

Division Road Roadway Easement



2007 00001422

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Page: 1 of 6 02/27/2007 09:34 AM

**EASEMENT,
DECLARATION OF RESTRICTIVE COVENANTS
AND RIGHT OF FIRST REFUSAL**

We, Eric T. Turkington, as Trustee of the EVH Realty Trust under Declaration of Trust dated January 31, 2006, to be recorded herewith, with an address at 49 Locust Street, Falmouth, MA 02540, and Jan W. Whiting, as Special Master under Dukes County Probate and Family Court Docket No. 92D0030-DV1 ("Whiting"), with an address at 86 Washington Street, Weymouth, MA 02188 (collectively, the "Parties", or, individually, a "Party"), owners of Lot A and Lot B, respectively, as shown on a certain plan entitled Plan of Land in Edgartown, Mass., Surveyed for Richard Brown", dated January 16, 2006, by Vineyard Land Surveying and Engineering, Inc., to be recorded herewith ("Lot A", "Lot B" and the "Plan", respectively), in consideration of the mutual promises made herein, hereby agree as follows:

I. EASEMENT

The Parties grant to each other, and each other's successors and assigns, a non-exclusive easement for the purpose of ingress and egress on foot or with vehicles, on and over a forty (40) foot strip of land, the centerline of which is the same as the centerline of "Division Road" as shown on a certain "Easement Plan of Land on Meeting House Way, Edgartown, Mass., Prepared for EVH Realty Trust and Jan W. Whiting" dated December 4, 2006, by Vineyard Land Surveying and Engineering, Inc., to be recorded herewith (the "Roadway Easement" and the "Easement Plan", respectively), and for all other purposes for which streets and ways are now or may hereafter be used in the Town of Edgartown.

The Parties, and their successors and assigns, may enter upon the Roadway Easement for the purposes of construction, repair, maintenance and replacement of said Road, at the sole cost and expense of the Party so entering, or such Party's successors and assigns. In the event of such entry, the entering Party, and such Party's successors and assigns, shall restore the Roadway Easement, as nearly as reasonably possible to the condition said premises were in prior to said entry.

The easement created by this instrument is appurtenant to Lot A and Lot B.

Reservation of Rights by the Parties. By their acceptance and the recording hereof, the Parties, for themselves and for their successors and assigns, agree as follows:

(1) Turkington, and his successors and assigns, and Whiting's successors and assigns, but not Whiting, agree to hold the other Party, and his successors and assigns, harmless from and against any and all liability for injury or damage to persons or property resulting from the construction, repair, maintenance and use

of the Roadway Easement , except that each Party is responsible only for the consequences of such Party's own negligence.

(2) The Parties, and their successors and assigns, shall have the right to place, install or construct in, on, along, under or upon the easement created by this conveyance any pipes, conduits, manholes or other appurtenances necessary for the transmission of gas, electricity, telephone, data, water or sewer service.

(3) The Parties reserve the right for each of them and for their successors and assigns to develop and use the Roadway Easement as all or part of a future private subdivision road or other private way or public way to be constructed by either Party or by its or his successors or assigns. The Parties further stipulate and agree, both for themselves and for their successors and assigns, that the driveway easement created by this conveyance does not constitute an interest which would require the Parties or their successors and assigns to join in any:

(i) future subdivision plan or other development plan or related application that may be submitted by either Party or by either Party's successors or assigns to any entity or agency; and,

(ii) any mortgage or other financing arrangement for any such subdivision or other development. In the event such joinder is required by any entity or agency, then the Parties, for themselves and for their successors and assigns, hereby appoint each other, and each other's successors and assigns, as such Party's true and lawful attorney in fact, authorized to act in the name, place and stead of the other Party, and the other Party's successors and assigns in all matters and in all respects concerning any such subdivision or related application, and to execute on behalf of the Parties, and their successors and assigns any subdivision or other development application(s) and related documents. A Party, and such Party's successors and assigns shall not be responsible for any of the costs and obligations associated with any such subdivision plan or development or any application therefor by the other Party.

In the event the Roadway Easement is so developed, constructed or used, the Parties, and their successors and assigns shall have the easement right to use said private subdivision road or public way in place of the private driveway provided for by this conveyance.

II. DECLARATION OF RESTRICTIVE COVENANT

The Parties covenant and agree that a) no access to either Lot A or Lot B of any kind or nature, including, without limitation, driveways, roads, streets or paths, is permitted over the areas shown on the Easement Plan as "Landscape Easement Area - Lot A" and Landscape Easement Area - Lot B"; b) that access to Lot A and Lot B is permitted on Division Road; c) that access to Lot B is

permitted anywhere on Pease's Point Way, as shown on the Easement Plan; d) that no other access of any kind shall be constructed, used, maintained, or suffered to remain at any other portion of the perimeter of either Lot A or Lot B; e) Turkington shall neither cut, trim or prune any vegetation nor install, construct, use or maintain any building, structure, walkway, fence or wall in the area shown as "Landscape Easement - Lot A" on the Easement Plan; and f) Whiting shall neither cut, trim or prune any vegetation nor install, construct, use or maintain any building, structure, walkway, fence or wall in the area shown as "Landscape Easement - Lot B" on the Easement Plan.

The foregoing restriction shall be enforceable by the owners, from time to time, of either Lot A or Lot B and by the owners, from time to time, of land now owned by Richard A. Brown, which land is in part described in a deed recorded with Dukes County Registry of Deeds in Book 357, Page 171, and as shown as Lot 10 on Edgartown Assessors' Map 37 ("Brown", and "Brown's Property"), and by the owners, from time to time, of land now owned by Joan A. Condlin, which land is further described in a deed from Enid MacDougall to her recorded with said Registry in Book 924, Page 131 ("Condlin", and "Condlin's Property"), and shall deemed to be a covenant running with Lot A and Lot B, and benefiting Lot A, Lot B, Brown's Property and Condlin's Property.

III. RIGHT OF FIRST REFUSAL

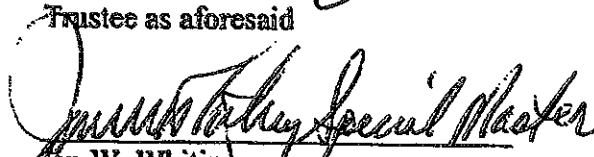
The parties agree that neither will sell all or any portion of Lot A or Lot B or any buildings or other improvements now or hereafter erected on such premises unless (a) a party has received a bona fide offer to purchase all or a portion of either Lot A or Lot B (the "Offered Premises"), (b) the party receiving such bona fide offer (the "Selling Party") has given the other party (the "Noticed Party") written notice (which shall be deemed to be duly given when mailed by certified mail addressed to the Noticed Party at the address set forth herein, or to such other address or addresses as the either party may specify by written notice to the other party), stating the name and address of the offeror and the terms and conditions of said bona fide offer and the encumbrances subject to which the Offered Premises, or any part thereof, are to be conveyed and containing an offer by the Selling Party to sell the same to the other party on the same terms and conditions as said bona fide offer; and (c) the Selling Party has not, within thirty (30) days after the giving of such notice, mailed or otherwise, been given written notice that the Noticed Party elects to purchase the same in accordance with said offer. In the event that Noticed Party so elects to purchase, the Offered Premises or such part thereof shall be conveyed by a good and sufficient Quitclaim Deed conveying a good and clear record and marketable title thereto, free from all encumbrances except as stated in said bona fide offer and such deed shall be delivered and the consideration paid at the Dukes County Registry of Deeds at 11:00 o'clock A.M. on the thirtieth (30th) or next business day after the date of the giving of such notice of election to purchase. In the event that Noticed Party shall not give such notice of election to purchase within the time above specified, or in the event

Noticed Party shall, after giving such notice, fail to complete such purchase as hereinabove provided, then Selling Party shall be free thereafter to sell and convey the Offered Premises or such part thereof covered by the offer to the offeror named in Selling Party's notice at a price not lower than that specified therein, but Selling Party shall not sell or convey the Offered Premises or any part thereof to any other person or at any lower price without again offering the same to Noticed Party. The provisions hereof shall not be construed to apply to bona fide mortgages to recognized lending institutions of Lot A or Lot B, or any part thereof, or sales or other proceedings for the foreclosure thereof; or to easements to any municipality or utility company required for the installation and/or maintenance of drainage, sewage, electric, gas, water and electric lines and appurtenance to and from Lot A or Lot B. Additionally, the provisions hereof shall not apply to transfers for nominal value of an interest in either Lot A or Lot B to any or all of a Party's or to a beneficiary of a Party's issue or to a trust or trusts for the benefit of any or all of such issue, or to a testamentary transfer or a transfer by intestacy resulting from the death of a Party or beneficiary thereof, or a transfer by Whiting to Brown or Condlin or to an entity created or controlled by Brown or Condlin.

WITNESS the execution hereof under seal to be effective as of the 31st day of January, 2006.



Eric T. Turkington, as
Trustee as aforesaid



Jan W. Whiting, as
Special Master as Aforesaid

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 16th day of January, 2007, before me, the undersigned notary public, personally appeared the above-named Eric T. Turkington, proved to me through satisfactory evidence of identification, which was his Massachusetts Driver's License, 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 Trustee as aforesaid.

Malissa Hallenbeck (official signature and seal of notary)

S. Malissa Hallenbeck (printed name of notary)

My commission expires: 09/11/2009



COMMONWEALTH OF MASSACHUSETTS

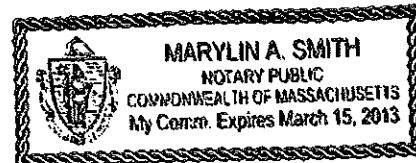
Norfolk, ss.

On this 10th day of January, 2007, before me, the undersigned notary public, personally appeared the above-named Jan W. Whiting, proved to me through satisfactory evidence of identification, which was his Massachusetts Driver's License, 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 Special Master as aforesaid.

Marilyn A. Smith (official signature and seal of
notary) Marilyn A. Smith

_____ (printed name of notary)

My commission expires: 3-15-13



Attest:

Dianne E. Powers Register