

NANTUCKET HOUSING NEEDS COVENANT

Condominium 150 Form

Premises: _____, Nantucket, MA

Premises Title Reference: _____

NHNC Unit: _____

Grantor: _____

Assessor's Map/Parcel: _____

Date: _____

WHEREAS, the Town of Nantucket, Massachusetts wishes to facilitate the development of affordable housing in the Town of Nantucket and to restrict the ownership of such housing to parties meeting applicable requirements;

WHEREAS, as one means of facilitating the development of such housing, the Town of Nantucket has approved the Nantucket Housing Needs Program, pursuant to Article 36 of the Town Meeting warrant of 2001, which is currently codified in Chapter 139, Section 7(A)(2)(g) of the Code of the Town of Nantucket, Chapter 139, Section 7(G) of the Code of the Town of Nantucket;

WHEREAS, the provisions appearing in Chapter 139, Sec. 7(A)(2)(g) and Chapter 139, Sec. 7(G) of the Code of the Town of Nantucket, as amended from time to time, are hereby incorporated, and made part of this Covenant, by reference;

WHEREAS, to strengthen the administration and enforcement of the Nantucket Housing Needs Program, the Town of Nantucket has approved a home rule petition, pursuant to Article 49 of the Town Meeting warrant of 2001;

WHEREAS, the General Court has approved this home rule petition as Chapter 301 of the Acts of 2002;

WHEREAS, to efficiently implement and administer the Nantucket Housing Needs Program, the Town of Nantucket, pursuant to Article 55 of the Town Meeting warrant of 2003, has duly adopted Chapter 100 of the Code of the Town of Nantucket, as amended from time to time, which is hereby incorporated, and made part of this Covenant, by reference;

WHEREAS, the Town of Nantucket has designated the Nantucket Housing Authority as its designee for purposes of administering and enforcing the Nantucket Housing Needs Program, pursuant to Section 2 of Chapter 301 of the Acts of 2002 and Chapter 139, Section 7(A)(2)(g) and Section 7(G) and Chapter 100 of the Code of the Town of Nantucket;

WHEREAS, pursuant to Chapter 100 of the Code of the Town of Nantucket, the Town of Nantucket has duly adopted and ratified certain regulations for the purpose of efficiently implementing and administering the Nantucket Housing Needs Program also known as the Nantucket Housing Needs Covenant Program, said regulations are known as the Condominium 150 Subprogram Regulation and the General Regulation, which regulations are hereby incorporated, and made part of this Covenant, by reference; ;

WHEREAS, this Covenant, and all of the agreements, restrictions, rights and covenants contained herein, is intended to be and is a “Nantucket Housing Needs Covenant” as that term is defined in Section 2 of Chapter 301 of the Acts of 2002, Chapter 100 and Chapter 139, Section 7(G) of the Code of the Town of Nantucket;

WHEREAS, the Grantor is the owner of the NHNC Unit or of Development Rights for such a unit, a residential dwelling unit which is qualified in accordance with the Nantucket Housing Needs Program, as codified at Chapter 100, Chapter 139, Section 7(A)(2)(g) and Chapter 139, Section 7(G) of the Code of the Town of Nantucket;

WHEREAS, the Premises shall be organized as a condominium in accordance with Chapter 183A of the General Laws of Massachusetts; and

WHEREAS, as a condition of selling the NHNC Unit or the Development Rights, pursuant to the Nantucket Housing Needs Program, the Grantor has agreed to execute this Covenant and to comply with all its terms and conditions, which Covenant shall run with title to the Premises.

NOW, THEREFORE, the Grantor for consideration paid, including without limitation the ability of the Grantor to convey into separate ownership the NHNC Unit and the Market Rate Unit, subject to this Covenant, notwithstanding the otherwise applicable provisions of the Town of Nantucket Zoning Code, the receipt and sufficiency of which consideration are hereby acknowledged by the parties to this Covenant, grants to the Nantucket Housing Authority, a duly organized body politic pursuant to M.G.L. Chapter 121B, having a usual place of business at 3 Manta Drive, Nantucket, Massachusetts 02554, this Covenant and the agreements, restrictions, rights and covenants contained herein for the benefit of the Authority and its successors, assigns, agents and designees and the perpetual right by the same to enforce this Covenant and the agreements, restrictions, rights and covenants contained herein.

1. Definitions. In this Covenant, the following words and phrases shall have the meanings as indicated below, or as appear in the Regulations:

“**Appeal Board**” means the Authority, or a committee thereof, authorized by Chapter 100 of the Code of the Town of Nantucket, pursuant to the Nantucket Housing Needs Covenant Program Appeal Board Regulation, to hear and decide grievances, special reviews and waiver requests relative to the Program, this Regulation, and any Subprogram or regulations thereof.

“**Authority**” means the Nantucket Housing Authority or its Designee.

“**Authority Mortgage**” means the performance mortgage, in a form acceptable to the Authority, attaching to the NHNC Unit, granted to the Authority by the NHNC Unit Owner, , securing the compliance with this Covenant.

“**Authority Option**” means the Authority’s right and option to purchase set forth in Sections 8 through 12, and Section 16, of this Covenant.

“**Authority Option Price**” means the price at which the Authority may purchase the NHNC Unit upon exercise of the Authority Option, as set forth in Section 10 of this Covenant.

“**Authority Option Price Certificate**” means a certificate evidencing the Authority Option Price as set forth in Section 10 of this Covenant.

“**Certificate of Compliance**” means a recordable document issued by the Authority certifying that a given transfer of the NHNC Unit comports with the requirements of the Program, the Subprogram, and the NHNC Condominium 150 Form, as additional set forth in Section 4 of this Covenant.

“**Condominium Documents**” means the documents pertaining to the Premises as described and required by Chapter 183A of the General Laws of Massachusetts and Section 15 of this Covenant, including without limitation a master deed and a site plan, as set forth in Section 15 of this Covenant.

“**Covenant**” see hereunder, Nantucket Housing Needs Covenant–Condominium 150 Form (NHNC Condominium 150 Form) or the Covenant.

“Designee” - means any successors, assigns, agents or contractors of the Authority duly authorized to represent the Authority.

“Development Rights” means the right granted, and/or limited, by law, by the Condominium Documents and by this Covenant and the Regulations to construct an NHNC Unit on the Premises in accordance with this Covenant, the Regulations and all applicable rules, regulations, statutes and laws.

“Development Rights Sales Price” means the price permitted for the sale or resale of the Development Rights, as set forth in Section 3(c).

“Household” means one or more individuals, regardless of familial relationship, who possess the present intent to share residency in an NHNC Unit, who in fact shall reside together in an NHNC Unit, whose incomes, assets and resources are available to support the needs of the household, which shall be included in Household Income as applicable, and whose name(s) appear on the Household Affidavit; provided that any minor child of any member of a Household who in fact shares residency shall be part of the Household and their names shall appear on the Household Affidavit.

“Market Rate Unit” means a unit of the two-unit condominium, which includes the NHNC Unit, that is not the NHNC Unit and which is less restricted by the NHNC Condominium 150 Form than is the NHNC Unit.

“Maximum Resale Price” means– the greater of the Maximum Sale Price, set at the time of the issuance of the object Qualified Seller Certificate, or the price paid for the NHNC Unit by the current NHNC Unit Owner(s); provided that if the current NHNC Unit Owner(s) inherited, or received the NHNC Unit as a donation, the Maximum Resale Price shall be the said Maximum Sale Price. See Section 3(b), hereof.

“Maximum Sale Price” means the purchase price of the NHNC Unit to be calculated annually, on the first business day of each calendar year, by assuming a ten percent (10%) down payment and an annual mortgage debt service at the Prevailing Fixed Interest Rate equal to thirty percent (30%) of the income of an hypothetical buyer who earns one hundred twenty five percent (125%) of the Nantucket County Median Family Income. See Section 3(a) hereof.

Nantucket County Median Family Income or MFI – Median family income for Nantucket County, as published from time to time by the U. S. Department of Housing and Urban Development (HUD).

Nantucket Housing Needs Covenant–Condominium 150 Form (NHNC Condominium 150 Form) or the Covenant – means this document and all of its provisions, including without limitation, all affirmative covenants, restrictive covenants, rights and options, under the Subprogram recorded or registered against the title of the NHNC Unit and enforceable by the Authority in perpetuity.

“NHNC Unit” means the dwelling, one unit of a two-unit condominium, subject to the NHNC Condominium 150 Form and other Subprogram requirements and standards.

“NHNC Unit Owner” means the person(s) whose name(s) appear(s) on the record title of the NHNC Unit under the Subprogram.

“Owner Occupancy” means the occupancy obligation of the of the NHNC Unit Owner as set forth under Part VII of the Nantucket Housing Needs Covenant Program Condominium 150 Regulation..

“Program” means the affordable housing program, known as the Nantucket Housing Needs Covenant Program, created under Chapter 301 of the Acts of 2002, and Chapter 100 of the Code of the Town of Nantucket, including Subprograms, Nantucket Housing Needs Covenants, regulations, rules, requirements and all other aspects of the Program, all as may be adopted, amended and repealed from time to time.

“Qualified Purchaser” means a Household having a valid Qualified Purchaser Certificate under the Subprogram.

“Qualified Purchaser Certificate” means a certificate issued by the Authority to an Applicant evidencing that said Applicant has satisfied the Qualified Purchaser criteria under the Subprogram.

“Qualified Seller” means an entity having a valid Qualified Seller Certificate under the Subprogram.

“Qualified Seller Certificate” means a certificate issued by the Authority to an applicant evidencing that said applicant has satisfied the Qualified Seller criteria under the Subprogram with respect to the Premises.

“Qualified Seller Counsel Assurance” means an assurance submitted by the applicant for a Qualified Seller Certificate, and said applicant’s legal counsel, on a form provided by the Authority, evidencing consent to and/or compliance with the Qualified Seller Criteria set forth in Section 5.1 hereof, assuring that the Seller has sufficient title to the property such that there are no impediments to the use and restriction of the NHNC Unit as contemplated under the Subprogram, and assuring that the condominium encompassing the NHNC Unit and the Market Rate Unit conforms to the requirements of Chapter 139, Section 7(A)(2)(g) and Chapter 139, Section 7(G) of the Code of the Town of Nantucket, as amended.

“Regulations” means those regulations duly adopted by the Authority pursuant to Chapter 100 of the Code of the Town of Nantucket known as the Nantucket Housing Needs Covenant Program General Regulation and the Nantucket Housing Needs Covenant Program Condominium 150 Subprogram Regulation hereby incorporated, and made part of this Covenant, by reference.

“Subprogram” means the Subprogram, known as the Nantucket Housing Needs Covenant Condominium 150 Subprogram, created under the Program, and Chapter 139, Section 7(A)(2)(g) and Chapter 139, Section 7(G) of the Code of the Town of Nantucket, as amended, which relates to the regulation of the terms of the purchase, sale and ownership of real property held as a condominium by Households with a Household Income of less than one hundred fifty percent (150%) of the Nantucket County Median Family Income.

2. Ownership/Occupancy of the NHNC Unit; Development Rights . The NHNC Unit shall be owned and occupied in compliance with the Parts VII and VIII of the Nantucket Housing Needs Covenant Program Condominium 150 Subprogram Regulation and all other applicable requirements of the Regulations and Program. The Grantor, or any NHNC Unit Owner, may sell the NHNC Unit only to the Authority pursuant to Section 8 herein, or to a Qualified Purchaser. Any sale of the NHNC Unit by the Grantor or NHNC Unit Owner, other than to the Authority or to a Qualified Purchaser, shall entitle the Authority to avail itself of the remedies described in Section 21 herein. The Grantor or the NHNC Unit Owner may sell the Development Rights to any entity that may legally hold an interest in real estate in the Commonwealth of Massachusetts, provided that if the Development Rights are sold to an individual that will occupy the NHNC Unit once developed, the Development Rights must be sold to a Qualified Purchaser or to the Authority.

3. (a) Maximum Sale Price. On the first disposition of the NHNC Unit, the Grantor shall not sell, convey, assign or otherwise dispose of, the NHNC Unit for consideration in excess of the Maximum Sale Price. Consideration shall include the aggregate value of all money, property and services of every kind given or paid by, or on behalf of, a Qualified Purchaser to or for the benefit of the Grantor in connection with the conveyance of the NHNC Unit including any consideration paid for any other real property or personal property conveyed by the Grantor to the Qualified Purchaser.

(b) Maximum Resale Price. On any sale of the NHNC Unit subsequent to its first disposition, any NHNC Unit Owner, including the Grantor, shall not sell, convey, assign or otherwise dispose of, the NHNC Unit for consideration in excess of the Maximum Resale Price as defined below. The Maximum Resale Price for the NHNC Unit shall be the greater of the Maximum Sale Price, calculated at the time of the NHNC Unit Owner’s intention to sell, or the price that the current NHNC Unit Owner paid for the NHNC Unit. (Consideration shall include the aggregate value of all money, property and services of every kind given or paid by, or on behalf of, a Qualified Purchaser to or for the benefit of the Grantor in connection with the conveyance of the NHNC Unit including any consideration paid for any other real property or personal property conveyed by the Grantor to the Qualified Purchaser.)

(c) Development Rights Sales Price. On the first sale, the Development Rights shall not be sold, conveyed, assigned or otherwise transferred for consideration in excess of the Maximum Sales Price. On any other sale of the Development Rights, the Development Rights shall not be sold, conveyed, assigned or otherwise transferred for consideration in excess of the purchase price for those Development Rights plus customary, reasonable closing costs, as determined by the Authority in its discretion, associated with the resale of those Development Rights.

4. Certificate of Compliance. No conveyance, sale or transfer of the NHNC Unit shall be valid or deemed in accordance with Covenant unless a certificate in recordable form is signed and acknowledged by the Authority and recorded which refers to the NHNC Unit, the Owner thereof, the Qualified Purchaser, and the Maximum Sale Price or the Maximum Resale Price, as the case may be, and which certifies that the conveyance, sale or transfer complies with this Covenant. A Transfer Fee, as set forth in the Regulations, shall be paid to the Authority for the issuance of such certificate, except when the conveyance is to an institutional lender (or the nominee of an institutional lender) as a result of a foreclosure or a deed in lieu of foreclosure.

5. Compliance. The Household, including the NHNC Owner, shall furnish such information as the Authority may request from time to time as set forth in the Regulations, for the purpose of assuring compliance with this Covenant and the Regulations. The Authority shall have access to inspect the NHNC Unit at reasonable times and upon reasonable notice.

6. Rights of Mortgagees. The other provisions of this Covenant notwithstanding, all mortgages or security interests in the NHNC Unit shall be subject and subordinate to the covenants and restrictions contained in this Covenant, and to the Authority Mortgage, provided that the Authority Mortgage, and any lien or claim the Authority may duly place on the NHNC Unit, shall be automatically subordinate to all institutional mortgages (mortgages held by banks, trust companies, insurance companies, or the like, regulated by State or Federal law) and any refinancing thereof with regard to the payment of all sums due to the mortgagee under the terms of any such mortgage and the note secured thereby. In the event of a change of ownership of the NHNC Unit due to foreclosure or a deed in lieu of foreclosure, any mortgagee and successor NHNC Unit Owner shall comply with all the provisions of this Covenant, and shall be entitled to hold title to the NHNC Unit prior to its resale, which resale shall be in accordance with this Covenant. Institutional mortgagees (banks, trust companies and insurance companies regulated under State or Federal law) shall have the following additional rights:

- a. To hold title to the NHNC Unit and to exercise all incidents of ownership, subject to this Covenant.
- b. To exercise all rights of foreclosure not inconsistent with this Covenant.
- c. To rent the NHNC Unit for no greater amount than the then current Fair Market Rent established for Nantucket County by the United States Department of Housing and Community Development as published in the Federal Register, and amended from time to time.
- d. To appear before the Appeal Board for the purpose of seeking such relief as the Appeal Board may grant.
- e. To sell the NHNC Unit, at a statutory foreclosure sale for a bid price which may exceed the Maximum Resale Price, provided that any excess sum over the greater of (i) the amount due to the mortgagee under the mortgage being foreclosed and the note secured thereby, including without limitation the balance of principal and interest

thereunder, costs of foreclosure including legal and auctioneer's fees, late charges, and items advanced by the mortgagee for the benefit of the mortgagor such as taxes and insurance premiums, and (ii) the Maximum Resale Price, shall be paid to the Authority. For the purpose of such a foreclosure sale, the institutional mortgagee shall be deemed a Qualified Seller.

7. Effect of Foreclosure Sale. The Maximum Sale Price and the Maximum Resale Price as defined in this Covenant shall not be affected in the event the price paid for the NHNC Unit pursuant to a foreclosure sale under Section 6e herein exceeds the Maximum Resale Price, and the Maximum Sale Price and the Maximum Resale Price shall remain in full force and effect as provided under this Covenant as if said foreclosure sale had never occurred; however, notwithstanding any other provision of this Covenant, an institutional mortgagee holding title to the NHNC Unit by reason of foreclosure or a deed in lieu of foreclosure may sell the NHNC Unit for an amount not exceeding the amount due to the mortgagee under the mortgage being foreclosed and the note secured thereby, including without limitation the balance of principal and interest thereunder, costs of foreclosure including legal and auctioneer's fees, late charges and items advanced by the mortgagee for the benefit of the mortgagor such as taxes and insurance premiums, together with reasonable and necessary costs incurred by mortgagee while in ownership of the NHNC Unit (reduced by the net income realized by the mortgagee from the NHNC Unit during its ownership thereof).

8. Authority Rights. The Authority reserves and the Grantor grants to the Authority, the option to purchase the NHNC Unit upon one or more of the following events:

a. The Grantor or any subsequent NHNC Unit Owner has delivered to the Authority a written notice of intent to sell, or a mortgagee has delivered to the Authority a written notice of intent to foreclose. Such notice is a requirement of this Covenant and shall be a condition precedent to any conveyance of the NHNC Unit or any interest therein, provided, however, that if the Authority determines that an NHNC Unit Owner has executed an agreement to sell the NHNC Unit to a Qualified Purchaser for a price not in excess of the Maximum Resale Price, the Authority shall waive the Authority Option.

b. Any legal or beneficial interest in the NHNC Unit is conveyed without notice to the Authority as provided above, unless the Authority shall have waived the Authority Option with respect to a particular sale, and unless such conveyance is made in accordance with the Regulations relative to an inheritance or a donation of the NHNC Unit.

c. Any legal or beneficial interest in the NHNC Unit is conveyed for consideration in excess of the Maximum Sale Price or the Maximum Resale Price.

d. The NHNC Unit is rented or leased, unless otherwise expressly permitted under this Covenant.

e. The of the NHNC Unit Owner fails to comply with the occupancy and rental requirements set forth in the Regulations.

f. Receipt by the Authority of notice in any form (including, without limitation, notice by newspaper publication) of an impending foreclosure against the NHNC Unit or of the taking of the NHNC Unit for unpaid municipal taxes, provided that the right to exercise the Authority Option by reason of such event shall terminate as of the time of a foreclosure sale by an institutional first mortgagee pursuant to such notice.

g. Receipt by the Authority of notice in any form (including notice by newspaper publication) that ownership of the NHNC Unit was obtained through substantial misrepresentations made to the Authority.

h. Possession of the NHNC Unit by any non-institutional mortgagee.

i. Breach of any other term, condition or provision of this Covenant, including, without limitation, Section 16 of this Covenant.

In lieu of exercising the Authority Option to purchase the NHNC Unit, the Authority may assign the Authority Option to purchase the NHNC Unit to a Qualified Purchaser. The exercise of the Authority Option to purchase the NHNC Unit, whether exercised by the Authority or by the assignee Qualified Purchaser will be subject to the provisions of Sections 8 through 11 of this Covenant.

9. Duration of the Authority Option. The right of the Authority to exercise or assign the Authority Option shall be enforceable in perpetuity or for the maximum time period allowable by law, applicable to each and every transaction or event enumerated in Section 8 which occurs during the term of this Covenant. The term of each option which arises shall be limited as stated in Sections 10 through 12 .

10. Authority Option Price. Whenever the Authority Option may be exercised, the Authority Option Price shall be established hereunder. The NHNC Unit Owner and the Authority shall each select a Massachusetts Certified General Real Estate Appraiser, to determine the value of the NHNC Unit ("Unit Value") in accordance with prevailing appraisal methodology for establishing fair market value of the NHNC Unit, accounting for the affect on value of this Covenant, if any (the "Authority Appraiser" and the "Owner Appraiser"). Each party shall pay the costs of its appraiser and each party shall require its appraiser to provide an appraisal report within twenty-one (21) days of appointment. If the Authority Appraiser and the Owner Appraiser agree on the Unit Value, then the Unit Value shall be the Authority Option Price and shall be binding on the NHNC Unit Owner and the Authority. If the Authority Appraiser and the Owner Appraiser disagree on the Unit Value, they shall select a mutually acceptable and qualified Review Appraiser who shall, within twenty-one (21) days of appointment review their work and determine the Unit Value in accordance with prevailing appraisal methodology. The Unit Value as determined by the Review Appraiser shall be the Authority Option Price, and shall be binding on the NHNC Unit Owner and the Authority. The NHNC Unit Owner and the Authority shall each pay one-half of the costs of the Review Appraiser. If the NHNC Unit Owner is not cooperative in the selection of the Owner Appraiser, the Authority shall have the right to select the Authority Appraiser, whose determination of the Unit Value shall be binding

on the parties as the Authority Option Price. In all cases, the Authority shall only be required to pay the lesser of the Authority Option Price determined under this Section 10 or the price at which the NHNC Unit Owner purchased the NHNC Unit. Within ten (10) days of the establishment of the Authority Option Price under this Section 10 - the Authority and the NHNC Unit Owner shall execute and issue the Certificate of Agreement reflecting the Authority Option Price determined hereunder. If the NHNC Unit Owner refuses to timely execute the Authority Option Price Certificate, the Authority may do so unilaterally.

11. Exercise of Authority Option. In the event that the Authority elects to exercise or assign the Authority Option arising from the NHNC Unit Owner's notice of intent to sell pursuant to Section 8 (a) of this Covenant, then the Authority's notice of its intent to exercise or assign the Authority Option shall be given within thirty (30) days after both parties have executed the Certificate of Agreement. In that case, within thirty (30) days after such notice by the Authority, the Authority, or its assignee, and the NHNC Unit Owner shall execute a Purchase and Sale Agreement consistent with the terms in this Section 11 .

In the event that the Authority Option arises pursuant to Sections 8 (b) through 8 (i) of this Covenant, then the Authority shall notify the NHNC Unit Owner and any institutional mortgagees thereof that an event triggering the Authority Option has occurred. Upon the giving of such notice, the NHNC Unit Owner or the mortgagee in possession, and the Authority, or its assignee, shall in good faith cooperate to determine the applicable Authority Option Price pursuant to Section 3(b) and Section 10 of this Covenant, and to execute a Certificate of Agreement. In the event the NHNC Unit Owner is not cooperative in that regard, the Authority shall establish the Authority Option Price pursuant to this Section 10 and Section 3(b) of this Covenant, and shall execute the Authority Option Price Certificate. The Authority's notice of its intent to exercise or assign the Authority Option shall be given within thirty (30) days after the parties have executed the Certificate of Agreement or the Authority has issued the Authority Option Price Certificate. Further, within thirty (30) days after such notice by the Authority, the Authority and the NHNC Unit Owner, or the institutional mortgagee, shall execute a Purchase and Sale Agreement consistent with the terms in this Section 11 , unless the NHNC Unit Owner is uncooperative in this regard, in which case the terms of the purchase of the NHNC Unit shall be consistent with this Section 11 .

The terms of the Purchase and Sale Agreement (the "P&S") to be executed by the NHNC Unit Owner, or the institutional mortgagee and the Authority, or the terms of the purchase of the NHNC Unit by the Authority, shall contain the following terms and conditions, as well as any additional terms and conditions upon which the parties may agree which are not contrary to the purposes of the Program:

- A. The purchaser shall pay a five (5%) percent deposit at the signing of the P&S. Such deposit shall be held in escrow by counsel for the Authority.
- B. The performance of the P&S shall be at a time and place mutually agreeable to the parties, but in all cases within a reasonable time following the execution of the P&S.
- C. The NHNC Unit shall be conveyed by a good and sufficient quitclaim deed running to the Authority or its assignee, conveying a good and clear record and marketable title thereto, free from encumbrances, except such taxes for the then current year as are not

due and payable on the date for the delivery of such deed; and such encumbrances as to which the Authority may have given its express written consent.

- D. The NHNC Unit shall be delivered in the same condition as at the time the Authority exercises or assigns the Right of First Refusal, free of all tenants and occupants. The Authority shall be entitled to an inspection of the NHNC Unit prior to delivery of the deed in order to determine whether the condition thereof complies with the terms of this paragraph.
- E. Fuel, common condominium charges, and water and sewer use charges, if applicable, and current real estate taxes shall be adjusted as of the date of delivery of the deed. If the amount of such real estate taxes is not known at the time of delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.
- F. If the NHNC Unit Owner shall be unable on the closing date to give title or to make conveyance or to deliver possession of the NHNC Unit, all in accordance with the terms hereof, or if on the closing date, the NHNC Unit does not conform with the requirements hereof, then the date of the closing hereunder shall be postponed for a period of thirty (30) days, during which period the NHNC Unit Owner shall use reasonable good faith efforts to remove any defects in title or to make conveyance or deliver possession of the NHNC Unit, all in accordance with the terms hereof or to make the NHNC Unit conform with the requirements hereof, as the case may be.
- G. If after the expiration of the aforesaid time for the closing, any title defects shall not have been removed and conveyance not made and possession delivered, or the NHNC Unit does not conform, all as required hereunder, then the Authority may without waiving any claims against the NHNC Unit Owner, either (a) terminate its obligation to purchase the NHNC Unit pursuant to its exercise of the Authority Option; or (b) accept such title as the NHNC Unit Owner can deliver to the NHNC Unit in its then condition and to pay therefore the purchase price; provided that in the event of such conveyance in accordance with this paragraph, if the NHNC Unit or the Premises of which it is a part shall have been damaged by fire or casualty insured against, or taken in whole or in part by eminent domain, then NHNC Unit Owner shall, unless NHNC Unit Owner has previously restored the NHNC Unit and/or Premises to their former condition either: (1) pay over or assign to the Authority, upon delivery of the deed, all amounts recovered or recoverable on account of such insurance or award for taking, less any amounts reasonably expended by NHNC Unit Owner for any partial restoration; or (2) if a holder of a mortgage on the NHNC Unit (to the extent such holder has an interest in the proceeds or award) shall not permit the insurance proceeds or award or any part thereof to be used to restore the NHNC Unit or Premises to their former condition or to be so paid over or assigned, give the Authority a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by NHNC Unit Owner for any partial restoration.

Nothing contained in the terms of the Authority Option or the P&S as to an NHNC Unit Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the NHNC Unit in accordance with the terms hereof, as to use of proceeds to clear title or as to the Authority's election to take title, nor anything else in this Covenant, shall be deemed to waive, impair or otherwise affect the priority of the Authority Option over matters appearing of record,

or occurring at any time after the recording of this Covenant, all such matters so appearing or occurring being subject and subordinate in all events to the Authority Option.

12. Failure to Exercise the Authority Option. In the event that the Authority shall (a) fail to give such notice of election to exercise or assign the Authority Option within the time above specified, (b) give notice that it has elected not to exercise or assign the Authority Option or, (c) after giving notice that it has elected to exercise or assign the Authority Option, fails to complete such purchase as hereinabove provided, then the NHNC Unit Owner shall be free thereafter to sell and convey the Premises to a Qualified Purchaser, subject to the other restrictions set forth in this Covenant.

Furthermore, the NHNC Unit Owner shall be entitled to a certificate, in recordable form and on demand, executed by the Authority, that it elects not to exercise or assign the Authority Option. If the Authority provides such a certificate, it shall be recorded with the deed from the NHNC Unit Owner, and such certificate shall be conclusive evidence of compliance with the requirements of this Covenant with respect to Sections 8 through 12.

13. Proceeds from Casualty or Taking or Abandonment of Condominium Regime. If the NHNC Unit or the Premises of which it is a part is destroyed by fire or other casualty and not rebuilt, or if it is taken by eminent domain or because of failure to pay real estate taxes, or if the NHNC Unit ceases to be a separate ownership NHNC Unit by reason of abandonment of a condominium regime followed by a sale of the Premises, with the proceeds of the sale being distributed to the former NHNC Unit owners, then, subject to the prior rights of all mortgagees, all proceeds of insurance or condemnation award or sale in excess of the Maximum Sale Price or the Maximum Resale Price shall be the property of the Authority as compensation for the loss of the benefit of this Covenant.

14. Notice. Any notices or other communications required or permitted to be given under this Covenant must be in writing and shall be effective when received by the party to whom it is addressed or five (5) business days after mailing by registered or certified mail, or Federal Express or other similar express carrier, return receipt requested, whichever first occurs. Notices and communications to the Authority shall be sent to: Nantucket Housing Authority, 3 Manta Drive, Nantucket, MA 02554, Attention: Executive Director. Notices and other communications to the NHNC Unit Owner shall be sent to the address of the NHNC Unit. Either party by written notice to the other may designate a different address to which notices shall thereafter be sent.

15. Condominium Form. The Premises shall be in the form of a condominium in accordance with Chapter 183A of the General Laws of Massachusetts. In addition to the requirements of Chapter 183A of the General Laws of Massachusetts, the documents creating said condominium form on the Premises shall include a recordable plan of land depicting the Premises, the location of the NHNC Unit, the Market Rate Unit, other structures on the Premises, and all common areas, bearing the verified statement of a registered land surveyor certifying that the plan fully and accurately depicts the bounds of the Premises, the layout, location and dimensions of the NHNC Unit, the Market Rate Unit, and the other structures on the Premises, and the common areas of the Premises. The master deed for the Premises shall include the following provisions, and the master deed shall provide that said provisions cannot be altered or amended without the

affirmative vote of one-hundred percent (100%) in beneficial interest of the unit owners of the condominium.

- a. The NHNC Unit's proportionate beneficial interest in the condominium and in the common areas and facilities of the condominium shall not be less than twenty-six percent (26%).
- b. A unanimous vote of the condominium unit owners is required to make any substantial changes to, or expend substantial sums on, the common areas and facilities of the condominium.
- c. The NHNC Unit shall be, or have been, constructed in a good and workmanlike manner.
- d. The organization of unit owners of the condominium shall have no right of first refusal with regard to any units of the condominium.
- e. Development Rights, with rights and obligations appurtenant thereto, must be addressed in accordance with this Covenant.
- f. A provision to the effect that this Covenant, which is to be recorded with the master deed, will attach to the unit to be known as the NHNC Unit.

Prior to their recording, , the Condominium Documents and plan and the Qualified Seller Counsel Assurance shall be submitted to the Authority, for review and approval, to ensure compliance with this Section 15 of this Covenant. The Authority shall conclude its review and approval within thirty (30) days of receipt of the complete Condominium Documents and plan and Qualified Seller Counsel Assurance. In the event the Condominium Documents and/or plan submitted to the Authority are incomplete, the Authority shall request revised and completed Condominium Documents and/or plan, and updated Qualified Seller Counsel Assurance, if necessary, and the thirty (30) day review period shall commence upon the Authority's receipt of the revised and completed Condominium Documents and/or plan and updated Qualified Seller Counsel Assurance. The parties shall work in good faith to correct any deficiencies in the Condominium Documents and plan identified by the Authority in its review under this Section 15. The Authority shall not issue a Qualified Seller Certificate prior to review and approval of the Condominium Documents and plan and Qualified Seller Counsel Assurance under this Section 15.

16. Compliance with Laws. The NHNC Unit, the Market Rate Unit, and the Premises shall at all times comply with the Condominium Documents, and with all applicable building, health, zoning and other land-use regulations and with all other applicable statutes, laws ordinances, rules and regulations. A failure to comply with this Section 16 shall subject the NHNC Unit to the provisions of Section 8 of this Covenant and the Market Rate Unit to available legal and equitable remedies, if such failure continues for thirty (30) calendar days, unless such failure is not susceptible of cure within that thirty (30) day period, in which case action to cure shall have begun within said thirty (30) days and shall be pursued diligently until completion, provided

however, that there shall be no cure period if such failure poses an immediate risk to the public health and safety or an immediate risk to the NHNC Unit, the Market Rate Unit, the Premises, or abutting lands.

17. Covenants to Run with the Land. The Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants and assigns to the Authority or its designee the right to enforce the rights, covenants and agreements set forth in this Covenant. The Grantor hereby grants to the Authority the right to enter upon the Premises and the NHNC Unit for the purpose of enforcing any and all of the restrictions, covenants and agreements contained herein and of taking all actions with respect to the NHNC Unit which the Authority or its designee may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the restrictions, covenants and agreements set forth herein. The rights hereby granted to the Authority or its designee shall be in addition to and not in limitation of any other rights and remedies available to the Authority or its designee for enforcement of the restrictions, rights, covenants and agreements set forth herein.

The Grantor and the Authority intend, declare and covenant on behalf of themselves and their respective successors and assigns that the agreements, covenants and restrictions set forth in this Covenant shall run with the land constituting the Premises and shall be binding upon any NHNC Unit Owner, including the Grantor, and his/her successors and assigns in perpetuity and shall be enforceable by the Authority and its successors, assigns, and designees in perpetuity for the maximum time period allowable by law. It is further agreed that the reservation or grant of the agreements, covenants and restrictions contained herein are for public and charitable purposes. By accepting title to the NHNC Unit subject to this Covenant any NHNC Unit Owner, including the Grantor, hereby acknowledges and agrees that any and all requirements of the law of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

The Grantor and any NHNC Unit Owner shall include a reference to this Covenant in any and all deeds or other instruments conveying an interest in the Premises, the Market Rate Unit, or the NHNC Unit.

18. Perpetuities. It is the intention of the parties that all of the rights and obligations created by this Covenant shall be perpetual and run with title to the Premises. In the event that it should be adjudicated by final unappealable order of a court having jurisdiction over such issue that the Rule Against Perpetuities applies to any right or obligation granted hereby, then, and only then, the right so limited, shall terminate twenty-one (21) years following the death of the last to die of the class consisting of the following members of the British Royal Family; Prince William Arthur Philip Louis of Wales, Prince Henry Charles Albert David of Wales, Princess Beatrice Elizabeth Mary of York, and Princess Eugenie Victoria Helena of York.

19. Appointment of Agent – Authority of Agent. The Authority may from time to time appoint and revoke the appointment of one or more agents or designees who shall have the power to issue certificates as provided herein and to exercise and enforce the rights of the Authority as provided herein. Such appointments shall be made and revoked only by instrument

in writing recorded in the Nantucket County Registry of Deeds and each such action shall be effective only upon recording. No such instrument of appointment or revocation of appointment shall be effective unless it expressly refers to the Program. Any agent or designee appointed hereunder shall have all the legal rights and powers possessed by the Authority, except that any instrument to be recorded under this Covenant, or required to be recorded by law, shall be duly executed by the Authority or by any assignee of the Authority pursuant to Section 25 of this Covenant.

20. Power of Attorney. The Grantor, for himself and for each successor as Owner of a NHNC Unit or a Market Rate Unit, hereby appoints the Authority as its attorney in fact irrevocable to do all acts and things which the Grantor or Grantor's successors may be required to do under this Covenant or which the Authority may reasonably deem necessary to preserve the interests created by this Covenant. This power, being coupled with an interest, is irrevocable as long as this Covenant is in force. The Grantor or Grantor's successors will at the request of the Authority execute and deliver any and all documents and instruments and take any and all action as the Authority may reasonably require more completely to vest in and assure to the Authority its rights hereunder or in the NHNC Unit.

21. Enforcement. Without limitation on any other rights or remedies of the Authority, its successors, assigns, and designees, in the event of any violation of the provisions of this Covenant, the Authority shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- a. specific performance of the provisions of this Covenant;
- b. voiding of the rental arrangement that violates this Covenant;
- c. money damages for charges in excess of Maximum Sale or Resale prices or for disgouement of rents;
- d. money damages for the cost of creating or obtaining other comparable dwelling NHNC Units to fulfill the need for affordable housing by low income and moderate income households;
- e. if the violation is a sale of the NHNC Unit at a price greater than the Maximum Sale or Resale Price as provided herein, the Authority shall have the right to purchase the NHNC Unit, or to assign its right, on the same terms and conditions as provided herein for the exercise of the Authority Option to purchase, except that the purchase price shall be the price which complies with the provisions of this Covenant;
- f. any contract for sale or any sale or other transfer or conveyance of the NHNC Unit in violation of the provisions of this Covenant in the absence of a certificate from the Authority approving such sale, transfer or conveyance as provided in Section 4 , to the maximum extent permitted by law, shall be voidable by the

Authority by suit in equity to enforce such agreements, covenants and restrictions;
and

g. foreclosure of the Authority Mortgage.

If the Authority initiates legal or administrative action to enforce this Covenant, the Authority shall be entitled to an award of attorneys fees and other costs of bringing the action, in addition to any other relief or remedy to which it may be entitled, should it be the prevailing party.

The NHNC Unit Owner hereby grants to the Authority the right to enter upon the Premises and the NHNC Unit for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the NHNC Unit which the Authority may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the agreements, covenants and restrictions.

22. Third Party Beneficiaries. The provisions of the Covenant, including without limitation the requirement that the purchase price shall not exceed the Maximum Sale Price or the Maximum Resale Price, the requirement of Owner Occupancy, and NHNC Unit rental restrictions, may be enforced by any NHNC Unit Owner and/or Qualified Purchaser of the NHNC Unit.

23. Waiver. Nothing contained herein shall limit the rights of the Authority to release or waive, from time to time, in whole or in part, any of the restrictions contained herein with respect to the NHNC Unit. No waiver or release shall be effective unless it is in writing and executed by the Authority, and no waiver or release in one instance shall bind the Authority to give a waiver or release in another similar instance.

24. Severability. If any provision of this Covenant or the application thereof to any person or circumstance is held to be invalid or unenforceable by any decision of any court of competent jurisdiction in an action in which the Authority is a party, such decision shall not impair or otherwise affect any other provision of this Covenant, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

25. Assignment. The Authority may elect to assign its interest in this Covenant to the Town of Nantucket or to any agency or authority of the Town of Nantucket.

26. Liability. The Authority shall not be held liable for any action taken or omitted under this Covenant so long as it shall have acted in good faith and without gross negligence.

27. Indemnification. The NHNC Unit Owner from time to time, including the Grantor, and its successors, hereby indemnifies and holds harmless the Authority against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Authority or any of its agents or representatives by reason of its relationship with the Program pursuant to this Covenant.

28. Estoppel Certificate. Upon request of the NHNC Unit Owner, the owner of the Market Rate Unit, or any mortgagee of record with respect to those units, the Authority shall provide an estoppel certificate, in a form reasonably acceptable to the Authority, certifying, if applicable, the respective owner's compliance with any obligation of this Covenant. .

Executed as a sealed instrument this _____ day of _____, 20__.

Grantor: <include all owners and all mortgages>

Name:

Name:

COMMONWEALTH OF MASSACHUSETTS

County of Nantucket, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____(name of document signer), proved to me through satisfactory evidence* of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

- (as partner for _____, a corporation)
- (as _____ for _____, a corporation)
- (as attorney in fact for _____, the principal)
- (as _____ for _____, (a) (the) _____)

Notary Public
My commission expires:

**Nantucket Housing Authority:
By its Board of Commissioners**

COMMONWEALTH OF MASSACHUSETTS

County of Nantucket, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____(name of document signer), proved to me through satisfactory evidence* of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

- (as partner for _____, a corporation)
- (as _____ for _____, a corporation)
- (as attorney in fact for _____, the principal)
- (as _____ for _____, (a) (the) _____)

Notary Public
My commission expires:

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County of Nantucket, ss

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- (as _____ for _____, a corporation)
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- (as partner for _____, a corporation)
- (as _____ for _____, a corporation)
- (as attorney in fact for _____, the principal)
- (as _____ for _____, (a) (the) _____)

Notary Public
My commission expires:

EXHIBIT A: Legal Description