

DRAFT

MONITORING SERVICES AGREEMENT TEMPLATE

This Agreement entered into this day of , 2022 (The "AGREEMENT"), by and between {Monitoring Agent} (the "Monitoring Agent") and {Developer} (the "Developer")

WITNESSETH

WHEREAS, The Town of {Municipality} has agreed to provide municipal subsidy for the purpose of financing a project containing # (number) single family residential housing units located on {Street Address} in {Municipality}, Rhode Island (the "Development").

WHEREAS, the Development has received a comprehensive permit from the Local Review Board of the Town of {Municipality} ("Municipality") under Rhode Island General Laws, Chapter 45-53 and the Town of {Municipality} has provided a municipal subsidy.

WHEREAS, Pursuant to Rhode Island General Laws, Chapter 45-53, # (number) of the units in the Development (the "Affordable Units") are required to be sold to households whose incomes do not exceed {#} % ({#} per cent) of the median income, adjusted for household size for the {MSA} Metropolitan Statistical Area. The maximum initial purchase price shall not exceed \$ {Maximum Purchase Price}. (XX thousand dollars and 00/100) for a {#}-bedroom Affordable unit. In addition, the Affordable units will be subject to deed restrictions governing resale (the "Affordability Requirement") for a period of {#} years.

WHEREAS, the Developer has agreed to retain the Monitoring Agent to perform monitoring and enforcement services regarding compliance of the Development with the Affordability Requirement.

WHEREAS, the Monitoring Agent has demonstrated expertise in compliance monitoring and stable financial evidence such that it is reasonable to anticipate it will be in existence for the period of the Affordability Requirement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

Section 1. Monitoring Services.

- A. Monitoring Agent shall monitor the compliance of the Project with the Affordability Requirement including:
- (i) Review of the substantive compliance of the Development with the Affordability Requirement.
 - (ii) Review of income certifications, deeds and deed riders with respect to initial sales of Affordable Units.
 - (iii) Certifying to the owners of Affordable Units as to the maximum resale price which households having incomes not in excess of {#}% of the average median income for the {MSA} Metropolitan Statistical Area (adjusted for family size), can pay for an Affordable Unit. The maximum resale prices must be approved by the Monitoring Agent prior to the time the marketing period commences for the Affordable Units. A statement to potential buyers informing them of the Affordability Requirement must be included in the purchase and sales agreements for the Affordable Units.
 - (iv) Monitoring of re-sales of Affordable Units for compliance with the terms of the applicable deed riders and issuance of certifications, as appropriate, approving re-sales.
- B. The Monitoring Agent shall work with in-place and prospective owners to understand ongoing subsidizing program requirements and restrictions including at least annual notice to owners of Affordable Units.
- C. The Monitoring Agent may provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Development and the Developer with the Affordability Requirement. The services under this Agreement shall not include any construction period monitoring. The services under this Agreement shall include follow-up discussions with the Developer, if appropriate, after an event of noncompliance.

Section 2. Monitoring, Services Fee.

- A. The Monitoring Agent shall receive a fee of \${{#}}. (XX Fifteen Hundred Dollars) from the Developer to be paid from the proceeds of the initial sale of each affordable unit. Such fee shall constitute payment for the services of the Monitoring Agent with respect to the initial sales of the Affordable Units and all future sales of the Affordable Units for the entire term of the Affordability Requirement Period.

Section 3. Enforcement Services.

- A. In the event of serious or repeated violations of the requirements of this Agreement, the Monitoring Agent shall have the right, at its discretion, to take

appropriate enforcement action against the Developer, including, without limitation, notice to the Municipality and/or to the lender Bank of noncompliance and the potential decertification of these units as low and moderate income housing, or legal action to compel the Developer to comply with the requirements of the Agreement. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing this Agreement against the Developer and to seek an attachment, including an attachment of the interest of the Developer in the Development in connection with any action to recover its fees and expenses.

- B. In the event of a violation of the provisions of a deed rider, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Affordable Unit owner or the unit owner's successors in title, including, without limitation, the Municipality and/or to the Bank of noncompliance and the potential decertification of these units as low and moderate income housing, or legal action to compel the Affordable Unit owner to comply with the requirements of the relevant deed rider. The form of deed rider will provide for payment by the Affordable Unit owner of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Affordable Unit owner thereunder or under this Agreement. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing a deed rider against the Affordable Unit owner and in any action to seek an attachment of the relevant unit to secure payment of such fees and expenses and to assert a lien against the unit as provided in the deed rider.
- C. Nothing in this Agreement shall be construed to require the Monitoring Agent to expend more than \$2,000 in enforcing the provisions of the Agreement or to take any particular enforcement action against the Developer or Affordable Unit owner.

Section 4. Term.

- A. The monitoring services are to be provided for the full term of the Agreement. This Agreement shall terminate 30 years after the first sale of the last Affordable Unit.

Section 5. Responsibility of Monitoring Agent.

- A. The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

Section 6. Indemnity.

- A. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship with the Development under this Agreement except where the Monitoring Agent acted in bad faith and with gross negligence.

Section 7. Applicable Law.

- A. This Agreement, and the application or interpretation of this Agreement, shall be governed by the laws of the State of Rhode Island.

Section 8. Binding Agreement.

- A. This Agreement shall be binding on the parties to this Agreement, their heirs, executors, personal representatives, successors and assigns.

Section 9. Expiration of Agreement

- A. This Agreement shall expire six months from the date of execution unless building permits for the Development have been issued.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as of the date first written above.

{Developer}

By: _____
 {Title}

{Monitoring Agent}

By: _____
 {Title}