

MEMORANDUM

TO: Jamie Feeley and Josh Posner  
Surfside Crossing LLC

FROM: Janet Steckel Lundberg   
Krokidas & Bluestein

CC: Arthur Reade, Esq.

RE: Surfside Crossing LLC – Proposed Condominium Restrictions

DATE: March 21, 2019

You requested that we provide a summary and review of potential fair housing issues that may arise in connection with a portion of the housing development you propose, known as Surfside Crossing, which will be located at 3, 5, 7, & 9 South Shore Road on Nantucket (“Surfside”). You have informed us that the overall development consists of 100 units of housing under a plan you submitted on September 26, 2018. This review and summary of potential fair housing issues is limited to the policy that is proposed for 45 condominium units that will be sold with certain restrictions to individual households and to Nantucket nonprofits. In addition to these 45 condominiums being developed, the Surfside project includes 15 affordable condominium units (as well as 10 affordable single family cottages) for income eligible families in accordance with M.G.L. c. 40B and the 40B regulations, as well as the 30 single family market rate cottages.<sup>1</sup> You have provided us with the proposed policy that will govern the restrictions to be imposed on the ownership and occupancy of the 45 condominiums, entitled “Restrictions for Condos, 60 Condos”, which is attached. The portion of the policy addressing the 45 condominium units (the portion we are reviewing) is Section B, entitled “45 Non-40B units – in two Categories”. Section B is hereinafter referred to as the “Policy”. We have relied on that Policy as an accurate description of the restrictions and occupancy requirements you intend to impose on the 45 condominiums.

This memorandum addresses generally the risk that the restrictions you intend to impose in connection with the Policy would be found to constitute housing discrimination under the federal Fair Housing Act, 42 U.S.C. 3601, et seq (“FHA”) and the Massachusetts fair housing law, G.L.c. 151B, §4. We did not specifically consider the potential statistical impact of the proposed restrictions contained in the Policy on any particular class of persons protected against housing discrimination by the FHA or c. 151B.<sup>2</sup> This is because, as you know, we did not obtain

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<sup>1</sup> This review does not address either the 40B condominium units and single family cottages, or the market rate single family cottages.

<sup>2</sup> The FHA prohibits housing discrimination on the basis of race, color, gender, religion, national origin, disability and familial status. C. 151B prohibits housing discrimination on the same bases, and in addition on the basis of gender identity, sexual orientation (with certain limitations), genetic information or ancestry, as well as

and were not provided by you with information about comparative demographics on Nantucket or elsewhere in Massachusetts, and because making such a demographic analysis would have required extensive expert study and analysis that we were not engaged to perform or obtain. In addition, we did not investigate or consider any fair housing program requirements associated with potential financing for Surfside, *inter alia*, because we were provided no information concerning such financing. Please see further limitations on the subjects we considered or reviewed in the discussion of fair housing issues below.

This memorandum is wholly based on facts concerning Surfside and the Policy that were provided to us by you. We made no independent investigation of any facts and relied on those facts you provided. Our conclusions in this memorandum constitute our assessment from a fair housing standpoint of your legal risks in implementing the Policy. The fair housing issues addressed below involve relatively new fair housing case law, which has not been fully applied by the courts to date with respect to the fair housing issues addressed. In addition, the fair housing issues addressed would be reviewed, if challenged, based upon the particular facts and circumstances presented in each case and the particular fair housing claims made by plaintiffs. Any conclusions or assessments stated herein do not constitute guarantees of any particular result in any fair housing claim brought with respect to Surfside or the Policy, or that an independent investigator, investigative agency or court reviewing any complaint made would reach the same conclusions as set forth herein.

The assessment and analysis in this memorandum are made as of its date, and do not address legal developments, circumstances or events which may occur subsequent to such date. Further, we undertake no obligation to advise you of any changes in, or any new developments which might affect, any matters set forth in this memorandum. This memorandum is furnished to you solely for your benefit and, while you may choose to share it with others for review, it may not be used, quoted from or relied upon by any other person, entity or government agency.

### **Surfside and the Policy**

You have represented that the 45 condominium units will be moderately priced (by Nantucket standards) at a level that is affordable to middle-income households. At least 30 of them will be offered to individual households (“Condo Units”). Although there will be no income restrictions associated with the purchase of the Condo Units, you have represented that the goal of the occupancy restrictions set forth in the Policy with respect to the Condo Units will be to facilitate purchase of those Units by middle-income, “work force” families/households who will use the units as their primary residences. The other units (up to 15) will be reserved for sale to “Nantucket Nonprofit Organizations” for use for “approved mission-related purpose”, including the housing of persons who are employed by or provide services to such Nonprofit

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based on the receipt of subsidy or the status of veterans. In particular, without limitation, we did not address the potential for a claim of subsidy discrimination under c. 151B, §4(10).

Organizations as a benefit related to their employment or services (“Nonprofit Units”). You informed us that the proposed restrictions contained in the Policy would be included in the terms of the 40B permit issued for the development overall, which would likely require that the terms of the restrictions be recorded, and also would be codified in the condominium’s governing documents.

In the Policy, you have provided the expressed purpose for the restrictions as follows:

Public Purpose: There is a severe shortage of homes in a price range affordable to middle income, “work force” residents who work on Nantucket and have their primary residence on Nantucket, but who earn more than the 80% of Area Median Income that would qualify them to purchase an affordable unit under Chapter 40B. Typically, there are only a few homes for sale on the island that are listed at or less than \$750,000.00 that are in the range affordable to work force households. The purpose of the restrictions contained in this policy, as to Category 1 described below, is to provide home ownership of the condominium units that will be priced to reach this middle-income, work force group. A related purpose of the restrictions contained in this policy, as to Category 2 described below, is to provide non-profit organizations on Nantucket the opportunity to own units for use in furtherance of their charitable mission-related purposes for the benefit of the Nantucket community, because the same housing shortage has resulted in limited opportunities for Nantucket non-profits to own such units.

As stated in this Policy, you have told us that the restrictions being placed on the Condo Units are intended to help address a significant shortage on Nantucket of affordable home ownership opportunities for its middle-income, “work force” residents – e.g., teachers, police officers, firefighters, skilled tradespersons, professionals, and other similar economically middle-class workers, including dual earning households, who can ill-afford the high-priced real estate on the island. As such, the sale of those Condo Units will be only to families/households who commit to making Nantucket their primary residence (i.e. households that are “year-round” residents) and who will be required to remain so while owning the Condo Units. “Primary residence is defined in the Policy as 183 days in the aggregate in a calendar year, as Massachusetts residence is defined for tax purposes in G.L.c. 62, §1(f). Occupancy is limited to “single family occupancy”, which is defined as one or more persons occupying a dwelling unit and living as a single household, as defined in Nantucket Zoning Code s. 139-2.

The Policy bars rental of the Condo Units, except for one rental of no more than 30 days per year. You have represented that the purpose of this limited rental exception is to allow work force households to have an opportunity to bring in extra income for a short period of time if they so desire.

Although there will be no formal income restrictions associated with the purchase of the Condo Units, you have informed us that your intention is that each of the restrictions (primary

residence, no long term rentals and single family occupancy) will make ownership of the units most accessible to the group you propose to reach -- “work force”, middle-income, “year-round” residents of Nantucket as home ownership opportunities. Likewise, you have told us that you believe that the housing and other real estate needs of Nantucket Nonprofit Organizations are underserved and that the proposed sales of the Nonprofit Units would thus provide a public benefit to Nantucket. With respect to both the Condo Units and the Nonprofit Units, the restrictions in the Policy will apply for 30 years, including upon resale of the units.

### **Fair Housing Issues**

In reviewing the Policy as it applies to the Condo Units, we identified three potential areas that could give rise to fair housing issues<sup>3</sup> – the possibility that the primary residence requirement could be considered to be a discriminatory “local preference”, the prohibition on rentals of more than 30 days, and the single family occupancy requirement. With respect to these three issues, we make the following initial observations.

1. Local Preference. As presently stated, the primary residence aspect of the Policy for the Condo Units simply requires that buyers be existing “year-round” residents of Nantucket or commit to making Nantucket their primary residence upon purchase. Our review of the law indicates that local preferences given to existing residents of a municipality are generally upheld against constitutional challenges (e.g. based on the right to travel and immigrate), so long as there is no durational residency requirement attached to the preference. Such preferences for existing residents (without durational requirements) are considered to be “bona fide residency requirements.” Under these standards, the primary residence requirement of the Policy would constitute a “bona fide residency requirement” which would likely be upheld against a constitutional challenge.

2. Rental Restriction. In general, zoning statutes prohibiting rental housing in certain districts are subject to “strict scrutiny” by the courts to determine their constitutionality because of the potentially arbitrary restriction on owners’ property rights. However, such statutes are generally upheld against constitutional challenge if a municipality can articulate a legitimate public interest being served. Likewise, private restrictions on rental housing (e.g., condo association rules barring rental) are generally upheld against owner challenges.

3. Single Family Occupancy. In general, single family zoning is upheld if the term “family” is not too narrowly defined. For example, too narrow a definition might be deemed to exclude minorities from cultures with traditions of large extended families living together. In addition, more recent law on associational rights favors allowing individuals to define their families as they see fit. To avoid such pitfalls, the Policy has adopted the Nantucket Zoning

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<sup>3</sup> The Nonprofit Units are addressed, along with the Condo Units, in the general fair housing discussion below.

Code definition of “family” as “[o]ne or more persons occupying a dwelling unit and living as a single household.” Nantucket Zoning Code §139-2. In addition, single family zoning may not be used to block purchase of the Condo Units for use as group housing for the disabled (including those in addiction treatment) or elderly. The Nantucket Zoning Code specifically permits in all zoning districts group residences for, among other things, disabled persons, the elderly or “others for whom social-welfare programs may be provided.” Nantucket Zoning Code §139-14. Likewise, the so-called “Dover Amendment” of the Massachusetts Zoning Act exempts educational uses by non-profit educational corporations (which has been deemed to include residences for the mentally ill, intellectually challenged, or those suffering from substance abuse) from zoning restrictions aside from specified reasonable regulations. G.L.c. 40A, §3. Most importantly, the FHA specifically bars discrimination against the disabled in zoning and requires reasonable accommodation of the disabled in housing. In this regard, the Policy explicitly exempts the application of the single family occupancy requirement “as required by federal or state fair housing laws applicable to group homes for the disabled or elderly.” Thus, under the Policy, the Condo Units could be sold for use as group homes (and the Nonprofit Units could be sold to Nantucket Nonprofit Organizations for use as group homes if that use is within their charitable purposes).

Turning to the general fair housing issues, the FHA and c.151B prohibit discrimination in the sale, rental, or financing of dwellings and in other housing-related activities with respect to the protected classifications described above. Both laws would apply to the sale of private housing at Surfside. Both statutes prohibit intentional discrimination, *i.e.*, disparate treatment of protected classifications, as well as unjustified discriminatory effect (without intent), *i.e.*, disparate impact. This was recently made clear in two cases -- Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc., 135 S.Ct. 2507 (2015) (“Inclusive Communities”), and Burbank Apartments Tenant Association v. Kargman, 474 Mass. 107 (2016) (“Burbank”).

With respect to intentional discrimination, the Policy does not explicitly involve or address protected classifications of individuals or families. Therefore, it does not on its face give rise to questions of intentional discrimination. It should be noted, however, that intentional discrimination claims with respect to Surfside could also arise from the manner in which the Policy is implemented, from statements or actions which indicate a *sub rosa* discriminatory intent despite the facial neutrality of the Policy, or from improper, discriminatory marketing procedures or actions. Although we are not aware of any such possible bases for an intentional discrimination claim with respect to Surfside, we did not look into or consider such factual matters as part of our engagement.<sup>4</sup>

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<sup>4</sup> It should also be noted that we were previously involved in a litigation matter where the plaintiffs asserted that the goal of providing “work force housing” constituted intentional discrimination because it indicated an intent to exclude lower income persons from such housing. High Point Families United v. Stony Brook Commons Company, No 07H84CV000779 (Boston Housing Court). However, the court in that case rejected, and entered

As a result, the remainder of this memorandum considers only the potential for claims of disparate impact. Inclusive Communities endorsed a 3-part burden shifting approach to determining whether housing discrimination under the FHA has occurred as a result of disparate impact.<sup>5</sup> Just prior to that decision, HUD had done the same, in regulations approved by the Court in Inclusive Communities. 78 Fed. Reg. 11460 (February 15, 2013); 24 CFR 100.500. Briefly, a plaintiff must show a prima facie case of either disparate impact or perpetuation of segregation resulting from a “housing policy”.<sup>6</sup> In this regard, statistical disparities alone are not sufficient to state a prima facie case. Rather, a plaintiff must show that the policy itself actually caused those statistical disparities. A high standard, requiring a showing of a “robust causality” between the policy and any statistical disparity, applies at this stage. 135 S.Ct. at 2523. If a prima facie case is made, the burden shifts to the defendant to prove that the challenged practice is necessary to achieve one or more of the defendant’s “substantial, legitimate, nondiscriminatory interests”. If the defendant does so, the plaintiff may still establish liability by showing that such legitimate interests could be served by a practice that has a less discriminatory effect. Burbank, 474 Mass. at 126; 78 CFR 100.500(c)(2).

Under the first prong of the disparate impact standard (prima facie case), the Policy would likely be considered to be a generally applicable policy or practice rather than a single business decision, given that it would be enacted by the Town of Nantucket in a comprehensive permit. However, to make a prima facie case, a plaintiff would also have to allege convincingly (with a robust connection) that the Policy itself caused some sort of legally significant statistical disparity with respect to protected class members who were prevented by the restrictions in the Policy from buying or renting the Units.

In this regard, as discussed above, we did not undertake any demographic analyses that would illuminate whether such an actionable statistical disparity could be successfully alleged as a result of the aspects of the Policy identified above. Therefore, we cannot determine whether such a prima facie case could be alleged. However, we note the following with respect to the Condo Units. First, some of the restrictions have been broadened to be more inclusive of protected classes. The primary residence requirement is structured such that it will not prevent off-island applicants from fulfilling the requirement. Thus, to the extent that a plaintiff could show that a greater percentage of protected class members presently reside off-island than on Nantucket, the Policy will not prevent off-islanders from more diverse areas from having the

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judgment for the defendants on, that claim. In addition, since the inception of that case, the concept of “work force housing” has gained credence as an important public policy goal for housing in Massachusetts. See the discussion of the need for “work force housing” on Nantucket below.

<sup>5</sup> In Burbank, the Massachusetts Supreme Judicial Court determined that the same analysis should be applied under the “cognate” Massachusetts fair housing statute, c. 151B, §4. 474 Mass. at 120, 126.

<sup>6</sup> The housing policy, under this scenario, is a generally applicable policy or practice, not a single business decision. 135 S.Ct. at 2523.

opportunity to apply for and purchase the Condo Units. Likewise, the single family/household definition is sufficiently flexible to prevent the exclusion of many types of protected classes. Moreover, the Nantucket “Workforce Housing Needs Assessment” (April 2015) (“Workforce Needs Assessment”) suggests that Nantucket is actually slightly more racially and ethnically diverse than the Commonwealth of Massachusetts as a whole (at p. 9-11).

While all of these factors would be generally helpful in the prima facie analysis, they do not address the possibility that the demographics of specific groups who are barred by the Policy from owning or renting the Units might be more diverse than single family, full time homeowners. These groups could include, *inter alia*, long term renters (vs. homeowners), persons who wish to purchase the units as investment properties but are unable to live on Nantucket as a primary residents, or non-single family renters or buyers. Thus, while we believe that potential plaintiffs would have difficulty in adequately alleging a legally significant prima facie statistical disparity (and a “robust causality” between any statistical disparity and the Policy), it is possible that they could do so with respect to the Condo Units. In this regard, if you use the 40B Affirmative Fair Housing Marketing Plan in the marketing of the Condo Units (as you have indicated you intend to do), such a marketing plan, and the results it achieves, could be helpful in addressing a claim of statistical disparity.<sup>7</sup>

If a plaintiff were able to allege a sufficient prima facie case, Surfside would then have available, in the second prong of the disparate impact standard, a significant argument that the Policy serves its “substantial, legitimate, nondiscriminatory interests”. As discussed above, Surfside’s goal with the restrictions contained in the Policy is to make homeownership available to the year-round, work force population such as middle-income teachers, firefighters, small business owners, skilled-tradespersons, professionals, etc.<sup>8</sup> As the Town of Nantucket itself has stated,

...[t]here is an undeniable shortage of price-appropriate housing for people with year-round, living-wage employment: the professional, technical, administrative, education, and health care employees of public- and private-sector establishments.

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<sup>7</sup> We view the possibility that plaintiffs could make a prima facie showing of statistical disparity with respect to the Nonprofit Units to be unlikely. Aside from the considerations just mentioned, the number of Nonprofit Units will be very small, making an identifiable statistical disparity with respect to these Units difficult. Moreover, in regard to these Units, the more significant argument is the “legitimate purpose” being served, addressed below.

<sup>8</sup> You believe that the primary residence and single family requirements, as well as the rental ban, will facilitate sales to such year round, middle income, work force Nantucket residents, as opposed to seasonal residents, and that the rental ban will prevent investment property purchases as well. You intend that these aspects of the Policy will therefore result in more sales to middle income work force households than might otherwise occur. You also believe that your pricing structure will be affordable to middle income, work force households.

Workforce Needs Assessment, p. 6.<sup>9</sup> Thus, to the extent that the restrictions in the Policy are successful in implementing the purposes espoused by the Policy, it will, with respect to the Condo Units, serve a public purpose by assisting in alleviating a recognized shortage of homeownership opportunities for work force employees.<sup>10</sup>

With respect to the Nonprofit Units, Surfside likewise has a strong argument that support of local nonprofits and their charitable missions is “substantial, legitimate and nondiscriminatory”. Presumably (although it cannot be confirmed at this time), the Nonprofits that will access the Nonprofit Units each, in its own way, serves a purpose that is beneficial to the Nantucket community at large. Thus, favoring them with a small number of units would likely be deemed legitimate even in the unlikely event that a prima facie showing of statistical disparity for protected classes can be shown with respect to the sale of the Nonprofit Units.

Finally, assuming that Surfside can demonstrate that the Policy and its restrictions serve a legitimate and important public purpose, any plaintiff seeking to make a disparate impact claim would have the opportunity to demonstrate that that Policy could be achieved by less discriminatory alternatives. It seems unlikely that potential plaintiffs could do so. As mentioned, the primary residence requirement does not prevent applicants from any area (including more diverse areas) from applying and the single family definition is broad. Thus less “discriminatory” alternatives to those restrictions would be difficult to identify. However, plaintiffs could assert that there are alternatives to those restrictions and the rental ban that might arguably result in less impact on protected classes who are only able to rent, live on-island seasonally, or live in roommate situations. For instance, the Policy could permit longer term rentals by families as well as groups who commit to year-round residence on Nantucket, or could permit seasonal rentals. However, you assert that those alternatives would not serve the Policy

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<sup>9</sup> In addition, Nantucket is recognized by HUD as one of three rural difficult development areas in Massachusetts, which are places where unaffordable land and housing prices impede the production of housing for low- and moderate-income residents. 2019 IRS Section 42(D)(5)(B) Nonmetropolitan Difficult Development Areas, U.S. Department of Housing and Urban Development, <https://www.huduser.gov/portal/Datasets/qct/DDA2019NM.PDF>.

<sup>10</sup> We note, however, that we make no judgment as to whether the Policy as structured can or will actually result in greater homeownership for Nantucket’s work force housing population. As you acknowledged, the restrictions imposed are intended to encourage such buyers, but nothing in the Policy directly enforces work force ownership nor prevents non-work force or higher income persons from purchasing the Condo Units. Likewise we make no judgment as to whether the length of the primary residence requirement or the pricing of the Units that will be utilized serves the expressed purpose of the Policy. If, in practice, the Policy is not successful in furthering the public purpose it espouses, that would undercut Surfside’s ability to claim a legitimate interest in implementing the restrictions in the policy. Finally, we are not able definitively to conclude that the goal of work force homeownership itself (as you have defined it in the Policy) would be upheld by the courts in a disparate impact analysis as a legitimate, non-discriminatory reason supporting the restrictions. We found no specific authority on that point. However, as mentioned above, it is our understanding that support of work force housing is a widely acknowledged goal in housing policy generally, although the Policy does not specifically define the work force housing population and, as the Workforce Needs Assessment notes, there are in fact varying definitions of the income levels that should be considered “workforce”. Workforce Needs Assessment, p. 45.

since, at its core, it is specifically intended to create home ownership opportunities for full time, middle income, work force Nantucket residents. As stated above, that is a supportable public policy goal. Finally, in the unlikely event that some less restrictive alternative is identified that still serves the purposes of the Policy, the Policy contains a proviso allowing for alterations as required by fair housing law.<sup>11</sup>

### **Conclusion**

In light of the foregoing analysis (and subject to the provisos, caveats and limitations expressed), we conclude that the restrictions contained in the Policy may reasonably be viewed as defensible against any potential claims of housing discrimination, including asserted unlawful disparate impact.

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<sup>11</sup> Of course, group homes for the disabled and elderly are already specifically exempted from the single family requirement, as mentioned above.

**Restrictions for Condos**  
**60 Condos**

**A. 15 Units Restricted under Chapter 40B (households earning up to 80% AMI)**

**B. 45 Non-40B units - in two Categories**

Public Purpose: There is a severe shortage of homes in a price range affordable to middle-income, “work force” residents who work on Nantucket and have their primary residence on Nantucket, but who earn more than the 80% of Area Median Income that would qualify them to purchase an affordable unit under Chapter 40B. Typically, there are only a few homes for sale on the island that are listed at or less than \$750,000.00 that are in the range affordable to work force households. The purpose of the restrictions contained in this policy, as to Category 1 described below, is to provide home ownership of the condominium units that will be priced to reach this middle-income, work force group. A related purpose of the restrictions contained in this policy, as to Category 2 described below, is to provide non-profit organizations on Nantucket the opportunity to own units for use in furtherance of their charitable mission-related purposes for the benefit of the Nantucket community, because the same housing shortage has resulted in limited opportunities for Nantucket non-profits to own such units.

**Category 1: At least 30 units- available for households committing to be Nantucket Residents using purchased units as their primary home**

- Applicants will be selected by a lottery which will operate according to similar procedures as the separate lottery for 40B eligible (80% AMI) applicants. There is no income qualification for these buyers, but as stated above, the pricing structure and primary home requirements are intended to make these units accessible to middle income, work force households.
- Ownership and occupancy will be restricted to (i) households consisting of families for whom the unit will be used as their primary residence, whether or not such households are current residents of Nantucket at the time of purchase, and (ii) single family occupancy.

“Primary residence” means that the unit is occupied by the owner’s household for at least one hundred eighty-three (183) days in the aggregate per calendar year. “Family(ies)” means one or more persons occupying a dwelling unit and living as a single household, as defined in Nantucket Zoning Code s. 139-2.

- Rentals of a unit by the owner shall be limited to one rental/lease per calendar year for a period of up to 30 days. Multiple rentals/leases during the one permitted 30 day rental period are prohibited. Owner must register any proposed rental in advance with the condominium property manager and receive approval prior to rental so that tenant contact

information and other pertinent information is available to the condominium management company. There shall be no boarders or sublets.

- Duration and limitation on sales:
  - The duration of these restrictions is thirty (30) years from initial sale.
  - There is no sale price restriction or income qualification for buyers, but the resale must be only to an eligible purchaser meeting these occupancy requirements.
  - All aspects of the restrictions and resale requirement will be controlled by a deed restriction, with oversight and enforcement by a monitoring agent of the condominium management company.
  - There is no lottery for resale units.

### **Category 2: Up to 15 units Prioritized for Nantucket Nonprofit Organizations**

- Will be offered for sale to Nantucket Nonprofit Organizations for use in furtherance of their charitable mission-related purposes. These units may not be rented or leased by the non-profits to others, but may be occupied, as residences or otherwise, for purposes related to the non-profits' charitable mission-related purpose (see examples below).
- “Nantucket Nonprofit Organization” shall mean Internal Revenue Code s. 501(c)(3) tax exempt organizations based in Nantucket which are a cultural, environmental, social welfare, health, religious, recreational or educational organizations.
- If fewer than 15 Nantucket Nonprofit Organizations seek to purchase units under this program, any remaining units will be added to Category 1.
- For units sold to Nantucket Nonprofit Organizations, no sub-lease or rental of a unit or any room or bed to a boarder is permitted.
- Examples, without limitation, of “mission-related purpose” mentioned above: Example #1: Holidays for Heroes offers a week (or multiweek) vacation on Nantucket to selected disabled vets as part of a program. Example #2: Nantucket Nonprofit Organization provides housing to persons who are employed by or provide services to the non-profit where lodging at the unit serves the non-profit's mission-related purpose, e.g., (a) The Dreamland Foundation uses a unit to house actors rotating through for changing performances; (b) a unit purchased by hospital for use by health care providers (physicians, nurses, etc.) rotating through as part of an established program; (c) units provided longer term employees who receive housing as part of their employment package.
- Resale: Units owned by Nantucket Nonprofit Organizations may be resold either to households committing to be Nantucket residents using purchased units as their primary residence under the rules set forth in Category 1 above or to another eligible Nantucket Nonprofit Organization. All other rules for resale of units by individuals as set forth in Category 1 above shall apply (See “Duration and limitations on sales” above). In the first

30 years following the issuance of the comprehensive permit, there may not be more than 15 units owned by Nantucket Nonprofit Organizations at any given time.

**Proviso**

All of the above restrictions concerning ownership, occupancy and rentals of units shall be applicable except as required by federal, state or local fair housing laws. Without limitation to the foregoing proviso, the single-family restriction set forth above shall not be applicable, to the extent required by federal, state or local fair housing laws, to group homes for the disabled or elderly.