the requirements of paragraph 15 hereof.

20. Sale of Units

(A) Appurtenant Interests. No Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein the Appurtenant Interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Units to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

(B) Sale Subject to Condominium Documents. All sales shall explicitly be made subject to the provisions of this Master Deed and the Condominium Trust and By-Laws.

21. Severability.

In the event that any provision of this Master Deed shall be determined to be invalid or unenforceable in any respect, it shall be interpreted and construed so as to be enforceable to the extent and such situations as may be permitted by applicable law, and in any event, the partial or total unenforceability of such provision shall not affect in any manner the validity, enforceability or effect of the remainder of this Master Deed; and, in such event, all of the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included herein.

22. Waiver

No provision contained in this Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

23. Captions

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Master Deed not the intent of any provision hereof.

24. Governing Law

This Master Deed, the Condominium Trust and By-Laws and the condominium created and regulated thereby, shall be governed in all respects by the Act as it is in force as of the date of the recording of this Master Deed. Provided, however, a subsequent amendment of, revision to or substitution for the Act shall apply to this Master Deed, the Condominium Trust and By-laws and the Condominium in the following cases:

A. Such amendment, revision or substitution is by its terms made mandatory on existing condominiums; or

B. To the extent permitted by applicable law, the Owners by a written instrument signed by Owners of Units holding at least two-thirds (2/3) of the total voting power of the Owners, as said voting power is defined in Section 4.3 of the Condominium Trust, may elect to have such amendment, revision or substitution apply. Such instrument setting forth this election, or a notice of it signed by a majority of the Condominium Trustees, which notice shall be accompanied by a certification that the consent of the Owners required for it has been obtained, shall be recorded with the Plymouth County Registry of Deeds prior to its becoming effective. Such instrument or notice, as so executed and recorded shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity thereof in favor of all persons who rely thereon without actual knowledge that such facts are not true or that such instrument or notice is not valid. Notwithstanding the foregoing provisions of this subparagraph 22(b) to the contrary, the owners may not elect to have such amendment, revision or substitution apply, without first obtaining the written consent of the Declarant, which consent shall be recorded with the instrument setting forth the election with the Plymouth County Registry of Deeds, if any such amendment, revision or substitution would adversely affect the Declarant's right and ability to develop and/or market this Condominium.

IN WITNESS WHEREOF, the undersigned has executed this Master Deed as an instrument under seal this _____ day of _____, 2020.

Wade Commons, LLC

BY: _____
David MacCready, Manager,
Authorized signatory

THE COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared David MacCready, Manager of Wade Commons, LLC as aforesaid, proved to me through satisfactory evidence of identification which was Massachusetts driver's 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
Comm. Expires: _____

EXHIBIT A
TO THE MASTER DEED
OF
WADE COMMONS CONDOMINIUM

EXHIBIT A

The following parcels of land with the buildings thereon in Scituate, Plymouth County, Massachusetts described as follows:

Notwithstanding the foregoing, Declarant specifically reserves to itself the right to construct Units and buildings on all portions of the land described in this Exhibit A.

Expressly reserving to the Declarant the right to grant easements and the right to use for drainage, utility purposes and access, on, over, under and through the Common Land.

The Declarant hereby grants the easement and right to use access roadway shown on said plan or as the same may be hereinafter amended for all purposes for which streets and ways are used in the Town of Scituate, in common with the Declarant and all others who are or may become entitled thereto, including, but not limited to, all Owners of Units in the Condominium, the Town of Scituate and the United States Postal Service, necessary for access and egress from the Units to a public way.

The above-described premises were conveyed to the Declarant by deed of _____ recorded with the Plymouth County Registry of Deeds in Book _____, Page _____.

EXHIBIT B
TO THE MASTER DEED
OF
WADE COMMONS CONDOMINIUM
DESCRIPTION OF BUILDINGS
TO BE COMPLETED UPON EACH PHASING AMENDMENT

Legend: BA= Bath BD= Bedroom DR= Dining Room K = Kitchen LR = Living Room SR = Sun Room LDRY= Laundry/Mud room LLLS = Lower level Living Space CR = Crafts Room Gu = Garage Under
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The Unit Designations of each unit and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification, are shown on the Plans hereinafter mentioned and recorded herewith, which is incorporated herein and made a part hereof.

The buildings are constructed principally of poured concrete foundation, wood frame construction and wood and cedar clapboard or shaker or vinyl siding and asphalt or fiberglass shingled roof, and shall contain two stories as shown on the respective Unit Plan. Each Unit has a front and rear or side entrance, and may contain landings and/or stairway servicing same, and may contain either a deck or patio and may contain a one or two car attached garage. Each Unit has its own separate propane; electric and water meters, gas fired heating and hot water systems and may have an external air conditioning compressor pad optional with central air conditioning system and security system and gas fireplace.

Each Unit having the exclusive use of so much of the common land that is situated within the boundaries of the E.U.A. bearing the same number as that of said Unit, and upon which the Unit is located

EXHIBIT C

**TO THE MASTER DEED OF WADE COMMONS CONDOMINIUM
PERCENTAGE CONDOMINIUM INTEREST**

TO BE COMPLETED UPON EACH PHASING AMENDMENT

