

**LATHAM LAW OFFICES LLC**

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\* ADMITTED TO PRACTICE IN  
MASSACHUSETTS AND NEW HAMPSHIRE

July 16, 2019

Reading Select Board  
Robert W. LeLacheur, Jr., Town Manager  
Reading Town Hall  
16 Lowell Street  
Reading, MA 01867

Re: Postmark, 136 Haven Street and 8 Sanborn Street, Reading, MA

On behalf of 136 Haven Street LLC, we request that the Select Board approve Barnstable Housing Authority as the Monitoring Agent to perform monitoring and enforcement services regarding compliance of the Postmark Project with the 40R Restrictions.

Enclosed with this letter is a copy of the proposed monitoring agreement.

We respectfully request to be advised when the Board will consider this matter in the event that the owner would like to have a representative be in attendance.

Thank you.

Sincerely,



O. Bradley Latham

Cc: Laurie Stanton, Housing Coordinator

- Bill Reyelt, Principal Planner, Smart Growth Programs Office of Sustainable Communities MA  
Dept. of Housing & Community Development.

## 40R OWNERSHIP MONITORING SERVICES AGREEMENT

This 40R Ownership Monitoring Services Agreement (“Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among **136 Haven Street, LLC**, and its successors and assigns (the “Owner”) having an address of 749 Lowell Street, Lynnfield, MA 01940, the **Town of Reading, Middlesex County, Massachusetts**, and its successors and assigns, having an address of 16 Lowell Street, Reading, MA 01867 ( “the Municipality”), and **Barnstable Housing Authority**, having an address at 146 Souht Street, Hyannis, MA 02601, and its successors and permitted assigns (the “Monitoring Agent”).

### RECITALS

WHEREAS, the Owner has commenced construction of a mixed use, multi-unit development, including a Fifty (50) unit residential development which will be constructed pursuant to a continuous buildout, consisting of One (1) residential building and certain accessory structures, on a property which is located on Haven Street and Sanborn Street, in the Municipality, as such property and the proposed improvements thereon (the “Project”) is more particularly described on Exhibit A attached hereto; and

WHEREAS, the Department of Housing and Community Development (“DHCD”) promulgated regulations at 760 CMR 59.00 (the “Regulations”) and issued its Guidance for M.G.L. c. 40R and 760 CMR 59.00: Smarth Growth Zoning and Starter Home Zoning (“40R Guidelines”), which collectively establish the affordability and related requirements for the Project and the Affordable Housing Restriction Agreement for 40R Ownership Project, dated \_\_\_\_\_, 20\_\_, recorded at the Middlesex South County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (the “40R Restriction”); and

WHEREAS, as part of the Downtown Smart Growth District (hereinafter, the “District”) on the September 11, 2017, the Reading Community and Development Commisison approved the Project; and the residential portion of the Project shall consist of a total number of Fifty (50) residential ownership units, (the “Units”) of which Ten (10) will be sold to Eligible Purchasers (as defined in the 40R Restriction) (the “Restricted Units”) at prices specified in the 40R Restriction and will be subject to sale and resale restrictions as set forth in the 40R Restriction (the “Affordability Requirement”);

WHEREAS, the Monitoring Agent has been selected by the Municipality to perform monitoring and enforcement services regarding compliance of the Project with the 40R Restriction during its term; and

WHEREAS, the Restricted Units shall be identified by individual unit numbers for each phase of the Project prior to the issuance of a certificate of occupancy for such phase.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Monitoring Services. From the date hereof, the Monitoring Agent shall both monitor and enforce the Project's compliance with the requirements of the 40R Restriction, as more fully described herein.

a. Affordability Requirement.

(1) Initial Sales. The Owner agrees to deliver to the Monitoring Agent the income and asset documents and certifications of purchasers, deeds, and Deed Riders (as defined in the 40R Restriction) with respect to the initial sales of the Restricted Units as required under the 40R Restriction (the "Initial Sales Data"). The Monitoring Agent agrees to review the Initial Sales Data and determine the substantive compliance of each initial sale with (1) the Affordability Requirement in accordance with 40R Guidelines and; (2) the Resident Selection Plan (as defined in the 40R Restriction) approved by DHCD. Upon completion of its review of the Initial Sales Data, the Monitoring Agent shall make a determination of whether the Affordability Requirement has been met and shall notify the Municipality of its determination.

(2) Resales. The Monitoring Agent also agrees to monitor resales of the Restricted Units (including review of income and asset documents and certifications of purchasers, deeds, and Deed Riders) for compliance with the terms of the Deed Rider and the 40R Restriction, and issuance of certifications that may be required by the Deed Rider in connection with approval of resales. The Monitoring Agent shall also locate and select, or provide assistance to the Municipality in locating and selecting, Eligible Households (as defined in the 40R Restriction), including without limitation, by exercising any rights under the Deed Rider to locate and select Eligible Households and ensuring compliance with the approved Resident Selection Plan, the Deed Rider, and the 40R Restriction.

On resale of a Restricted Unit, the Monitoring Agent shall, if necessary under the terms of the Deed Rider, issue a new resale price certificate recalculating the resale price multiplier in accordance with the terms of the Deed Rider, and require the purchaser to record the new resale price certificate immediately after the recording of the deed to such Restricted Unit. The resale price multiplier set forth in the most recently recorded resale price certificate shall apply to each subsequent resale of the Restricted Unit unless otherwise provided in the Deed Rider.

(3) Recording.

(a) Upon execution, the Owner shall immediately cause this Agreement and any amendments hereto to be recorded with the appropriate registry of deeds, and the Owner shall pay all fees and charges incurred in connection therewith.

- (b) The Monitoring Agent shall ensure that the 40R Restriction is recorded by the Owner with the appropriate registry of deeds and that, for each sale of the Restricted Units, all documents required to be recorded by the Deed Rider are recorded by each purchaser with the appropriate registry of deeds.
- b. Annual Reports. Throughout the term of this Agreement, the Monitoring Agent agrees to annually prepare and deliver the Annual Compliance Report (as defined in the 40R Restriction) to the Municipality and DHCD regarding the Owner's and the Project's compliance requirements under the 40R Restriction. The Annual Compliance Report shall include the contents required by the 40R Restriction and shall be delivered to the Municipality and DHCD within one hundred and twenty (120) days of the end of each calendar year.
- c. Supplemental Monitoring Services. The Monitoring Agent shall provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the (i) compliance of the Project and the Owner with the 40R Restriction and (ii) compliance by the owners of the Restricted Units with the requirements of the Deed Riders, including without limitation, the owner occupancy requirement and the resale restrictions. The services hereunder shall also include considerations of requests by owners of the Restricted Unit for refinancing, approval of capital improvements, further encumbrances, and leasing Restricted Units. The services hereunder shall not include any construction monitoring. The services hereunder shall include follow-up discussions with the Owner and/or owners of Restricted Units, if appropriate, after an event of noncompliance. The Monitoring Agent shall be entitled to a reasonable fee for supplemental monitoring services as set forth in the Homebuyer Disclosure Statement executed by the owners of Restricted Units.
- d. Monitoring Services Fee. The Monitoring Agent shall receive a fee of \$3,750.00 from the Owner at the time of execution of this Agreement and \$3,750.00 upon receipt by the Monitoring Agent of the first file. Such fee shall constitute payment for services of the Monitoring Agent with respect to compliance by the Owner with the 40R Restriction and this Agreement with respect to the initial sales of the Restricted Units. As provided in the Deed Rider for each Restricted Unit, after the first sale of a Restricted Unit by 136 Haven Street LLC, the Monitoring Agent shall receive a resale fee on the resale of that same Restricted Unit of up to two and one-half percent (2.5%) of the product of the Base Income Number (as defined in the Deed Rider) multiplied by the resale price multiplier, to be paid by the seller of the Restricted Unit at each closing as a condition precedent to closing, for the services with respect to monitoring each subsequent sales transaction for compliance with the resale restrictions and the other terms of the Deed Rider. Such fee shall be payable for all resales of Restricted Units, including those to an eligible purchaser or other purchaser, as permitted by the Deed

Rider. If the Monitoring Agent's fee is not paid at the time of closing, the Monitoring Agent shall be entitled to payment from the purchaser of the Restricted Unit and to bring an action and seek an attachment of the interest of the purchaser of the Restricted Unit. Neither the Municipality nor DHCD shall have any responsibility for payment of any fee to the Monitoring Agent hereunder.

e. Enforcement Services.

(1) In the event of serious or repeated violations of the substantive or reporting requirements of the 40R Restriction or a failure by the Owner to take appropriate actions to cure a default under the 40R Restriction, the Monitoring Agent shall have the right, with the prior consent of the Municipality, to take appropriate enforcement action against the Owner including, without limitation, legal action to compel the Owner to comply with the requirements of the 40R Restriction. The 40R Restriction provides for payment by the Owner of reasonable costs and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Owner hereunder. The Monitoring Agent shall be entitled to seek recovery of all reasonable costs and expenses incurred in enforcing the 40R Restriction against the Owner.

(2) In the event of a violation of the provisions of a Deed Rider, the Monitoring Agent shall have the right, with the prior consent of the Municipality, to take appropriate enforcement action against the unit owner or the unit owner's successor in title, including, without limitation, legal action to compel the unit owner to comply with the requirements of the applicable Deed Rider. The form of Deed Rider shall provide for payment by the unit owner of all fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the unit owner thereunder and shall grant to the Monitoring Agent a lien on the unit, junior to the lien of any institutional holder of a first mortgage on the unit to secure payment of such fees and expenses. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing a Deed Rider against the unit owner and to assert a lien on the relevant unit to secure payment of the unit owner of such fees and expenses.

f. Default Under This Agreement.

(1) If any default, violation or breach by the Owner under this Agreement is not cured to the satisfaction of the Monitoring Agent within thirty (30) days after notice to the Owner thereof, then the Monitoring Agent or the Municipality may exercise any remedy at law or in equity available. No such failure to cure a default, however, will be deemed to exist if the Owner has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in

curing a default will be excused if due to causes beyond the reasonable control of the Owner.

(2) The Owner shall pay all reasonable costs and expenses, including legal fees, incurred by the Monitoring Agent and the Municipality in enforcing this Agreement, and, in the event of any action by the Monitoring Agent or the Municipality against the Owner, the Monitoring Agent or the Municipality shall be entitled to seek an attachment against the Owner's property including, without limitation, its interest in the Project. The Monitoring Agent or the Municipality may perfect a lien on the Project by recording/filing one or more certificates setting forth the amount of the costs and expenses due and owing in the Registry. A purchaser of the Project or any portion of it shall be liable for the payment of any unpaid costs and expenses which were the subject of a recorded/filed certificate prior to the purchaser's acquisition of the Project or portion thereof; provided, however, a mortgagee foreclosing on all or any portion of the Project, or a purchaser at any foreclosure sale, shall have no liability for any such costs or expenses.

(3) In the case of default by the Monitoring Agent under this Agreement, the Municipality may (1) terminate this Agreement and/or the Monitoring Agent with sixty (60) day notice to all parties; or (2) apply to any state or federal court for specific performance of this Agreement; or (3) exercise any other action as may be necessary or desirable to correct such default by the Monitoring Agent under this Agreement.

- g. Term. The monitoring services are to be provided for so long as there is a Restricted Unit subject to a Deed Rider. The term of this Agreement shall end on the date six (6) months after the later to occur of the latest expiration date of the term of the Deed Rider attached to any Restricted Unit.
- h. Responsibility of Monitoring Agent. 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.
- i. Successor Monitoring Agent/Further Delegation.

(1) Should the Monitoring Agent be dissolved or become incapable of fulfilling its obligations during the term of this Agreement, the Municipality shall have the right to appoint a successor to serve as the Monitoring Agent for the remaining term of this Agreement. The Monitoring Agent shall give the Municipality and the Owner at least six (6) months written notice prior to any such dissolution or incapacity in order to allow the Municipality to appoint a successor to assume the rights and obligations of the Monitoring Agent under this Agreement and the 40R Restriction. In the event of termination of the Monitoring Agent, the Municipality shall promptly appoint a new successor monitoring agent to serve as the Monitoring Agent for the remaining term of this Agreement.

(2) The Monitoring Agent shall not delegate all or any portion of the obligations hereunder without the prior written approval of the Municipality. If the Monitoring Agent performs any functions of the Owner, including, but not limited to performing marketing tasks, that would be subject to oversight by the Monitoring Agent, the Monitoring Agent must delegate oversight of such functions to the Municipality or an entity approved by the Municipality unless otherwise permitted in writing by the Municipality.

- j. Indemnity. The Owner agrees to indemnify and hold harmless the Monitoring Agent and the Municipality against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent or the Municipality by reason of its relationship with the Project under this Agreement and not involving the Monitoring Agent or the Municipality acting in bad faith or with gross negligence or breaching this Agreement or law. The indemnification obligation of 136 Haven Street LLC shall terminate when all affordable units have been sold by 136 Haven Street LLC.
- k. Applicable Law. This Agreement, and the application or interpretation hereof, shall be governed by the laws of The Commonwealth of Massachusetts.
- l. Binding Agreement. This Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns.
- m. Headings. All paragraph headings in this Agreement are for the convenience of reference only and are not intended to qualify the meaning of the paragraph.
- n. Municipality's Right to Enforcement and Reliance. The Municipality shall be entitled to enforce this Agreement and may rely on the benefits of this Agreement.
- o. Entire Agreement. With the exception of the 40R Restriction, this Agreement supersedes all prior agreements between the parties with respect to the Project, whether oral or written including, without limitation, all correspondence between the parties and between counsels for their respective parties. This Agreement, together with the 40R Restriction, constitutes the sole and entire agreement between the parties hereto with respect to the subject matter thereof, and the rights, duties, and obligations of the parties with respect thereto. In executing this Agreement, the Monitoring Agent acknowledges that the Monitoring Agent is not relying on any statement, representation, warranty, covenant or agreement of any kind made by the Owner or the Municipality or any employee or agent of any of the foregoing, except for the agreements set forth herein. This

Agreement may not be modified or amended except with the written consent of the Municipality, Monitoring Agent, and DHCD.

- p. Severability. If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder, hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**



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

**OWNER:**

**136 Haven Street, LLC**

By: \_\_\_\_\_

By: Paul DiBiase  
Its: Manager

**MUNICIPALITY:**

**Town of Reading, Middlesex County,  
Massachusetts**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**MONITORING AGENT:**

**Barnstable Housing Authority**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared Paul DiBaise, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's license to be the person whose name is signed on the preceding document, as Manager of 136 Haven Street LLC, a limited liability company and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the City/Town of \_\_\_\_\_ and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of for \_\_\_\_\_, a [form of organization] and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires:

7.16.19

EXHIBIT A

**Description of the Property**

The Project includes a 5-story mixed-use building with 50 condominium units and approximately 8,500 square feet of commercial space at 136 Haven Street and 8 Sanborn Street, the land, being described as follows:

Parcel 1:

A certain parcel of land situated in said Reading, and bounded as follows: Beginning at a stone bound at the intersection of the northerly line of Haven Street with the westerly line of Sanborn Street; thence northerly by said Sanborn Street, eighty five and ten hundredths (85.10) feet to an iron bound at land of Parks; thence turning and running westerly by land of Parks and land of Bancroft, one hundred and seventy three (173) feet to a stone bound at land of Pratt; thence turning and running southerly by land of Pratt one hundred and sixty and sixty seven hundredths (160.67) feet to a drill hole in a stone post at said Haven Street; thence turning and running northeasterly by said Haven Street one hundred and eighty five and eighty eight hundredths (185.88) feet to the point of beginning.

AND BEING the same property conveyed to United States of America from James A. Bancroft, as conservator of the estate of Zelia M. Kingman by Deed dated September 05, 1913 and recorded September 18, 1913 in Deed Book 3823, Page 126.

Tax Parcel No. 246 0160 0000 03800

Parcel 2:

Being bounded and described as follows:

A certain parcel or tract of land shown as "Parcel 3, 9,866.41 square feet, Mary A. Kingman" on a plat entitled, "General Services Administration, Reading, Mass., Scale 1" = 20'" dated Feb. 08, 1968 by Hayward-Hayward & Boynton, Engineers Surveyors, 68 Main Street, Brockton, Mass., said plat being recorded at Book 11560, Page 636 in the Middlesex County South District Registry of Deeds as Plan No. 912 of 1968. Said Parcel 3 is more particularly bounded and described as follows:

Beginning at a point in the westerly line of Sanborn Street at the southeast corner of the herein described premises it being the northeast corner of land of Eva S. Higgins;

Said point being distant N 6° 51' 50" E, 167.79 feet from the intersection of the westerly line of Sanborn Street with the northerly line of Haven Street;

Thence N 83° 40' 20" W, 134.72 feet by land of said Higgins to land of the New England Telephone and Telegraph Company;

Thence N 6° 57' 40" E, 73.80 feet by land of said Telephone Company and land of Alice C. Owen to a concrete bound at land of Marie W. Wescott;

Thence S 83° 12' 40" E, 134.59 feet by land of said Wescott to a drill hole in the Westerly line of said Sanborn Street;

Thence S 6° 51' 50" W, 72.73 feet in the westerly line of said Sanborn Street to the point of beginning.

Said parcel or tract containing 9,866.41 square feet of land, more or less, according to said plan.

EXHIBIT A (Cont.)

AND BEING the same property conveyed to The United States of America from Priscilla L. Rogers and Richard W. Rogers, co-executors under the Will of Mary A. Kingman by Deed dated August 12, 1968, and recorded August 23, 1968 in Deed Book 11560, Page 636; AND FURTHER CONVEYED to The United States of America from Priscilla L. Rogers by Deed dated August 12, 1968 and recorded August 23, 1968 in Deed Book 11560, Page 638.

Tax Parcel No. 246 0210 0000 00340

Parcel 3:

Bounded and described as follows:

A certain parcel or tract of land with buildings and appurtenances thereon being shown as "Parcel 2 11,223.56 square feet" on a plat entitled, "General Services Administration, Reading, Mass., Scale 1" = 20' dated Feb. 08, 1968, by Hayward-Hayward & Boynton, Engineers Surveyors, Brockton, Mass." And said plat recorded at Book 11560, Page 636 in the Middlesex County South District Registry of Deeds as Plan No. 912 of 1968. Said Parcel 2 is further bounded and described as follows:

Beginning at a point in the Westerly line of Sanborn Street at the Southeast corner of the herein described premises it being the Northeast corner of other land of the United States of America, said point being distance N 60° 51' 50" E, 84.90 feet from the intersection of the Westerly line of said Sanborn Street with the Northerly line of Haven Street;

Thence N 83° 59' 20" W, 134.87 feet by land of said United States of America to a concrete bound at land of The New England Telephone and Telegraph Company;

Thence N 6° 57' 40" E, 83.65 feet by land of said Telephone Company to land of Mary A. Kingman;

Thence S 83° 40' 20" E, 134.72 feet by land of said Kingman to the Westerly line of said Sanborn Street;

Thence S 6° 51' 50" W, 82.89 feet in the Westerly line of said Sanborn Street to the Point of beginning.

The premises are subject to a Protective Covenant between the United States Postal Service and the Massachusetts Historical Commission dated June 26, 2013, recorded at the Middlesex South District Registry of Deeds at Book 68600, page 498 as Exhibit B.

AND BEING the same property conveyed to 136 Haven Street LLC by deed from The United States Postal Service recorded at the Middlesex South District Registry of Deed at Book 68600, Page 498.