

**DECLARATION OF PROTECTIVE COVENANTS,  
PERMANENT RESTRICTIONS, RIGHTS AND RESERVATIONS  
FOR: LOTS on Fish & Game Circle and Wildlife Circle, HARWICH, MA**

WHEREAS, the below signed, Christopher W. Our, Trustee of the Wildlife Circle Nominee Trust (hereinafter "Our") is the owner of land in Harwich, Massachusetts, being shown as Lots 1-7 inclusive, which lots have areas designated as "Vegetation and Wildlife Conservancy Areas" on Definitive Subdivision Plan of Land, Off Littlefield Pond Road, Harwich, MA prepared for R.B. Our Co. et al date July 14, 2021 which plan is recorded at the Barnstable County Registry of Deeds in Plan Book \_\_\_\_\_ Page \_\_\_\_\_ (hereinafter the "Subdivision Plan).

WHEREAS, said Our is hereinafter referred to as the Declarant; and

WHEREAS, it is the intention of the Declarant to create a residential subdivision in a natural wooded setting for all the land on said plan; and to secure proper and pleasing site development by retaining the maximum natural vegetation and by maintaining natural grade and to assure a high quality of community appearance.

THEREFORE, to protect and preserve the natural beauty and to create and maintain a desirable residential community and to maintain the value of all the homes, the Declarant hereby imposes the following restrictions, conditions, reservations and rights which shall run with said lots and be binding on all parties hereafter having any right, title or interest in said lots.

**I. RESTRICTIONS**

A. No trade or business, nor any mechanical, manufacturing or mercantile trade or business of any kind, nor practice of any profession shall be carried out upon the granted premises.

B. Tanks or any other storage facility for propane or other types of gas supply, in excess of 5 gallons for grills/firepits and the like, are prohibited. All other tanks maintained on any property shall be buried or confined within the residence.

C. No unregistered automobiles, campers, camping trailers, commercial vehicles, trucks (except light pickups), dump trucks, box trucks, econoline vans with commercial lettering, or moving vans are allowed on the property. No construction equipment or commercial vehicle of

**FILE COPY**

2022 SEP 20 P 12:02

RECORDED  
INDEXED  
2022 SEP 20

any kind shall be parked in the open overnight, except as required during construction of dwellings, approved facilities, roads, driveways, utilities, or landscaping. Boats and boat trailers are allowed if enclosed and screened with fencing and shrubbery, approved by Declarant, so as to obscure visibility from the street or other abutting properties.

D. No animals of any kind may be kept except household pets. Specifically excluded are chickens, turkeys, geese, ducks, pigs and all other "farm" animals. No pets shall be kept which shall constitute a nuisance or which will be troublesome or objectionable to the occupants of adjoining or nearby premises.

E. No building material of any kind or character shall be placed upon any property except for the immediate purpose of construction of an approved dwelling or accessory structure.

F. No temporary house, trailer or tent shall be placed or erected on any property.

G. No more than three garage bays will be allowed per lot.

H. No clotheslines or drying yards are to be maintained. Receptacles or waste cans for the storage of household rubbish, garbage or refuse shall be stored in suitable containers with tops which can be securely affixed to prevent opening by animals, and if stored outdoors shall be enclosed and screened from the view of adjoining property or street by a fence, hedge or other similar enclosure.

I. No noxious or offensive activity shall be carried out upon any property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

J. No permanent signs shall be permitted on any lot except for one sign not over one and one-half (1-1/2) square feet in area, indicating the owner's name or identifying the owner's property. This restriction shall not apply to the Declarant, his successors or assigns.

K. No live trees exceeding six (6) inches in diameter at a point two (2) feet above ground level shall be disturbed in their natural growth except as may be necessary for building construction, site development or grading, until prior plan approval and consent shall have first

been obtained in writing from the Declarant, except as hereinafter provided.

L. The exterior of any building erected on any lot and the landscaping and grading in connection therewith shall be finished and completed within ninety days of issuance of a Certificate of Occupancy. No dwelling shall be occupied as a residence until it is completed, and no temporary building shall be so occupied on any lot. All bare or disturbed ground shall be covered with grass, stone, shells, asphalt, woodchips or pine needles. Dirt driveways are prohibited.

M. The structures and grounds on any property shall be maintained in a neat and attractive manner, and the entire property shall be kept free of rubbish, debris or material of any kind, which renders the same unsanitary, unsightly, offensive, or detrimental to any property within the Subdivision.

N. No antennas or aerials shall be placed upon any single-family lot unless completely inside a dwelling.

O. No ham radios, radio transmission equipment (including walkie talkies and CB radios) or microwave transmission equipment shall be operated or permitted without the prior written consent of the Declarant.

P. **PERMANENT RESTRICTION with regard to the WILDLIFE CONSERVANCY AREA.** No construction or alteration of any kind (exclusive of perimeter fencing, if any, which shall have a height approved as hereinafter set forth), including selective clearing or brushing, shall take place within the areas designated as "Vegetation & Wildlife Conservancy Areas" without the prior written approval of Declarant or the Division of Fisheries and Wildlife, which has determined that this area is within the actual habitat of the Eastern Box Turtle. No structure (fence or otherwise) shall be erected or maintained that impedes the migration of said Eastern Box Turtle. This permanent restriction is designed as a means of protecting said species. Notwithstanding the above restriction, improvements for drainage as shown on the plans submitted to the Town of Harwich Planning Board can be constructed in the

wildlife conservancy areas.

Q. RESTRICTION ON LEASING. A dwelling may not be leased for periods of less than four (4) weeks for more than two (2) times within any twelve (12) month period, i.e. no air b & b or vrbo.

R. NO TIME SHARING. No "Time Sharing Plan" (as hereinafter defined) shall be permitted for any dwelling. A "Time Sharing Plan" means any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use the dwelling for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three (3) years.

## **II. DEFAULT PROVISIONS**

A. In the event of a default in the performance of the provisions as set forth herein and if such default shall not have been cured within fourteen (14) days after written notice thereof, the Declarant, his successors or assigns, shall have the right to enter upon any lot and abate and remove, at the expense of the owner, all weeds, rubbish, debris or materials; to cut the grass and vegetation; to remove dead trees, shrubs and plants or other unsightly objects, vehicles or temporary structures; and to do all things necessary to place the property in a neat and orderly condition without being deemed guilty of any manner of trespass. The cost of any work so required shall become due and payable by the property owner or owners to the Declarant, his successors or assigns, immediately upon the completion thereof.

## **III. MINIMUM SQUARE FOOTAGE, ARCHITECTURAL GUIDELINES AND RESERVATION OF RIGHT TO AMEND**

A. DESIGN. The Declarant shall review designs specifically for conformance to the Guidelines and not to participate in a substantial way in the design process or to suggest alternative designs. We strongly recommend that applicants retain a licensed architect or other

qualified professional architectural designer to design their house.

B. STYLE. The Declarant has created the Architectural Guidelines with a particular architectural style in mind. It is a style rooted in traditional Cape Cod and New England forms with a bias toward larger ranches, Capes and Colonial style homes.

C. SIZE. No one-story dwelling shall be erected that contains less than 2000 square feet exclusive of porches, breezeways or attached garages. With regard to one and a half story dwellings, no Cape or one-half Cape shall be erected that contains less than 1600 square feet exclusive of porches, breezeways or attached garages. No two-story dwelling shall be erected containing less than 1800 square feet exclusive of porches, breezeways or attached garages. All dwellings must have at least a one-car garage. Garages may be "built under" or not attached, in accordance with overall plan and siting approval, if approved by the Declarant. The Declarant specifically reserves the right to amend (lessen) the square footage requirements so long as it owns at least one lot.

D. SCALE/PROPORTION. Houses should be scaled to compliment the lot size, geometry, and the existing landscaping as well as neighboring houses, where applicable. Scale is relative and does not necessarily impact size; a house can be large in area and still made to feel small in scale if properly designed.

The Declarant encourages designs in which separate building elements are in proper proportion to one another and in which the massing, or scale of individual building blocks relative to each other, is appropriate. As an example, a wing off the main house would be expected to be smaller and step forward or back of the plane of the main house. Layering, or creating recesses or elements which project out from the main planes of the building, can be used effectively to break up otherwise long, monotonous wall planes.

E. SIDING. The emphasis should be on muted, monochromatic earth tone color schemes and on natural wood materials rather than on masonry or other siding. Cedar shingles or clapboard with no more than 5" exposure to weather is preferred.

F. ROOF TREATMENTS. A variety of roof planes which result in appropriate proportion, massing, and scale are required. Roof pitches should be a minimum of 8 in 12 except farmer's porch or dormer roofs, where a minimum of 4 in 12 pitches will generally be required. Flat roof pitches are not allowed. Red cedar, white cedar or Architect asphalt roof shingles are required. Approved asphalt roof shingle colors shall be browns, dark grays or slate blend.

G. TRIM. A variety of trim details and colors are acceptable as long as they compliment the overall design. Designers should specify trim sizes and colors clearly on preliminary plans.

H. CHIMNEYS. Chimneys may be masonry or wood framed provided they are finished in brick, stucco or similar traditional finishes. The location, scale, and detailing of chimneys should be carefully planned. Direct vent for fireplaces are allowed but must be screened with landscaping so as to not be visible from the street.

I. SKYLIGHTS. The size and position of skylights on roof planes should compliment the overall design. A variety of manufacturers will be accepted. Bubble skylights will not be allowed.

J. DORMERS. A variety of dormer configurations are acceptable and will be judged on how they compliment the overall design. Dormers, which step in from the plane of the wall below are preferred and shed dormers should start below the ridge wherever possible and have cheeks on each end.

K. WINDOWS/DOORS. A wide variety of window and door treatments and manufacturers will be allowed and will be judged as they relate to the overall design of the house. Colonial style window grills are required.

L. DECKS. Decks should be well integrated into the overall design of the house. Elevated second level decks, which extend too far off the house, tend to look awkward and their supports too spindly and they will not be approved. First level decks are preferred to be low to the ground however where it is appropriate that they are somewhat elevated above grade, lattice may be required below. First floor decks should not be too large in relation to the house and must

be integrated with the design of the house and the landscaping.

M. FOUNDATIONS. Houses and foundations should be designed to fit the natural grade of the lot in such a way that no more than 8" of concrete is exposed above average existing or natural grade. All basement windows must have areaways. In cases of unusual grade conditions where complying with these requirements is not possible, the Declarant will consider landscaping solutions which mitigate the use of exposed foundation.

N. EXTERIOR LIGHTING. Exterior wall mounted light fixtures of a variety of styles and manufacturers are acceptable and will be judged by their relationship to the overall design of the house. Light fixtures shall be of a type, which produce soft levels of illumination, as bright light sources will not be allowed. All exterior lighting must be located or shielded in such a manner as to avoid spillover from the lot in intensities of over one (1) foot candle. Recommended walk and driveway lighting is a fixture with an indirect type light source, garden type, with a height of 2' 6" or less.

#### **IV. OBTAINING APPROVAL**

A. BUILDING PLANS. In order to obtain approval the owner must submit to the Declarant two (2) complete sets of building plans that include front, side and rear elevations. The building plans and/or specifications must describe the nature, size, type and color of all exterior building materials, including steps, patios, fences, lights, etc. The applicant must provide samples of all exterior colors to be used on the proposed house.

B. SITE PLANS. Applicants must submit a proposed plot plan showing the house as it relates to the properties lot lines. The proposed septic and well locations, as well as the proposed driveway and what materials will be used in the construction of the driveway. All septic and wells must be installed in accordance with and in the specific areas as shown on plan on record for this subdivision at the Harwich Board of Health.

C. LANDSCAPE PLANS. Applicants must submit a scaled landscape plan indicating the proposed location and grouping of plantings, their sizes and species. The plan shall indicate

the areas to be disturbed by construction and which areas will remain natural. The plan should also indicate areas to be lawn, mulched or stone. Any retaining walls shall also be indicated on the plan. A row of trees along the sides and rear property lines shall remain natural or be transplanted if accidentally disturbed or damaged.

D. PERFORMANCE BOND. The existing owner or contractor shall be responsible for damages to the infrastructure within said subdivision, including the loamed and seeded road shoulders. Each owner or their contractor shall provide a performance bond of \$1,000.00 prior to construction to ensure compliance with the terms and provisions of the documents. Said \$1,000.00 bond shall be returned to owner or contractor upon completion and approval of the house including landscaping, provided that damage has not occurred.

E. APPROVAL BY DECLARANT. The Declarant may decline to approve plans, which in its sole judgment, it deems not suitable or desirable. All approvals or disapprovals of the Declarant shall be in writing and shall be sent to the applicant. Evidence of such approval shall be made by means of a certificate, in recordable form, executed by Declarant. Declarant shall provide approvals or disapprovals within 30 days of submittal.

F. APPROVAL OF CONTRACTORS. All construction on any single family lots must be performed by duly licensed contractors and subcontractors approved by the Declarant in writing prior to performing such construction. All contractors must be properly insured including Workman's Compensation and Liability Insurance. Declarant may request copies of said policies. In the event a contractor or subcontractor performing work on a single family lot fails to comply with any of the terms and provisions of the documents, the Declarant shall have the right, after seven days notice to said contractor or subcontractor of non-compliance, to revoke such written approval and to prohibit such contractor or subcontractor, as the case may be, from entering upon the land. Declarant shall have the right and authority to condition its approval of any contractor upon the experience of said contractor in constructing custom homes.

## V. RESERVATIONS



A. The Declarant or his successors, heirs or assigns specifically reserves the fee in the ways and roads as shown on said Plan and the Declarant shall have the right to grant similar rights of way over the roads shown on said plans for the benefit of all lot owners on said plan, and for the benefit of the land of others not shown on said plans, and Declarant reserves the right to grant access over said roads to any person or persons for all purposes in which ways are used in the Town of Harwich. Any purchaser of a lot or lots of land in the Subdivision shall take subject to the rights and reservations created and expressed herein.

B. Each original owner or owners and their successors in title to any lot will have the right to use the ways and roads as shown on said plan in common with others who are now or may hereafter be entitled thereto for all purposes for which public roads are customarily used in the Town of Harwich. This instrument, in addition to creating restrictions, is intended to serve as a dedication of rights of ways for the benefit of each lot owner in the Subdivision.

C. The Declarant may construct and maintain drainage areas on portions of lots designated as drainage easement areas shown on said plans. The original Owner, for itself and its successors in record title, reserves the right to grant easements for utility purposes, cable television, telephone, gas, water and the like, in roads on the subdivision plan and within an area contiguous to, and no more than fifteen (15) feet in depth from said roads, for service boxes, wires, conduits and the necessary attachments for electrical energy, storm water drains, water and gas mains and pipes, and any other method of conducting and performing any utility function along or under the ground.

D. RESALES. Owner shall grant the Declarant or a licensed broker designated by Declarant a six (6) month exclusive brokerage listing for any vacant lot to be sold within the subdivision prior to listing said lot or lot/home package with any other brokerage company. In the event said lot is listed and sold by an outside brokerage company without a written waiver by Declarant, then the owner and/or the outside brokerage company shall pay Declarant an amount equal to no less than three (3) percent of the sales price of a lot/home package or five (5) percent of the sales price of a lot sale only. This provision will terminate five

years from conveyance to the original owner.

This paragraph shall not apply to a bank or lending institution's mortgage or to a foreclosure sale resulting therefrom, but shall apply after said foreclosure sale to any sale by the purchaser thereof other than the foreclosing bank or lending institution which may hold free and clear of said restriction.

E. DEVELOPMENT AND MARKETING ACTIVITIES. Declarant and his nominees reserve the right to enter into and transact on the land any business necessary to consummate the sale, lease, improvement, repair, maintenance or encumbrance of single family lots, residential dwellings or other real property in said subdivision including, but not limited to, the right to maintain models and a sales office, place signs, employ sales personnel, show residential dwellings and single family lots and other portions of the land, and use the portions of the land and residential dwellings and other improvements owned by Declarant or which Declarant or her nominees have the right to use, pursuant to a lease, for purposes set forth above and for storage of construction materials and for assembling construction components on site.

F. SALES AND CONSTRUCTION OFFICES. Declarant shall have the right to use one (1) or more residential dwellings, a trailer located on a portion of the land owned by Declarant, or a portion of any sales office as a construction office. Any such models, sales areas, sales offices, construction offices, signs and any other items pertaining to such sales, construction, maintenance and repair efforts shall not be considered a part of the common elements and shall remain the property of Declarant or its nominees, as the case may be. Declarant for itself and its nominees hereby reserves unto Declarant and its nominees an easement for an office to carry on Declarant's or its nominee's sales and resales business ("Sales Office") on any lots in the Subdivision Plan and easements for access to the Sales Office and for furnishing all required services and utilities to the Sales Office and easements for such other purposes as may be required in connection with the operation of the Sales Office. Declarant further specifically reserves the right in its sole discretion to place the Sales Office upon some other portion of the

land in which event the Sales Office shall remain the property of Declarant. Declarant further reserves the right to use the Sales Office as a sales and business office until Declarant no longer owns any single-family lots.

At such time as Declarant no longer owns any single family lots, or such earlier time as Declarant may determine in its sole discretion, Declarant may remove the Sales Office from the land, in which event the Sales Office shall remain the property of the Declarant. This right of use and transaction of business as set forth herein and any other rights reserved by Declarant in the Documents may be assigned, in writing, by the Declarant in whole or in part.

#### VI. ENFORCEMENT OF RESTRICTIONS

- A. If in the event the Declarant or any of his successors, heirs or assigns, are obligated to enforce any of the provisions of this Declaration, then and in that event should the Declarant or his successor, heirs or assigns be successful against any lot owner or lot owners in any court of law to cause the lot owner or owners abide by the terms and provisions of this covenant, then in that event the lot owner or owners shall be required to pay to the Declarant, his successors, heirs and assigns any and all attorney's fees and court costs incurred by the Declarant, his successors, heirs and assigns in prosecuting the enforcement of the terms and provisions of this Declaration.
- B. The Division of Fisheries and Wildlife shall have the power to enforce the permanent restriction with regard to the Eastern Box Turtle and shall be allowed to fine any offending owner accordingly for any violation.

#### VII. AMENDMENT AND ASSIGNMENT OF RESTRICTIONS

A. The Declarant may delegate or assign any or all of his rights, powers and obligations under these restrictions to any corporation, association or agent, said assignment to be in writing and duly recorded in the Barnstable County Registry of Deeds. **Except for the permanent restriction concerning the Wildlife and Conservancy Areas, the Declarant reserves the**

**right to release, modify, amend and waive said covenants, restrictions and conditions at any time.**

### **VIII. RIGHT OF FIRST REFUSAL**

A. In the event any vacant lot owner or owners shall receive a bonafide written offer from a third person or persons or any entity to purchase from the lot owner or owners any vacant lot of land shown on the said plan above mentioned; then and in that event before any conveyance shall be made to any such third person or persons or entity, the lot owner or owners shall deliver to the Declarant by certified mail, return receipt requested, a copy of such offer, and the Declarant shall notify the lot owner or owners, by certified mail, return receipt requested within thirty (30) days of receipt of such copy, whether the Declarant will purchase said lot for the net amount of said offer (i.e., without the necessity of either party paying a real estate broker) and if such reply is in the affirmative, the lot owner or owners shall within 60 days convey said real estate to the Declarant for the said net amount. In the event the response of the Declarant is in the negative, the same shall be under seal, acknowledged and in a form acceptable for recording at the Barnstable Registry of Deeds.

Should Declarant not respond within thirty (30) days, the lot owner or owners may execute and record a statement under oath of compliance with the provisions herein contained and such statement shall be conclusive and irrefutable with respect to the facts therein contained. This provision shall not apply to conveyances from the lot owner or owners to any of their children or the spouses of any such children, but shall apply to conveyances from said children or their spouses to any third person, persons or entity.

This provision is personal to the Declarant, shall not be considered running with the granted premises and shall terminate on the earliest occurrence of twenty (20) years after the date of the recording of this Declaration, or the construction of a house on the lot in the Subdivision and obtaining an occupancy permit from the Town of Harwich.

If any banking corporation or lending institution shall become the mortgagee of any of

the lots of land of any of the lot owner or owners, the premises shown on the said plan as mentioned above or any of the portion thereof, then this provision shall not apply to such mortgagee, its successors or assigns or anyone claiming by or through such mortgagee.

**IX. HOMEOWNER'S ASSOCIATION**

A. All of the lots within the above described plan shall be required to join the WILDLIFE CIRCLE ESTATES HOMEOWNER'S ASSOCIATION and to pay such charges as that association establishes for the maintenance of any open space areas and the like.

For my title reference, see the deeds recorded at Barnstable County Registry of Deeds in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, inclusive.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

Wildlife Circle Nominee Trust

\_\_\_\_\_  
By Christopher W. Our, Trustee

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

July \_\_\_\_, 2022

Then personally appeared before me, the undersigned notary public, the above-named Christopher W. Our, Trustee of the Wildlife Circle Nominee Trust who is known by me and to me known to be, the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

