

CONTRACT

Monitoring Services for Waterstone at Lexington

(Property Address: 53 & 55 Watertown Street, Lexington, Massachusetts)

The Town of Lexington, a municipal corporation located in the Commonwealth of Massachusetts, by its Town Manager, duly authorized who, however, incurs no personal liability by reason of the execution hereof or anything herein contained, and Lexington Senior Housing Owner LLC, a Delaware limited liability company with a principal place of business at 2310 Washington Street, Newton Lower Falls, Massachusetts 02462 (the "Project Sponsor") agree as follows:

Article 1. Town

Whenever the term "Town" is used in this agreement, it shall be understood to mean the Town of Lexington, Massachusetts, acting by and through its Town Manager. The term "Manager" shall mean the Town Manager of the Town of Lexington, Massachusetts. The term "Lexington Department of Planning" or "Director of Planning", or pronouns in place of them shall be deemed to refer to said Town Manager of the Town of Lexington, Massachusetts, either directly or through its properly authorized assistants or agents acting severally within the scope of the particular duties entrusted to them.

Article 2. Project Sponsor

Whenever the term "Project Sponsor" is used in this agreement, it shall be understood to include its heirs, executors, administrators, successors, assigns, employees, agents and representatives. The Project Sponsor shall support all the work and furnish all the material, equipment and labor necessary or proper for performing and completing the work hereinafter specified, except as herein otherwise specified.

Article 3. Work

The Project Sponsor agrees to support, at the Project Sponsor's own expense, all the work and furnish all the equipment and labor during the term of this contract, all in accordance with the terms and provisions of this contract and in a proper, thorough and workmanlike manner and to the satisfaction of the Town Manager. As used herein, (i) the term "Moderate Units" shall be deemed to mean and refer to the "Moderate Income Units" as defined in that certain Declaration of Moderate Income Housing Restriction dated as of March 25, 2022 (and accepted by the Town on March 30, 2022) and recorded at the Middlesex South District Registry of Deeds at Book 80723 Page 544, by and between the Town and the Project Sponsor (the "Moderate Restriction"), and (ii) the term "Affordable Units" shall be deemed to mean and refer to the "Affordable Units" as defined in that certain Regulatory Agreement and Declaration of Restrictive Covenants for Rental Project dated as of September 8, 2022, recorded at the Middlesex South District Registry of Deeds at Book 80723 Page 516 by and between the Town, the Project Sponsor and the Department of Housing and Community Development ("DHCD") (the "Regulatory Agreement"). The Moderate Units and the Affordable Units are sometimes collectively referred to herein as the "Monitored Units."

The scope of work under this Contract shall include the scope of services as follows:

Scope of Services

The Project Sponsor will be expected to provide annual certification reports and information to confirm that (i) the Moderate Units have been maintained in a manner consistent with the Moderate Restriction and applicable regulations and (ii) the Affordable Units have been maintained in a manner consistent with the Regulatory Agreement and applicable regulations.

The Project Sponsor will provide, and the Town or its agent will confirm, the following on an annual basis:

1. **Rents Charged:** Project Sponsor will provide an annual schedule of rents, to include gross and net rents by unit type, and an annual rent listing, to include rents charged by individual unit, which report, with respect to the Moderate Units, shall be consistent with the form of Annual Report in Exhibit C of the Moderate Restriction.
2. **Tenant Eligibility:** Project Sponsor will provide the opportunity for the Town to review income certifications for the Monitored Units, sampling the units each year, including:
 - a. Reviewing tenant documentation held in Project Sponsor's files using appropriate standards for certification.
 - b. With respect to the Moderate Units, if income is in excess of 140% of Median Income (as such term is defined in the Moderate Restriction), reviewing the Project Sponsor's records to ensure that the next available unit rule has been complied with in accordance with the terms of the Moderate Restriction.
 - c. With respect to the Affordable Units, if income is in excess of 140% of median income (as such term is used in the Regulatory Agreement,), reviewing the Project Sponsor's records to ensure that the next available unit rule has been complied with in accordance with the terms of the Regulatory Agreement.
 - c. Obtain and review leases for sample Monitored Units.
3. **Physical Inspection:** Project Sponsor will provide the opportunity for the Town to review the physical condition of the property each year, sampling the Monitored Units each year, including units of each bedroom size, to the extent applicable.

Article 4. Payment

A. **Compensation to be Paid By Project Sponsor:** The Project Sponsor will pay and the Town will accept, in full consideration for the performance of the Project Sponsor's obligations, an amount not to exceed Two Thousand Two Hundred Fifty Dollars (\$2,250.00) annually (i.e., \$1,000 plus \$50/unit for 21 Affordable Units and 4 Moderate Units). Payments by the Project Sponsor to the Town under this contract shall be made upon signing this agreement and then annually and shall be invoiced by the Town to the Project Sponsor no later than ten (10) business days after January 1st of each calendar year. The Project Sponsor will make all payments due to the Town under the terms of the agreement within thirty (30) days of receiving an invoice from the Town.

B. Price Escalators: There are no allowable price escalators during the term of this contract unless otherwise agreed and signed by the Town and the Project Sponsor.

C. Assign or Subcontract: The Town and Project Sponsor shall give their personal attention consistently to the faithful performance of the work, shall keep the same under their personal control but shall be able to assign or subcontract, by power of attorney or otherwise, the work or any part thereof, with the previous written consent of the Town Manager (not to be unreasonably withheld, conditioned or delayed), though in such case, shall not, either legally or equitably, assign any of the moneys payable under this contract, or his claim thereto, unless, by and with the like consent of the Town Manager. Notwithstanding the foregoing, the Project Sponsor shall have the right to assign this agreement to any permitted or approved assignee to whom the Project Sponsor assigns its interest under the Moderate Restriction and the Regulatory Agreement in accordance with the terms thereof. Each party shall provide the other with not less than thirty (30) days' prior written notice of any proposed assignment of this agreement.

Article 5. Liability

A. Town's Liability: The Town's liability under this contract shall be limited to the work due thereunder. In no event shall either party be liable hereunder for any additional work, including without limitation, any indirect, special or consequential damages.

B. Protection Against Liability: The Project Sponsor acknowledges and agrees that it is responsible as an independent Project Sponsor for all operations under this contract and for all acts of employees and agents thereunder, and agrees that it will indemnify, exonerate and hold harmless the Town and its officers, boards, employees, agents and officials, from and against any and all loss, damage, cost, charge, expense and claim, which may be made against it or them or to which it or they may be subject by reason of any alleged act, action, neglect, omission or default on the part of the Project Sponsor or any of its agents or employees and will pay promptly on demand all costs and expenses of the investigation and defense thereof, including reasonable attorneys' fees and expenses. If any such claim is made, the Town may retain out of any payments then thereafter due to the Project Sponsor, a sufficient amount to protect it completely against such claim, costs and expenses.

C. Insurance: Certificates of Insurances shall be filed with the Town within 10 business days of the signing of this contract in the following categories and amounts: (1) Employer's liability insurance: \$1,000,000 each accident; (2) General liability insurance: \$1,000,000 on a claims made basis, \$2,000,000 in aggregate; (3) Automobile Insurance: \$1,000,000; and (4) Workers Compensation: at the statutory levels.

Article 6. Miscellaneous Provisions

A. Licenses and Permit: The Project Sponsor shall obtain and pay for all licenses and permits necessary for doing the work, including permits from the Lexington Board of Health.

B. Laws and Regulations: The contract shall be considered to incorporate by reference all applicable Federal, State and local laws and rules and regulations of all authorities having jurisdiction over the work as though such provisions

were set forth in full herein. The Project Sponsor shall keep fully informed of all Federal, State and local laws, and municipal ordinances, bylaws and regulations in any manner affecting those engaged or employed in the work or the materials used in the work, or in any way affecting the conduct of the work and of all such orders and decrees or bodies or tribunals having any jurisdiction or authority over the same.


- C. Governing Law: This contract shall be governed by the laws of the Commonwealth of Massachusetts.
- D. Term: The term of this agreement shall commence upon the execution date hereof, and shall continue until the expiration or termination of both the Moderate Restriction and the Regulatory Agreement.

[Remainder of page left intentionally blank. Signatures follow.]

Executed under seal as of this 21st day of September, 2022.


PROJECT SPONSOR:

LEXINGTON SENIOR HOUSING OWNER LLC,
a Delaware limited liability company

By: 
Name: Stephen A. Kinsella
Title: Authorized Real Estate Signatory
Hereunto duly authorized

TOWN:

THE TOWN OF LEXINGTON

By: 
Name: Sam Hilkey
Title: Town Manager