

828PG287

AGREEMENT OF RESTRICTIVE COVENANTS AND VIEW EASEMENTS

AGREEMENT made as of this 29th day of March, 2001, by and between JOHN A. STRAUS and DIANE STRAUS, of 11 Three Wells Lane, Darien, Connecticut 06820 (the "Strauses") and JOAN C. POTTER and JOHN S. POTTER, JR., of P.O. Box 1475, Oak Bluffs, Massachusetts 02557 (the "Potters").

WHEREAS, Joan C. Potter is the owner of the improved property in Oak Bluffs, Massachusetts known as 221 East Chop Drive and shown as Lot 2 on a plan entitled "Plan of Land in Oak Bluffs, Mass. Surveyed for Joan C. Potter September 27, 1995 Scale 1 in. = 30 ft. Vineyard Land Surveying, Inc. Box 421 State Road West Tisbury, MA 02575-0421 phone (508) 693-3774 fax (508) 693-8575" filed in the Dukes County Registry of Deeds as Oak Bluffs Case File No. 320 (the "Plan" and "Lot 2"); and

WHEREAS, the Potters are the owners of the improved property in Oak Bluffs, Massachusetts known as 225 East Chop Drive and shown as Lot 1 on the Plan ("Lot 1"); and

WHEREAS, Joan C. Potter has conveyed Lot 2 to the Strauses by deed to be recorded herewith; and

828PC288

WHEREAS, the parties agree that it is in their best interests that they place certain restrictions and covenants and grant certain easements on and across their respective properties for the benefit of each other.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Potters hereby agree that they shall maintain the existing trees, shrubs and plantings located on Lot 1 and designated "Existing Plantings" on the sketch plan entitled "Sketch Plan of Land in Oak Bluffs, Mass. Drawn for Joan C. Potter Scale 1" = 40' March 16, 2001 Vineyard Land Surveying, Inc. P.O. Box 421 West Tisbury, MA 02575" attached hereto as Exhibit "A" and incorporated herein by reference (the "Sketch Plan" and the "Existing Plantings") in the same manner or as reasonably close thereto as presently exists so as to provide a privacy screen between their activities on Lot 1 and the activities of the Strauses on Lot 2.

BL 828PG289

Notwithstanding anything to the contrary contained herein, the Potters shall have the right to cut and remove the Existing Plantings provided that they plant and install other trees, shrubs and plantings that will provide an equivalent privacy screen to the one presently provided by the Existing Plantings (the "Replacement Plantings"). In the event that the Existing Plantings or the Replacement Plantings are damaged or destroyed so as to impair the effectiveness of said privacy screen, as soon as reasonably practical after said damage or destruction, the Potters shall plant and install such further trees, shrubs and plantings so as to restore the area with a reasonably equivalent privacy screen.

2. The Potters hereby grant to the Strauses, with *quitclaim covenants*, an easement for view across that portion of Lot 1 shown as "View Easement Area No. 1" on the Sketch Plan ("View Easement Area No. 1") for the purpose of preserving the view of Nantucket Sound from Lot 2.

828P290

a. Pursuant to the easement granted hereby, the Potters shall maintain said view by (1) cutting or trimming any vegetation existing within View Easement Area No. 1 as of the date of this Agreement to a height not greater than nine (9) feet above mean natural grade; (2) cutting or trimming vegetation planted after the date of this Agreement to a height not greater than three (3) feet above mean natural grade; and/or (3) not erecting, placing or allowing any building or structure of any kind to stand within View Easement Area No. 1 greater than three (3) feet in height.

(1) All cutting and trimming of vegetation shall be designed to minimize the impact of any such work to View Easement Area No. 1, shall employ proper horticultural, forestry and landscape management practices, and shall proceed

828PG291

in accordance with all applicable laws,
by-laws, rules and regulations;

- (2) All cuttings and trimmings of vegetation as a by-product of the exercise of the rights set forth herein shall be removed from View Easement Area No. 1 promptly after the completion of said work; and
- (3) Any and all necessary permits, orders, certificates, authorizations or other approvals shall have been obtained by the Potters, including, without limitation, any approvals required by any land use or wetlands laws, by-laws, rules or regulations.

b. In the event that the Strauses are of the opinion that the Potters have failed to maintain View Easement Area No. 1 in the condition stated in Paragraph 2.a. above, the Strauses shall give notice to the Potters describing the vegetation or structure which, in their opinion, violates the obligation of the Potters hereunder. If the Potters do not

828PG292

cut or trim the alleged non-conforming vegetation or remove the alleged non-conforming structure within the thirty (30) day period following the giving of such notice (unless extended by the agreement of the parties), the Strauses shall submit the matter to arbitration in accordance with the provisions of Paragraph 2.c. hereof.

- c. Any and all disputes or controversies arising out of or relating to whether the Potters have maintained View Easement Area No. 1 in the condition stated in Paragraph 2.a. above shall be submitted to arbitration in accordance with the Rules of the American Arbitration Association. The award made by the arbitrator shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The demand for arbitration shall be made within a reasonable time after the dispute has arisen. The arbitrator is authorized to award any party

Bk: 828Pg: 293

or parties sums as he shall deem proper for the time, expense and trouble of arbitration, including arbitration fees and attorney fees.

3. The Strauses hereby grant to the Potters, with *quitclaim covenants*, an easement for view across that portion of Lot 2 shown as "View Easement Area No. 2" on the Sketch Plan ("View Easement Area No. 2") for the purpose of preserving the view of Nantucket Sound from Lot 1.

a. Pursuant to the easement granted hereby, the Strauses shall maintain said view by (1) cutting or trimming any vegetation in View Easement Area No. 2 to a height not greater than three (3) feet above mean natural grade; and/or (2) not erecting, placing or allowing any building or structure of any kind to stand within View Easement Area No. 2 greater than three (3) feet in height.

(1) All cutting and trimming of vegetation shall be designed to minimize the impact of any such work to View Easement Area

PL 828PC294

- No. 2, shall employ proper horticultural, forestry and landscape management practices, and shall proceed in accordance with all applicable laws, by-laws, rules and regulations;
- (2) All cuttings and trimmings of vegetation as a by-product of the exercise of the rights set forth herein shall be removed from View Easement Area No. 2 promptly after the completion of said work; and
- (3) Any and all necessary permits, orders, certificates, authorizations or other approvals shall have been obtained by the Strauses, including, without limitation, any approvals required by any land use or wetlands laws, by-laws, rules or regulations.
- b. In the event that the Potters are of the opinion that the Strauses have failed to maintain View Easement Area No. 2 in the condition stated in Paragraph 3.a. above, the Potters shall give notice to the Strauses

AL 828PG295

describing the vegetation or structure which, in their opinion, violates the obligation of the Strauses hereunder. If the Strauses do not cut or trim the alleged non-conforming vegetation or remove the alleged non-conforming structure within the thirty (30) day period following the giving of such notice (unless extended by the agreement of the parties), the Potters shall submit the matter to arbitration in accordance with the provisions of Paragraph 3.c. hereof.

- c. Any and all disputes or controversies arising out of or relating to whether the Strauses have maintained View Easement Area No. 2 in the condition stated in Paragraph 3.a. above shall be submitted to arbitration in accordance with the Rules of the American Arbitration Association. The award made by the arbitrator shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The demand for

RE: 828PG296

arbitration shall be made within a reasonable time after the dispute has arisen. The arbitrator is authorized to award any party or parties sums as he shall deem proper for the time, expense and trouble of arbitration, including arbitration fees and attorney fees.

4. All notices required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or by certified or registered mail, return receipt requested, postage prepaid, to the address set forth in the records of the Oak Bluffs Board of Assessors for the owner of Lot 1 or the owner of Lot 2, as appropriate, or in the case of any party, to such other address(es) as shall be designated by written notice given to the other party. Any such notices shall be deemed given when so delivered by hand, or, if so mailed, when deposited with the U.S. Postal Service.
5. The rights and obligations set forth herein shall be binding upon and enure to the benefit of each of the respective parties' heirs, devisees, executors, administrators, successors and assigns.

BA 828PG:297

6. Any of the terms of this Agreement which are deemed to constitute restrictions within the meaning of M.G.L. c. 184, § 27 shall continue and remain in full force and effect for thirty (30) years from the date of the recording of this Agreement of Restrictive Covenants and View Easements and may be extended and continued in full force and effect in the manner provided in M.G.L. c. 184, § 29, as it may be amended from time to time, or as provided in similar successor provisions, for further periods of twenty (20) years, each, or for such other maximum further periods as may be allowed by any amendments of said law and any successor provisions.
7. This instrument may be executed in multiple counterparts, all of which shall constitute one and the same instrument and may be cancelled, modified or extended only by a written instrument executed by all the parties or the survivors of the parties hereto.

BL 828PG298

EXECUTED as a sealed instrument on the day and date first above written.

John A. Straus
John A. Straus

Diane Straus
Diane Straus

Joan C. Potter
Joan C. Potter

John S. Potter, Jr.
John S. Potter, Jr.

STATE OF CONNECTICUT

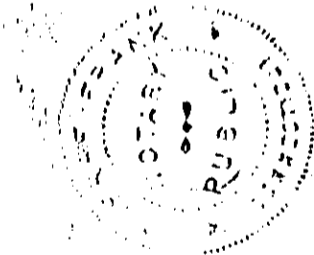
Fairfield County, ss.

March 24, 2001

Then personally appeared the above-named John A. Straus and Diane Straus, and acknowledged the foregoing instrument to be their free act and deed, before me

Sheree Frank
Notary Public

My commission expires: 4/30/04



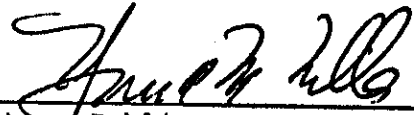
RA 828PG299

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

March 27, 2001

Then personally appeared the above-named Joan C. Potter and John S. Potter, Jr., and acknowledged the foregoing instrument to be their free act and deed, before me



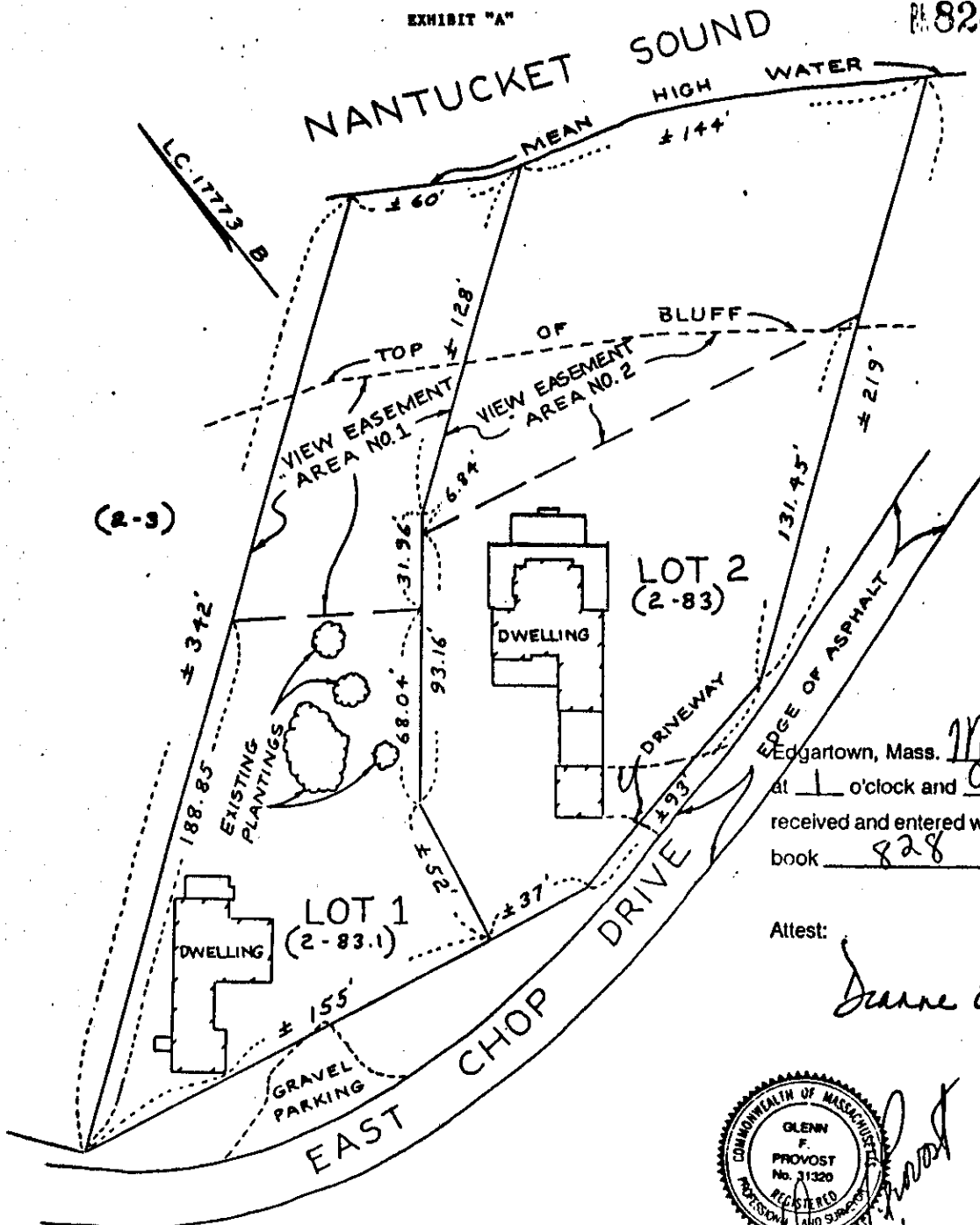
Notary Public

My commission expires: 10/28/05

N:\U24\01\Mar\STRAUS - AGREEMENT OF RESTRICTIVE COVENANTS AND VIEW EASEMENTS.wpd

EXHIBIT "A"

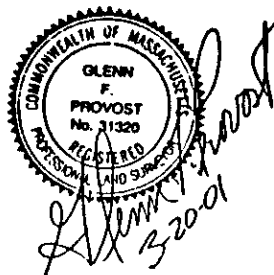
PL 828 PG 300



Edgartown, Mass. March 29, 2001
 at 1 o'clock and 03 minutes P M
 received and entered with Dukes County Deeds
 book 828 page 287

Attest:

Janne E. Powers Register



SKETCH PLAN OF LAND IN
 OAK BLUFFS, MASS
 DRAWN FOR
 JOAN C. POTTER
 SCALE 1" = 40'
 MARCH 16, 2001

VINEYARD LAND SURVEYING, INC.
 P.O. BOX 421
 WEST TISBURY, MA 02575

Job No 659-1