

## **Exhibit B**

### **Declaration of Covenants and Restrictions**

This Declaration, made as of the 1<sup>st</sup> day of November, 2005 by Waterview Association, Inc., and by each of the persons who is a signatory to this Declaration, shall supercede all prior Declaration of Covenants and Restrictions relating to the existing property as defined herein.

#### **WITNESSETH:**

**WHEREAS**, the owners of the real property described in Article II of this Declaration are members of Waterview Association, Inc. and desire to preserve therein predominantly in their natural and open condition such land and water areas that are not yet developed; and

**WHEREAS**, owner-members desire to provide for the preservation of the values and amenities of the community located upon said real property and for the maintenance of roads, beaches and other common facilities; and to this end desire to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which are for the benefit of said real property and each owner thereof; and

**WHEREAS**, owner-members have deemed it desirable, for the efficient preservation of the undeveloped areas in their predominantly natural and open state and for the efficient preservation of the values and amenities in said community, to create an agency to which should be designated and assigned the powers of administering and maintaining the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, owner-members have incorporated under the laws of the state of Massachusetts, as a non-profit corporation, Waterview Association, Inc., for the purpose of exercising the aforesaid function.

**NOW THEREFORE**, owner-members declare that the real property described in Article II, an such additions as may be made thereto pursuant to Article II, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants and restriction, easements, charges and liens (sometimes hereinafter referred to as "Covenants and Restrictions") hereinafter set forth.

#### **ARTICLE I**

##### **Definitions**

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to Waterview Association, Inc.

- (b) "The real Property" shall mean and refer to the real property and additions thereto that are subject to this or any Supplemental Declaration.
- (c) "Common Undeveloped Properties" shall mean and refer to those undeveloped properties to be devoted to the common use and enjoyment of the members of the Association. Included therein shall be the following properties: Lot A' Lot B; Lot C; Lot D; Lot 45b; Lot 58A; Lot 58b: as those lots are shown on a plan entitled "Subdivision Plan of Land, Waterview Farm, Farm Neck-Martha's Vineyard, Mass. owned by Island Properties Inc.", dated April 22, 1968 and as revised to September 9, 1970, recorded in case file No. 34 at the Dukes County Registry of Deeds (the "Plan") and/or any additional real property incorporated into Waterview Association, Inc. in accordance with Article II, Section 3 of this document.
- (d) "Common Developed Properties" shall mean those developed Properties to be devoted to the common use and enjoyment of the member of the Association. Included therein shall be the following properties: Waterview Road; Waterview Lane; Old Harbor Lane; Waterfront Trail; Osprey Lane; Pulpit Rock Road; as those areas are shown on the Plan.
- (e) "Common Properties" shall mean the aggregate of the properties defined in (c) and (d) above.
- (f) "Lot" shall mean and refer to any plot of land which is subject to this Declaration.
- (g) "Owner" shall mean and refer to the record owner whether one or more persons or entities of the fee simple title to any lot but shall not refer to any mortgagee until such mortgage has acquired title pursuant to foreclosure or any procedure in lieu of foreclosure.

## **ARTICLE II**

### **Property Subject to This Declaration:**

#### **Additions Thereto**

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the town of Oak Bluffs, Dukes County, Commonwealth of Massachusetts and is more particularly described as follows: all of the real property shown on the Plan by numbered or lettered lot or roads and incorporated into Waterview Association, Inc. thereafter, all of which real property shall be hereinafter collectively referred to as "Existing Property." Owners of Existing Property subject their Lots to this Declaration (a) by becoming signatories to this Declaration or (b) by signing and acknowledging an "Adoption of Declaration of Covenants and Restrictions" in the form annexed hereto as Exhibit A.

Section 2. Protective Provisions. The Existing Property shall continue to remain subject to the provisions of the document marked "Protective Provisions" contained in a Deed from Island Properties Inc. to Robert E Cooke, et ux recorded in said Deed in Book 285, Page 285 ("Island Properties Deed") at the Dukes County Registry of Deeds, as amended on November 1, 2005, which is herein incorporated by reference and made a part hereof, and similar covenants contained or referred to in other deeds of Owners. Henceforth, Waterview

Association, Inc. exercises its rights to enforce said provisions subject, however, to the Association's obligations set forth in Article V, Section 3.

Section 3. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

- (a) The Association may acquire by gift or bequest, such undeveloped lands as its Board of Directors, pursuant to a vote of two-thirds (2/3) of the Directors shall determine are necessary or desirable for the maintenance of the existing undeveloped property in its predominantly natural or open condition. The Association may acquire by purchase or otherwise such undeveloped lands as its members, pursuant to a vote of two-thirds (2/3) of the members, shall determine are necessary or desirable for the maintenance of the existing undeveloped property in its predominantly natural or open condition.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the Covenants and Restrictions of this Declaration to such property.

In no event shall such Supplementary Declaration revoke, alter, modify or add to the Covenants and Restrictions established by this declaration.

- (b) Other Additions. Upon approval in writing of the Association pursuant to a majority vote of its members and upon filing of record by the owner of any property a Supplementary Declaration of Covenants and Restrictions, as described in subsection (a) hereof, such property shall become subject to this Declaration.
- (c) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Organization, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger or consolidation. The surviving or consolidated association may administer the Covenants and Restriction established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one. No such merger or consolidation, however, shall effect any revocation, change or addition to the Covenants and Restrictions established by this Declaration within the Existing Property except as hereinafter provided.

## **ARTICLE III**

### **Membership and Voting Rights in the Association**

Section 1. Membership. Every person or entity who is the Owner of any Lot shall be a member of the Association, provided that any person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. Each member shall be entitled to one vote:

- (a) for each Lot in which he holds the interest for membership required by Section 1 and on which Lot there is a house standing at the time such a vote is to be cast;
- (b) for each Lot in which he holds the interest for membership required by Section I and on which Lot there is no house standing at the time such vote is to be cast; provided, however, that no member entitled to cast votes pursuant to (b) above shall be entitled to cast more than a total of 1 votes on each matter with respect to such Lots, but such votes shall be in addition to votes such member shall be entitled to cast pursuant to (a) above. When more than one person holds such interest or interests in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than a single vote be cast for any such Lot on each matter. The right of any member to vote on any matter shall be suspended during any period in which any assessment (and any interest and costs thereon) authorized by this Declaration is due and unpaid by such member. The provisions of Article XII of the Associations By-Laws shall govern the manner of voting.

## **ARTICLE IV**

### **Property Rights In The Common Properties**

Section 1. Members' Easement of Enjoyment. Subject to the provisions of Section 3 of this article, every member shall have a right and easement of enjoyment in and to the Common Properties and such easement and right shall be appurtenant to and shall pass with the title to every Lot. Subject to the provisions of such Section 3, bona fide guests of members, shall also have such easement and right, subject, however, to the right of the Board of Directors of the Association to withdraw such easement and right from any such tenant or guest if such Board determines, in its sole discretion, the exercise of such easement or right by any such tenant or guest is not in the best interests of members of the Association.

Section 2. Title to Common Properties. The Association shall retain legal title to all the Common Properties.

Section 3. Extent of Member's Easements. The rights and easements granted hereby shall be subject to the following:

- (a) The right of the Association as provided in its By-Laws to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period or periods established by the Board of Directors of the Association for any infraction of its published rules and regulations.
- (b) The hunting or trapping of birds and game within Waterview Farm shall be prohibited.
- (c) Small boats may be kept at the Waterview Farm waterfront, above the beach level, in accordance with rules and regulations of the Association if such boats are owned or leased by owner-members of the Association or, subject to the right of the Association to withdraw such privilege in accordance with the provisions of Section 1 or this article, by bona fide guests or tenants of such owner-members.
- (d) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, or utility, subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, shall be effective unless an instrument signed by member entitled to cast two-thirds (2/3) of the votes thereon has been recorded agreeing to such dedication or transfer, an unless written notice of the proposed action is sent to every member at least ninety (90) days in advance of any action taken.
- (e) Operation of any non-registered motorized vehicle is not permitted on Waterview Association Common Properties (roads and common lands) without the written approval of the Grantor.

## **ARTICLE V**

### **Duties of the Association as to Real Property**

Section 1. Common Undeveloped Properties. With respect to all Common Undeveloped Properties owned by the Association or subsequently to come under its ownership, the Association shall not cause or undertake, and shall prohibit any other person, agency, or association from:

- (a) the construction or placement of buildings, walls, signs, billboards or other advertising, utilities or other structures on or above the ground;
- (b) the dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
- (c) the removal or trimming of trees, shrubs or other vegetation, except for such removal or trimming as may be necessary to maintain the land in the general condition as January 1, 1971 (including particularly preserving existing water views);
- (d) the excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface;
- (e) surface use except for outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition;

- (f) activities detrimental to drainage flood control, water conservation, erosion control or soil conservation; or
- (g) any other acts or uses detrimental to the preservation of such Properties in their predominantly natural and open condition.

Section 2. Common Developed Properties. In relation to all Common Developed Properties owned by the Association as described above and all developed areas subsequently to come under its ownership, the Association shall maintain, repair and improve such properties and maintain services related thereto.

Section 3. Existing Real Property.

- (a) The Association will enforce the restrictions and provisions of the Island Properties Deed, as amended and extended during the period this Declaration shall be enforceable (whether or not such restriction and provision shall have terminated by the terms of such deed) and will exercise all of the powers of Grantor, as that term is used therein.
- (b) The Association will not permit construction on any Lot that is of a character or style different from that permitted by Island Properties Inc. in the period 1968-1973 and will not permit any sign to be displayed to public view on the Common Properties or on any Lot, other than Owner name signs consistent generally in size and style with those provided by Island Properties in the period 1968-1973, without the approval of its Board of Directors.
- (c) The Association will maintain the roads, lanes, trails and ways in a condition comparable to the condition of such roads, lanes trails and ways in the period 1972-1973.

Section 4. Lots. The Association will have a 40 day right of first refusal on any and all Lots offered for sale by and Owner.

## **ARTICLE VI**

### **Covenant for Maintenance Assessment**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner-member hereby covenants and agrees to pay to the Association annual assessments as provided in this Article VI. Each such assessment, together with interest thereon and the cost of collection thereof as hereinafter provided, shall be a charge upon the land and shall be a continuing lien upon the property against which each assessment is made, and, in addition, shall be the personal obligation of the person who was the owner of the property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments described in Section 1 hereof shall be used exclusively for the purpose of promoting the health, welfare, safety, recreation and enjoyment of the owner-members and in particular for maintaining the predominantly natural and open state of the Common Undeveloped Properties and in relation to the Common Developed Properties for the improvement and maintenance of properties, services and facilities; provided, however, that no part of this assessment shall be used for placing asphalt, concrete or any other commercial paving surface on any road, land, trail or way specified in Article 1 (d) hereof, except pursuant to a vote of a majority of the Association's members. Such assessments may be used for the maintenance of the roads and the adjacent areas, payment of taxes and insurance on the Common Property, and repair thereof or replacement or addition thereto, and for the cost of labor, equipment, materials, management supervision and any other labor, equipment, materials, management supervision and any other services necessarily or reasonably incurred for the maintenance or improvement of Common Property, and any other liabilities of or claims against the Association under this Declaration or otherwise.

Section 3. Basis and Maximum of Annual Assessments. The assessment for a Lot on which there is no house standing as of the date of assessment shall be 1/2 of the assessment for a Lot on which there is a house standing as of the date of assessment. The assessment for the calendar year 2006 shall be \$350 per Lot, for each Lot on which there is a house standing on January 1, 2006, and \$175 per Lot for each Lot on which there is no house standing as of January 1, 2006 as voted by the Board of Directors on September 21, 2001. From and after September 21, 2001, the annual assessment shall be set by the Board of Directors of the Association, but no such annual assessment shall be more than 25% greater than that of the immediately prior year, except to the extent a house is erected on a Lot, in which case the assessment shall be the same as for other Lots on which there is a house.

Section 4. Change of Basis and Maximum of Annual Assessment. The Association may change the maximum and basis of the assessment fixed by Section 3 hereof prospectively for any period provided that any such change shall have the assent of members entitled to case two-thirds (2/3) of the votes thereon, voting in person or by proxy at a meeting duly called for this purpose, and provided further that written notice of such meeting shall have been sent to all members setting forth the purpose of the meeting, at least sixty (60) days in advance of such meeting.

Section 5. Date of Commencement of Annual Assessments: Due Dates. The Annual Assessments provided for herein shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement. The annual assessment for any year shall become due and payable on the first day of March of said year.

Any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period shall pay an initial annual assessment which shall be an amount which bears the same relation to the annual assessment provided for in Section 3 hereof as the number of days remaining in that year after the day fixed for assessment bears to 360.

Section 6. Duties of the Board of Directors. The board of Directors of the Association shall fix the assessment, subject to the limitation of Section 3 hereof against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that

time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner-member.

Written notice of the assessment shall thereupon be sent to every owner-member.

The Association shall upon demand at any time furnish to any member liable for said assessment a certificate in writing signed by and officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessment: The Personal Obligation of the Member; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being dates specified in Section 5 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof hereinafter, provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner-member, his heirs, devisees, personal representative and assigns. The personal obligation of the then owner-member to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the simple annual rate of 12% and the Association may bring an action at law against the owner-member personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessments. Sale or transfer of a Lot shall not relieve such property from liability for any assessments thereafter becoming due.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

- (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) all Common Properties;
- (c) all properties exempted from taxation by the laws of the Commonwealth of Massachusetts, upon the terms and to extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.



## ARTICLE VII

### Special Covenant of Island Properties Inc.

Section 1. Assignment of Common Properties. Island Properties Inc. has assigned, conveyed and transferred to Waterview Association, Inc. all of Island Properties Inc.'s rights, interests and title in the Common Undeveloped Properties and in the Common Developed Properties.

Section 2. Protective Provisions. Island Properties Inc. has assigned, conveyed and transferred to Waterview Association, Inc. all of Island Properties Inc.'s rights and duties in regard to the Protective Provisions in the Island Properties Deed except as herein otherwise provided.

Section 3. Annual Charge. Island Properties Inc. has assigned and transferred to Waterview Association, Inc. all of its rights accruing or payable after January 1, 1974 to receive an annual charge of \$50 or as amended by Waterview Association, Inc. for the maintenance, protection and development of the common Properties as Provided in the Island Properties Deed and other deeds of Owners evidencing their proprietorship of a Lot.

## ARTICLE VIII

### General Provisions

Section 1. Duration. This Declaration of Covenants and Restrictions shall become effective when executed by the Owners of 43 of the Lots recorded on the subdivision Plan referred to in Article I (c), comprising two-thirds (2/3) of such Lots and shall remain effective and enforceable until and including December 31, 2025. Insofar as the covenants and Restrictions of the Declaration do not constitute a Conservation Restriction as specified in SS 31,32 of Chapter 184 of the Massachusetts General Laws, they may be extended for further periods of not more than twenty (20) years at a time by Owners of record, at the time of recording of the extension, of fifty percent or more of the Lots, provided that the extension in accordance with this provision is recorded before December 31, 2025 and is signed by one or more persons appearing of record to own a Lot at the time of such recording and by the President or Vice President or Treasurer or Assistant Treasurer or the Association. The recording will evidence the fact that the extension of this Agreement was assented to by the Owners of 50% of the Lots. This same procedure shall be followed before the end of each subsequent twenty (20) year period.

The notice of restriction, when filed, shall comply with the then applicable provision of said S 27 or any successor statute.

The restrictions imposed by this Declaration shall be for the benefit of the Association and its owner-members and shall be enforceable by the Association regardless of whether the property owned by the Association or any particular owner-member is bounded by a street by which the subject parcel is bounded or lies in a block surrounded by the same streets as the subject parcel or is contiguous to said block except for streets or ways.

Section 2. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner-member on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. This Declaration may be amended, to the full extent allowed by law, at any time upon the execution of the amendment by the then Owners of two-thirds (2/3) of the lots.

**Waterview Association, Inc.**

by: *Joseph M. Forns*  
President

COMMONWEALTH OF MASSACHUSETTS :  
 : SS.  
COUNTY OF DUKES COUNTY :

On this 1<sup>st</sup> day of November, 2005, before me appeared Joseph M. Forns, to me personally known, who, being by me duly sworn, did state that he is the President of Waterview Association, Inc. and that the seal affixed to the foregoing instruments, Exhibit A- Protective Provisions, as Extended and Amended November 1, 2005 and Exhibit B- Declaration of Covenants and Restrictions is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Joseph M. Forns acknowledged said instrument to be the free act and deed of said corporation.

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(official signature and seal of notary)

My commission expires: