

NANTUCKET HOUSING NEEDS COVENANT PROGRAM

CONDOMINIUM 150 SUBPROGRAM REGULATION

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PART I: EFFECTIVE DATE

1.1 This Regulation, to be known as the Nantucket Housing Needs Covenant Condominium 150 Subprogram Regulation, became effective _____ and superseded “Nantucket Housing Needs Covenant Regulations (Ownership Dwelling Units), Nantucket Zoning Code, Chapter 139, Sec. 7(A)(2)(f) & Chapter 139, Sec. 7(G), As of March 21, 2003” as previously promulgated. Any decisions in effect on _____ relative to the superseded regulations shall remain in effect.

PART II: APPLICABILITY

2.1 This Regulation applies to matters relating to and arising under the Nantucket Housing Needs Covenant Condominium 150 Subprogram.

2.2 The Nantucket Housing Needs Covenant Program General Regulation is hereby restated and incorporated herein by reference and shall apply to this Subprogram as if fully set forth herein, except that where there is inconsistency between the General Regulation and this Regulation, this Regulation shall control.

PART III: DEFINITIONS

The Act - Chapter 301 of the Acts of 2002 of the General Court.

Adult - An individual eighteen (18) years of age or older.

Annual Recertification Filing - Submission of documentation, as requested by the Authority, to verify compliance with NHNC Unit Owner Criteria as set forth in Section 7.1 and Section 7.2. Such documentation may include, without limitation, a Household Affidavit and a Lodger Status Report.

Applicant - An entity, individual or Household, as the case may be, who wishes to obtain a Qualified Purchaser Certificate, and/or a Qualified Seller Certificate, and who wishes to otherwise participate in the Subprogram.

Authority or NHA - Means the Nantucket Housing Authority, its successors, assigns, agents, contractors and designees. The Authority shall be deemed a Qualified Purchaser and an NHNC Unit Owner.

Certificate of Compliance - 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.

Development Rights - The right to construct the NHNC Unit, as more particularly set forth in this Regulation and in the NHNC Condominium 150 Form.

Household - 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.

Household Affidavit – A form available from the Authority required of an Applicant for a Qualified Purchaser Certificate as a prerequisite to the issuance of said Certificate by the Authority, and for other purposes as may be established from time to time by the Authority in connection with this Regulation and the Subprogram.

Household Income - The annual income, as defined in 24 CFR 5.609, of the Household, adjusted in accordance with 24 CFR 5.611.

Lodger – An individual residing in the NHNC Unit, with the consent of the NHNC Unit Owner, who is not an NHNC Unit Owner nor a member of the NHNC Unit Owner’s Household.

Lodger Status Report – A form available from the Authority that may be required as part of the Annual Recertification Filing.

Market Rate Unit – 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.

Marketing Plan – A document developed to address the means and methods to be employed relative to preparing and marketing the NHNC Unit for sale. Said Plan must be submitted to the Authority for review and approval under Section 10.3, where the Market Rate Unit is sold prior to the first transfer of the NHNC Unit, and in other circumstances to be determined by the Authority, from time to time.

Maximum Resale Price – 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.

Maximum Sale Price - 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.

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) - A real property use restriction under the Subprogram recorded or registered against the title of the NHNC Unit and enforceable by the Authority in perpetuity.

NHNC Unit – 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 – Person(s) whose name(s) appear(s) on the record title of the NHNC Unit under the Subprogram.

Occupancy – The act, state or condition of actually physically living in, and actually physically taking up quarters in the NHNC Unit.

Prevailing Fixed Interest Rate – Shall be the highest rate offered by Nantucket County banks for a non-conforming 30-year fixed rate mortgage.

Principal Residence – The locality where a person resides with the present intent to make it the person’s fixed and permanent home, as evidenced by the Principal Residence Declaration.

Principal Residence Declaration - A form available from the Authority required of an Applicant for a Qualified Purchaser Certificate as a prerequisite to issuance of said Certificate by the Authority.

The Program - The affordable housing program, known as the Nantucket Housing Needs Covenant Program, created under the Act, 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 – A Household having a valid Qualified Purchaser Certificate under the Subprogram.

Qualified Purchaser Certificate – A certificate issued by the Authority to an Applicant evidencing that said Applicant has satisfied the Qualified Purchaser criteria under the Subprogram.

Qualified Seller – An entity having a valid Qualified Seller Certificate under the Subprogram.

Qualified Seller Certificate – 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 a specific parcel of real property.

Qualified Seller Counsel Assurance – 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 6.1 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.

Subprogram – 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.

Transfer Fee – Fee equal to one-half percent (0.5%) of the Maximum Sale Price, which shall be paid to the Authority by the transferor each time title to the NHNC Unit is transferred.

PART IV: PURPOSE; OVERVIEW

4.1 The Subprogram was established to assist Households with a Household Income of less than one hundred fifty percent (150%) of the Nantucket County Median Family Income in becoming NHNC Unit Owners. Chapter 139, Sections 7(A)(2)(g) and 7(G) are integral to the Subprogram. Under those Sections, a property owner having a lot with two residential dwellings thereon, excluding accessory apartments, or having the capacity to construct one or two dwellings thereon, may sell the dwelling(s), or the Development Rights, even though the dwellings and Development Rights may be in different legal or beneficial ownership, without subdividing the parcel, provided that the transaction(s) is submitted to the requirements of the Subprogram and the NHNC Condominium 150 Form.

4.2 Under the Subprogram and those Sections, the lot shall be subjected to the NHNC Condominium 150 Form and to M.G.L. c. 183A, the condominium law. The two units of the resulting condominium shall be known as the NHNC Unit and the Market Rate Unit, both of which shall be subject to the NHNC Condominium 150 Form. While the Market Rate Unit shall be minimally affected by the NHNC Condominium 150 Form, the NHNC Unit shall be extensively restricted under the NHNC Condominium 150 Form. For instance, without limitation, the NHNC Unit shall be sold to only a Qualified Purchaser by a Qualified Seller, either for the Maximum Sale Price or the Maximum Resale Price, as the case may be. The NHNC Unit, as a whole, may not be leased.

4.3 The NHNC Unit Owner shall abide by the terms and conditions of the NHNC Condominium 150 Form, shall abide by the Maximum Sale Price and the Maximum Resale Price, shall maintain Occupancy in the NHNC Unit as required hereunder, shall not lease the entire NHNC Unit, but may take in Lodger(s), and shall comply with all other applicable requirements and standards of the Program and Subprogram.

PART V: QUALIFIED PURCHASER CRITERIA

5.1 An Applicant, which shall mean the Applicant's Household, shall apply to the Authority for a Qualified Purchaser Certificate.

5.2 At the time of application, a Qualified Purchaser shall meet the following criteria:

- (a) A Qualified Purchaser shall have a Household Income of less than one hundred fifty percent (150%) of the Nantucket County Median Family Income.
- (b) A Qualified Purchaser shall have Total Household Assets equal to or less than fifty percent (50%) of the current maximum sales price.

Total Household Assets shall include the following:

- Cash in savings accounts, checking accounts, safety deposit boxes, etc.;
- Assets held in a revocable trust;
- Equity in real property or other capital accounts;
- Cash value of life insurance policies available to the applicant before death;

- Personal property held as an investment: gems, jewelry, coins collections, antique cars, etc. Personal jewelry is not included in Total Household Assets;
- Lump sum receipts or one time receipts (i.e., inheritance, capital gains, one time lottery winnings, victim's restitution, settlement on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments;
- Promissory note, mortgage, or deed of trust held by Applicant;
- IRA, 401(k), SEP, and 403B accounts; and
- Retirement and pensions funds.

Total Household Assets shall not include the following:

- Personal property (i.e., clothing, furniture, cars, wedding ring and/or other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities);
- Term life insurance policies (i.e., policies with no cash value);
- Equity in the cooperative unit in which the applicant lives;
- Assets that are part of an active business. Business does not include rental of properties that are held as investments unless such properties are the Applicant's main source of income; and
- Assets that are not effectively owned by the Applicant.

Notwithstanding the foregoing,

- i. Restricted Assets such as 401(K), SEP, IRA, 403B, pension and retirement accounts (hereinafter "Restricted Assets") will not be included in Total Household Assets, provided that the household is not currently drawing any funds from such Restricted Assets.
- ii. Restricted Assets shall be included in Total Household Assets if the household is currently drawing any funds from such Restricted Assets. In such a case, a Qualified Purchaser's Total Household Assets shall not be greater than one hundred percent (100%) of the current maximum sales price.

5.3 Nantucket County, Massachusetts shall be the Principal Residence of any Qualified Purchaser.

5.4 At the time of the acquisition of the NHNC Unit, a Qualified Purchaser shall not possess an ownership or beneficial interest in any real property situated in

Nantucket County, Massachusetts that may be used lawfully for residential purposes. Prior to the purchase of an NHNC Unit, the Qualified Purchaser shall be fully divested of all ownership or beneficial interest of any nature whatsoever in all real property located in Nantucket County, Massachusetts that may be used lawfully for residential purposes.

5.5 With respect to the Qualified Purchaser criteria set forth in Sections 5.1 to 5.4, inclusive, the Authority may request and maintain in its files, some or all of the documentation cited below, without limitation, evidencing Principal Residence, Household Income, **Household Assets**, Household membership, and ownership of real property:

- (a) Qualified Purchaser Certificate Application and Household Affidavit.
- (b) Copies of the past two years complete Federal income tax returns, with attachments (1099s, W-2s, Schedule(s)).
- (c) Pay stubs evidencing income for the most recent four weeks of employment.
- (d) Employment contracts, letters of engagement.
- (e) From Applicants that are self-employed, as defined by the Internal Revenue Code, current (year-to-date) income and expense summaries in a form acceptable to the Authority, verified by the Applicant to be true and correct.
- (f) If applicable, divorce decree or separation agreement evidencing alimony and child support.
- (g) Most recent financial accounts statements, including without limitation, CDs, Money Market Accounts, IRAs, 401Ks, **SEPs, 403Bs**, stocks, bonds, annuities, pensions, **retirement benefits**, disability benefits, insurance policies and similar cash, investment and gift accounts statements.
- (h) Driver's License, and/or other documentation customarily indicating place of residence, including without limitation voter registration records, property assessor's records, utility bills, other bills, minors' school enrollment, vehicle registration, employment, or the Principal Residence Declaration.
- (i) Contracts, judgments, decrees, awards and settlements.

(j) Deeds, trusts, mortgages and other instruments evidencing ownership and/or beneficial interests in real or personal property. If an Applicant for a Qualified Purchaser Certificate possesses an ownership or beneficial interest in real property located in Nantucket County, Massachusetts, the Applicant shall submit to the Authority an appraisal of the property performed by a licensed, qualified appraiser within six (6) months of the submission of the Qualified Purchaser Certificate Application.

(k) And other information as may be required as indicated on the Qualified Purchaser Certificate Application, or on other forms the Authority may develop from time to time in order to verify Principal Residence, Household Income, **Total Household Assets**, Household membership, and ownership of real property, and to otherwise implement this Regulation and the Subprogram. Applicants for Qualified Purchaser Certificates, if requested by the Authority, shall execute an authorization and release enabling the Authority to obtain a copy of the loan application from the lender providing the purchase money for the NHNC Unit, and to obtain third-party verifications of all other information required of Applicant under this Regulation and the Subprogram.

5.6 A Qualified Purchaser shall be responsible for those acts and expenses that are customarily assumed by a purchaser of real property, such as, without limitation, recording fees for the deed to the NHNC Unit, recording fees for purchase money mortgage and other documents to be recorded against the title of the NHNC Unit, and lender's attorney's fees.

5.7 The Authority shall within thirty (30) days of receipt of a complete application make a decision with respect to the application. In the event the Authority denies the application, it shall furnish the Applicant with a written explanation setting forth with reasonable particularity the basis for the denial. Issued Qualified Purchaser Certificates are non-transferable and are valid for one (1) year from the date of issuance.

PART VI: QUALIFIED SELLER CRITERIA

6.1 An Applicant shall apply to the Authority for a Qualified Seller Certificate, which application shall include a Qualified Seller Counsel Assurance. With respect to the Qualified Seller criteria set forth in this Section 6.1, the Authority may request, and maintain in its files, in addition to the Qualified Seller Counsel Assurance, documentation, determined by and acceptable to the Authority, which evidences Applicant's consent to comply with the requirements set forth below:

(a) A Qualified Seller shall abide by the Maximum Sale Price or Maximum Resale Price.

(b) A Qualified Seller shall pay the Transfer Fee.

(c) A Qualified Seller shall be responsible for preparing, in accordance with M.G.L. c. 183A, and the NHNC Condominium 150 Form, the documents and plans requisite to the creation of the condominium of which the NHNC Unit shall be one unit and the Market Rate Unit the other unit.

(d) A Qualified Seller shall be responsible for obtaining all applicable federal, state and local permits, approvals and licenses, and those approvals set forth in the NHNC Condominium 150 Form, required in order to utilize the condominium and the NHNC Unit for the purposes contemplated in the Subprogram.

(e) A Qualified Seller shall be responsible for those acts and expenses that are customarily assumed by a seller of real property, such as, without limitation, recording fees for release or discharge of seller's mortgage(s) and preparation and execution of the deed to the NHNC Unit.

(f) And other information as may be required as indicated on the Qualified Seller Certificate Application, the Qualified Seller Counsel Assurance, or on other forms the Authority may develop from time to time in order to verify compliance with this Section 6.1, and to otherwise implement this Regulation and the Subprogram.

6.2 The Authority shall within thirty (30) days of receipt of a complete application make a decision with respect to the application. In the event, the Authority denies the application, it shall furnish the Applicant with a written explanation setting forth with reasonable particularity the basis for the denial. Issued Qualified Seller Certificates are non-transferable and are valid for one (1) year from the date of issuance.

PART VII: NHNC UNIT OWNER CRITERIA

7.1 At least one Adult member of the NHNC Unit Owner's Household shall maintain Occupancy in the NHNC Unit for not less than ten months for each consecutive twelve-month period, except that this Section 7.1 shall not apply where every Adult member of the NHNC Unit Owner's Household:

(a) Has employment obligations, evidenced by documentation acceptable to the Authority, that absents them from Nantucket County, Massachusetts for a period of time such that fulfillment of the Occupancy requirements is impracticable.

(b) Can document, to the Authority's satisfaction, three (3) prior years of residency in Nantucket County, Massachusetts.

(c) Owns no real property that may be occupied lawfully as a residence, whether acquired prior to or subsequent to the NHNC Unit Owner's acquisition of the NHNC Unit.

(d) Has, or will have, no Lodger or Lodgers in the NHNC Unit.

(e) Is not self-employed, as defined by the Internal Revenue Code.

7.2 No NHNC Unit Owner, nor any other party, shall lease any NHNC Unit as a whole, but may permit a Lodger or Lodgers to occupy a portion of the NHNC Unit.

7.3 Annually, following acquisition of the NHNC Unit, the NHNC Unit Owner shall comply with the Annual Recertification Filing.

PART VIII: THE NHNC UNIT CRITERIA

8.1 As a condition of the initial transfer of the NHNC Unit, the Qualified Purchaser and the Qualified Seller shall agree to execute and cause to be duly recorded or registered, as the case may be, an NHNC Condominium 150 Form.

8.2 Title to the NHNC Unit shall vest only in individuals, mortgagees thereof, or the Authority, but not in trustees, corporations, or like entities.

8.3 No transfer of an NHNC Unit shall be valid unless and until a Certificate of Compliance is fully executed and duly recorded with the Nantucket County Registry of Deeds or duly filed with the Nantucket County Registry of Deeds Land Court Department.

8.4 The NHNC Unit shall comply with all other applicable requirements and standards as set forth in the NHNC Condominium 150 Form.

8.5 Where the owner of the prospective Market Rate Unit and the prospective NHNC Unit elects to convey the Market Rate Unit and to retain

ownership of and reside in the NHNC Unit, said owner shall first obtain a Qualified Seller Certificate and a Qualified Purchaser Certificate and shall pay the Transfer Fee.

PART IX: DEVELOPMENT RIGHTS

9.1 The Development Rights may be sold to any entity that may legally hold an interest in real property in the Commonwealth of Massachusetts, provided that if the Development Rights are sold to an individual(s) who will reside in the NHNC Unit once constructed, the Development Rights must be sold to a Qualified Purchaser.

9.2 The first transfer of the Development Rights shall be for a sum not to exceed the Maximum Sale Price.

9.3 Any retransfer of the Development Rights shall be for a sum not to exceed the purchase price of the Development Rights plus customary, reasonable closing costs associated with the retransfer of the Development Rights, subject to the Authority's approval of such closing costs.

PART X: INHERITANCE; DONATION OF NHNC UNIT

10.1 Ownership of the NHNC Unit may be transferred pursuant to due action by a probate court or other court of competent jurisdiction. In the event of inheritance, the transferee of the NHNC Unit shall be deemed a Qualified Purchaser and shall be subject to the NHNC Unit Owner Criteria.

10.2 The NHNC Unit may be transferred for no consideration (donation). In the event of a donation of the NHNC Unit, the donee of the NHNC Unit shall be deemed a Qualified Purchaser and shall be subject to the NHNC Unit Owner Criteria.

10.3 In the event any transferee of an NHNC Unit under Sections 10.1 and 10.2 hereinabove elects not to occupy the NHNC Unit, said transferee shall, within forty-five (45) days from the date it obtains the legal right to occupy the NHNC Unit, submit a Marketing Plan to the Authority for review and approval. Said transferee shall in good faith institute the Marketing Plan and shall timely transfer the NHNC Unit as prescribed in said Marketing Plan.

PART XI: IMPLEMENTATION OF THE SUBPROGRAM

11.1 In addition to the documents and forms identified in this Regulation, the Authority, from time to time, may develop, use and require other documents,

forms, certificates, checklists, informational bulletins, and the like, in order to implement, administer and enforce the Subprogram and this Regulation.

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