

Declarant: Eastward MBT, LLC, Trustee
Eastward Companies Business Trust
Grantee: Town of Harwich, acting by and through
Its Planning Board
Prop. Add.: Turtle Run, Harwich, MA
Title Ref: Book 34692, Page 11

DECLARATION OF RESTRICTIONS

William Marsh, Eastward MBT, LLC, Trustee of the Eastward Companies Business Trust under Declaration of Trust dated December 26, 2000, as amended of record (see C. 184 s. 35 Trustees Certificate filed with the Barnstable Registry District of the Land Court (“Registry”) as Document No. 12667260), a Massachusetts Business Trust, with a mailing address of 155 Crowell Road, Chatham, MA 02633 (“Declarant”), does make the following Declaration of Restrictions, with respect to certain land situated in Harwich, Barnstable County, Massachusetts, for the benefit of the Town of Harwich, a municipal corporation, with an address at 732 Main Street, Harwich, MA 02645, acting by and through its Planning Board (“Grantee”).

WHEREAS, the Declarant is the owner of land in Harwich, Barnstable County, Massachusetts (“Property”), as shown on a definitive subdivision plan entitled, “Division Plan (Recorded in Plan Book _____, Page _____) in Harwich, MA as prepared for Eastward Companies Business Trust, Scale: 1” = 40’, Dated: 4/8/22, Clark Engineering LLC” (“Plan”); and

WHEREAS, said Plan is recorded with the Registry in Plan Book _____, Page _____, and is attached hereto as Exhibit A; and,

WHEREAS, the Declarant has proposed to construct a residential development on the Property, to be known as Turtle Run (“Development”), consisting of five (5) building lots numbered 1 through 5, and two (2) open-space lots lettered as Open Space A and B (collectively, the “Open Space Area”), all as shown on the Plan; and

WHEREAS, the Harwich Planning Board approved the Development as a definitive subdivision and approved a special permit for the Development, as evidenced by its Decision dated _____, 2022, which is recorded with the Registry in Book _____, Page _____, and by its further Decision dated _____, 2022, which is recorded with the Registry in Book _____, Page _____; and,

WHEREAS, the Decision requires as a condition of the Harwich Planning Board’s approvals that, pursuant to Section 325-51.F of the Town of Harwich Zoning By-Law, a deed restriction, enforceable by the Town, is to be imposed on the Open Space Area within the Development, providing that said Open Space Area is to be kept in an open or natural state.

NOW, THEREFORE, in fulfillment of the condition in the Decision pertaining to the Open Space Area, the Declarant, for consideration paid of One Dollar (\$1.00), the receipt and sufficiency of which is acknowledged, hereby makes, imposes, and declares this Declaration of Restrictions on the Open Space Area (“Restriction”), for the purpose of preservation of open

space, to be binding on itself, its successors, and its assigns, the terms and conditions of which are as follows:

I. Purposes

This Restriction is intended to comply with the requirements of the Town of Harwich Zoning By-Law and the conditions of the Planning Board's approvals for the Development. The Restriction's purpose is to assure that the Open Space Area will be retained in perpetuity, in its natural, scenic, and open condition and to prevent any use of the Open Space Area which will significantly impair or interfere with the conservation values of the Open Space Area.

The Open Space Area, comprised of approximately 5.23 acres (227,938 square feet) of land contains unusual, unique, or outstanding qualities, the protection of which will be of benefit to the public:

A. The Open Space Area will preserve and protect the values of the Zone II Area (Drinking Water Resource Protection District), the Harwich Wellfield located off Chatham Road, and wildlife habitat, by reducing the area available for development and lawns.

B. The Open Space Area has value for its scenic and aesthetic qualities. The wooded area provides for the amelioration of noise, heat, and air-borne pollutants.

C. The Open Space Area is adjacent to the open space of one existing open space residential subdivision and the Town of Harwich Water Department property, creating an interconnection of permanently protected open space and existing wildlife corridors.

D. The Open Space Area includes a portion of Hidden Pond and will act as a vegetated buffer between existing and proposed development and the pond.

II. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses

A. Prohibited Acts and Uses

Subject to the exceptions set forth in subparagraph II-B below, the Declarant, its successors and its assigns will neither perform nor allow others to perform the following acts and uses, which are prohibited on, above and below the Open Space Area:

1. Constructing or placing of any temporary or permanent building or structure, tennis court, swimming pool, paving, fences, landing strip, mobile home, billboard, or other advertising display, antenna, utility pole, tower, conduit, line on, or other temporary structure or facility under or above the Open Space Area.
2. Mining, excavating, dredging, or removing from the Open Space Area of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit.
3. Placing, filling, storing or dumping on the Open Space Area of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, yard wastes, including grass

clippings, leaves and brush and any other kind of waste or other substance or material whatsoever or the installation of underground storage tanks.

4. The use, parking, or storage of off-road and similar motorized vehicles in the Open Space Area, including snowmobiles, campers, all-terrain vehicles and motorcycles, except as necessary by safety officials in the performance of their official duties.
5. Cutting, removing, or otherwise destroying trees, shrubs, grasses, or other vegetation, or the dumping of yard waste.
6. The further subdivision of the Open Space Area, or division thereof, and no portion of the Open Space Area may be used towards building or development requirements on this or any other parcel.
7. The disturbance in any fashion of the natural surface of the ground, including the organic litter layers of the soil, including downed trees and branches and rocks.
8. Any other use of the Open Space Area or activity that would materially impair conservation interests, including, but not limited to those interests specifically mentioned in Section I, unless necessary for the protection of the conservation interests that are the subject of this Restriction.
9. Activities detrimental to drainage, flood control, water conservation, erosion control, and soil conservation.

B. Exceptions to Otherwise Prohibited Acts and Uses

The following acts and uses otherwise prohibited in subparagraph II-A are permitted, but only if such acts or uses do not materially impair conservation interests.

1. Erection of small signs by the Declarant or Grantee identifying the Grantee as holder of the restriction and to educate the public about the conservation values protected and any limitations relating to public access.
2. With Grantee approval, the selective cutting of trees for fire protection, public safety, or otherwise to preserve the present conditions of the Open Space Area, including the clean-up and removal of storm damage.
3. Installation and maintenance of drainage easements along Turtle Run on Open Space B, as shown on the Plan (Exhibit A).
4. The maintenance of piles of limbs, brush, leaves and similar biodegradable material originating on the Open Space Area provided such piles are not conspicuous or otherwise interfere with the conservation objectives of this Restriction.

5. The placing of fences that do not interfere with the passage of protected wildlife or other conservation purposes of this Restriction.
6. Any rights that may have existed in the existing way known as Middle Road will remain and the way is shown on the Plan in its existing location and over Open Space Parcel A.

C. Permitted Acts and Uses

All acts and uses not otherwise prohibited or restricted in subparagraphs II-A and II-B are permissible, provided they do not materially impair the purposes or conservation values of this Restriction.

III. Legal Remedies of the Grantee

A. Enforceability

This Restriction shall run with the land and shall be enforceable against the Declarant and all successors and assigns of the Declarant holding any interest in the Open Space Area.

B. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief for any violations, including, without limitation, relief requiring restoration of the Open Space Area to its condition prior to the time of the injury complained of (it being agreed that the Grantee shall have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

C. Reimbursement of Costs of Enforcement

The Declarant, and thereafter the successors and assigns of the Declarant, covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including, without limitation, counsel and survey fees) incurred in enforcing this Restriction or in remedying or abating any violation thereof.

D. Grantee's Disclaimer of Liability

By its acceptance of this Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Open Space Area not directly caused by the Grantee, their agents or assigns.

E. Non-Waiver

Any election by the Grantee as to the manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

IV. Access

The Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Open Space Area, except there is granted to the Grantee and its representatives the right to enter the Open Space Area, over Turtle Run, at reasonable times and in a reasonable manner for the purpose of inspecting the Open Space Area to determine compliance with the terms of this Restriction.

V. Extinguishment

A. Grantee's Receipt of Property Right

The Declarant and the Grantee agree that this Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Restriction determined at the time of the Restriction bears to the value of the unrestricted Open Space Area at that time.

B. Value of Grantee's Property Right

Such proportionate value of the Grantee's property right shall remain constant.

C. Right of Grantee to Recover Proportional Value at Disposition

If any occurrence ever gives rise to extinguishment or other release of the Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Open Space Area, shall be entitled to a portion of the proceeds equal to such proportionate value, exclusive of improvements, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

D. Declarant/Grantee Cooperation Regarding Public Action

Whenever all or any part of the Open Space Area or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Declarant and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

E. Allocation of Expenses upon Disposition

All related expenses incurred by the Declarant and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Declarant and Grantee in shares equal to such proportionate value.

F. Continuing Trust of Grantee's Share of Proceeds of Restriction Disposition

The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this Restriction.

VI. Duration

The Declarant agrees that this Restriction is a gift for a public purpose pursuant to G.L. c. 184, §23 and shall be perpetual; and that, further, if the grant of the Restriction is held not to be a gift for a public purpose, the Restriction is an “other restriction held by a governmental body,” as that term is used in G.L. c. 184, §26, which is not subject to the limitations on the enforceability of restrictions in G.L. c. 184, §§26-30, and that said Restriction shall run for the term of one hundred years. If recording of a notice is ever needed to maintain the enforceability of this Restriction, the Declarant hereby appoints the Grantee as its agent to execute and record such notice.

VII. Subsequent Transfer to Association

The Declarant agrees to convey the Open Space Area to a corporation or trust owned or to be owned by the owners of lots within the Development (“Association”), and to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which said conveyance is accomplished. The Declarant’s failure to do so shall not impair the validity or enforceability of the Restriction.

VIII. Recordation

The Declarant shall record this Restriction with the Registry in a timely fashion, and in any event prior to the conveyance or other transfer of any interest in the Open Space Area. The Declarant further agrees to provide the Town with a copy of the recorded Restriction within thirty days of its recording.

IX. Amendment and Release

This Restriction may be amended or released only upon the written acknowledgment of such amendment or release executed by the Declarant and a majority of the members of the Planning Board, and in compliance with Article 97 of the Amendments to the Massachusetts Constitution, if the same is applicable.

X. Severability

If any provision of this Restriction or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Restriction or its application shall not be affected.

In Witness whereof, I, William Marsh, Manager of Eastward MBT LLC, Trustee of Eastward Companies Business Trust, hereunto set my hand and seal this _____ day of _____, 2022.

EASTWARD COMPANIES BUSINESS TRUST

By: Eastward MBT, LLC, Trustee

By: William Marsh, Manager

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. _____, 2022

Then personally appeared before me William Marsh, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Eastward MBT LLC, Trustee of Eastward Companies Business Trust.

Notary Public

My commission expires:

ACCEPTANCE OF DECLARATION OF RESTRICTIONS

The Town of Harwich, acting by and through its Planning Board pursuant to the authority granted under G.L. c. 40A, §9; G.L. c. 184, §26; and the Town of Harwich Zoning By-Law, hereby accepts the foregoing Declaration of Restrictions on this ____ day of _____, 2022.

TOWN OF HARWICH PLANNING BOARD

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. _____, 2022

Then personally appeared before me _____, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as a member of the Harwich Planning Board.

Notary Public

My commission expires: