

Drawn by and mail to:
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City Attorney's Office
600 East Fourth Street
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**RESTATED BROOKLYN VILLAGE AFFORDABLE HOUSING AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

This RESTATED BROOKLYN VILLAGE AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Agreement") is entered into as of December 1, 2012 between **THE CITY OF CHARLOTTE, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (the "City"), **THE HOUSING AUTHORITY OF THE CITY OF CHARLOTTE, N.C.**, a public body and a body corporate and politic organized under the laws of the State of North Carolina (the "Authority"), **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (the "County") and **SPECTRUM INVESTMENT SERVICES, INC.**, a North Carolina corporation ("Developer").

WITNESSETH

WHEREAS, the Second Ward Master Plan was approved by the Charlotte City Council, the Mecklenburg County Board of Commissioners and the Charlotte-Mecklenburg School Board in 2002 (the "Second Ward Master Plan"); and

WHEREAS, the Second Ward Master Plan contained a Vision Statement that reads in part, "[t]o create a livable and memorable urban neighborhood in the heart of the city through mixed land uses, diverse architecture and housing types, unique infrastructure, and a hierarchy of open spaces. These components will combine to welcome and support a diverse population with varied ages, races, and socio-economic backgrounds"; and

WHEREAS, the Second Ward Master Plan also established sixteen (16) goals, three (3) of which are to "[p]rovide a variety of housing types with unique infrastructure," "[p]rovide workforce housing in each phase of development," and "[p]rovide the integration of historic references throughout the neighborhood for identity"; and

WHEREAS, City was the owner of certain real property (the “City Property”) within the area bounded by South McDowell Street, Third Street, Martin Luther King Jr. Boulevard and the First Baptist Church property in Charlotte, Mecklenburg County, North Carolina and currently known as “Marshall Park”, as the City Property is more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, County is the owner of certain real property within Marshall Park adjacent to the City Property (the “County Property”), as the County Property is more particularly described on Exhibit B attached hereto and made a part hereof; and

WHEREAS, pursuant to the provisions of that certain Brooklyn Village/Knights Baseball Stadium Interlocal Cooperation Agreement between City and County, as approved by the City on May 14, 2007, as amended (the “Interlocal Agreement”), City conveyed the City Property to the County; and

WHEREAS, the County now owns the City Property and the County Property, that is, the entirety of Marshall Park; and

WHEREAS, Developer’s acquisition of the real property that includes the County Property and the City Property acquired by the County, but excludes the land therein being retained by the County (the “Park Site”) (said real property, excluding the Park Site, is called the “Brooklyn Village Tract” and the same is more particularly shown on the Subdivision Plat [as hereinafter defined]), is pivotal to the development of Brooklyn Village, and the planned County park to be located at S. Church Street and W. Third Street (the “Third Ward Park”); and

WHEREAS, the Subdivision Plat depicts the development of the Brooklyn Village Tract in three (3) separate and distinct parcels, labeled as Parcel 1 consisting of 2.367 acres (the “Office/Condominium B Parcel”), Parcel 2 consisting of 3.008 acres (the “Apartment Parcel”) and Parcel 3 consisting of 2.280 acres (the “Condominium A Parcel”); and

WHEREAS, in consideration of the City’s conveyance of the City Property to the County and the County’s subsequent conveyance of the Brooklyn Village Tract to Developer, Developer has agreed to implement the development, construction and operation of certain “Affordable Housing Units” (as hereinafter defined) in accordance with the terms of this Agreement and has further agreed that the Apartment Parcel and the Condominium A Parcel (but not the Office/Condominium B Parcel) within the Brooklyn Village Tract shall be held subject to certain restrictive covenants as hereinafter set forth to assure its continued operation as Affordable Housing Units; and

WHEREAS, Developer has cooperated with the City, County, Charlotte-Mecklenburg Schools (“CMS”) and the Authority to achieve substantial mutual goals through the uptown land transactions that have occurred to date; and

NOW, THEREFORE, in order to facilitate implementation of the Second Ward Master Plan, as well as development of a Third Ward Park, and in consideration of the conveyance of the City Property to the County and the County’s subsequent conveyance of the Brooklyn Village Tract to Developer and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the City, the Authority, the County and Developer hereby agree as follows:

ARTICLE I

DEVELOPMENT OF THE VILLAGE

1. **Incorporation of Recitals.** The Recitals set forth hereinabove are incorporated by reference as if fully set forth herein.

2. **Preliminary Planning Efforts.** The Developer has studied the Second Ward Master Plan and has embraced its direction. With the help of the City/County Planning Department and the Charlotte Department of Transportation, the Developer previously created a site plan for Marshall Park based on the Second Ward Master Plan (the "Site Plan") attached hereto as Exhibit C and made a part hereof, and submitted it for UMUD-Optional zoning for City Council consideration. City Council approved the UMUD-Optional zoning and Site Plan on July 16, 2007. Developer has subsequently prepared a preliminary subdivision plat (the "Subdivision Plat"), a copy of which Subdivision Plat is attached hereto as Exhibit D and made a part hereof, that is consistent with the Site Plan. The "Office/Condominium B Parcel," the "Condominium A Parcel," and the "Apartment Parcel" (each of which may be individually called a "Parcel" and collectively called the "Parcels") are each depicted on the Subdivision Plat. Any reference in this Agreement to any of the Parcels shall be deemed to refer to and encompass the real property shown on the Subdivision Plat to be within the boundaries of the Parcel to which such reference is made. If at anytime subsequent to the Effective Date (as hereinafter defined) Developer or the County (acting at the request of Developer) shall record a subdivision plat of the Brooklyn Village Tract that further delineates the area, configuration and boundaries of the Parcels or any of the Parcels, then from and after the recording of such subdivision plat, the Parcel(s) shall be as shown on the recorded subdivision plat; provided, however, no material changes may be made to the Subdivision Plat as shown on Exhibit D prior to the recording thereof without the prior written consent of the County and the City. From and after the recording of the Subdivision Plat, Developer shall make no material changes to the area, configuration or boundaries of the Apartment Parcel or the Condominium A Parcel without the prior written consent of the County and the City.

3. **Village Components.** The Site Plan approved by the City Council proposes an urban village that includes a wide variety of housing types and a retail village around a new County park (collectively, the "Village"). The Developer has embraced the look of the Village as suggested in the Second Ward Master Plan, and is working closely with the County to design an urban park as part of the Village. The Developer has embraced the history of the old Brooklyn neighborhood by A) naming the project "Brooklyn Village," B) naming the streets using historic street names, C) putting historic markers throughout the project and in the park, D) agreeing to attempt to raise funds to turn the Second Ward Gym into a Community Center (with CMS' agreement) and E) working diligently to develop a village of diverse residents.

4. **Housing Components.** The Developer is working diligently to include a wide variety of housing types in the Village, as well as a significant amount of workforce housing. The Developer will work diligently to maximize the workforce housing component of the

Village. The Developer agrees to discuss with the City and the Authority the potential for affordable housing units (in addition to the Affordable Housing Units to be constructed in Phase I of the Brooklyn Village development) in future phases of the Brooklyn Village development, with the understanding that any additional affordable housing units would be at the City's and/or Authority's cost and expense.

5. **Commitment to Diversity.** The Developer has made a significant commitment to diversity in this project, committing to use good faith efforts to achieve a 20% minority participation goal (calculated on the overall value of contracts let) on the construction project. Diversity has also been built into the development team, the architectural team and the sales team. The Developer is also working with CMS to provide internships and apprenticeships during the three to four years following the Effective Date.

ARTICLE II

DECLARATION OF RESTRICTIVE COVENANTS

1. **Affordable Housing Units.** In consideration of the City's conveyance of the City Property to County as of the Effective Date and the County's subsequent conveyance of the Brooklyn Village Tract to Developer, Developer has agreed with the City, County and Authority to provide thirty (30) "Affordable Housing Units" on the Apartment Parcel of the Village (or in the alternative, as more particularly set forth in Section 3 below, on the Condominium A Parcel of the Village) to be developed as a part of Phase I of the Village. The meanings of the defined terms "Affordable Housing Units" and "Apartment Component," as well as other defined terms related thereto, are set forth in the restrictive covenants in Section 2 below. At the time the Apartment Component is ready for occupancy (the "Commencement Date"), as evidenced by the issuance of Certificates of Occupancy for the Apartment Component, the City and the Authority will pay to Developer (or, subject to the provisions of Section 6 of Article IV hereof, Developer's successors or assigns in title to the Apartment Parcel or the Condominium A Parcel, as applicable) a one-time public subsidy of \$2.5 million toward the cost of the Affordable Housing Units. This payment will be shared equally between the City and the Authority, for a total cost per entity of \$1.25 million, with the City's portion to be funded from the Housing Trust Fund and the source of the Authority's portion to be determined by the Authority. This represents a total public subsidy of \$83,334 per Affordable Housing Unit. To achieve this goal, the Developer has allocated a lower land value to the Apartment Parcel and has forfeited estimated profit from these Units, at an estimated value of \$1.5 million. Developer's obligation to operate and maintain the Affordable Housing Units in the Apartment Component shall continue for a period of forty (40) years from and after the Commencement Date.

2. **Declaration of Restrictive Covenants.** In consideration of the conveyance of the City Property to the County and the County's conveyance of the Brooklyn Village Tract to Developer and the other mutual promises and covenants set forth herein, the parties hereto hereby declare that for the duration of the Restrictive Covenant Term (as hereinafter defined) the Apartment Parcel and the Condominium A Parcel within the Brooklyn Village Tract may be used or developed for mixed commercial, retail and residential uses and for no other uses or purposes. The parties hereto further declare that the Apartment Component of such mixed use development shall provide thirty (30) "Affordable Housing Units" within any such Apartment

Component for a period beginning on December 1, 2012 and continuing for forty (40) years (the "Restrictive Covenant Term") from and after the Commencement Date. For purposes of further clarification, the "Apartment Component" of such development means rental housing located within either the Apartment Parcel or the Condominium A Parcel consisting of (i) market rate "for lease" units (which may be interspersed with market-priced units if within Condominium A Parcel) and (ii) thirty (30) Affordable Housing Units that are physically indistinguishable from the market rate "for lease" units and dispersed among the market rate "for lease" units. The term "Affordable Housing Unit" means a rental housing unit that meets both of the following criteria: (a) it qualifies for and has been designated as Section 8 within the meaning of Section 8 of the United States Housing Act of 1937 (or any successor legislation adopted by Congress); and (b) it is affordable for households earning 30% or less of Area Median Income (as established by the United States Department of Housing and Urban Development ["HUD"]) for the Charlotte-Gastonia-Concord North Carolina/South Carolina Metropolitan Statistical Area (as determined by the United States Office of Management and Budget). The Area Median Income for the area defined above is, as of the Effective Date, \$60,200 for a family of four and thirty percent (30%) of the Area Median Income for the area defined above is, as of the Effective Date, \$18,060.

It is further required that: (u) each of the 30 Affordable Housing Units will be a two bedroom apartment with no less than 850 net square feet; (v) each Affordable Housing Unit will be provided, without additional cost, an access card for the parking area serving the Parcel where the Affordable Housing Unit is located; (w) the residents of the Affordable Housing Units will have the same rights and privileges to community rooms and other amenities as the residents of the market rate "for lease" units of the Parcel where the Affordable Housing Units are located at no cost to such residents, provided that if use of optional amenities by the residents of the market rate "for lease" units is conditioned upon payment of a fee therefor, the residents of the Affordable Housing Units may be charged the same fee in the same amount for the same rights and privileges, provided that in no event may a resident of an Affordable Housing Unit be charged a fee for access to (to the extent the same are provided): (A) swimming pools, outdoor terraces, gardens, picnic areas, common area kitchens, playgrounds, and other recreational areas, (B) common area weight room and exercise facilities, (C) community meeting space or (D) any other areas and services that residents of the market rate "for lease" units receive without charge; (x) the Affordable Housing Units will be distributed throughout the overall residential development on that Parcel or Parcels as opposed to being concentrated in the same area; (y) the use of the property for the rental and maintenance of Affordable Housing Units will comply with all laws, HUD regulations and agreements that apply to the Affordable Housing Units; and (z) the monthly rent for each of the Affordable Housing Units will be established at one hundred twenty percent (120%) of the "fair market rental" published by HUD from time to time (for example: using the published fair market rental current on the date of this Agreement, monthly rental would be set at \$740 multiplied by 120% for a total of \$888, less a utility allowance of \$120, yielding a net rent of \$768 for each Affordable Housing Unit).

3. Completion of Affordable Housing Units as a portion of Phase I of the Village. Developer has agreed that the Affordable Housing Units will be constructed and thereafter operated by Developer as a part of its development of Phase I of the Village. For purposes of this Agreement, "Phase I of the Village" shall mean the development of the Office/Condominium B Parcel and the Apartment Parcel. In order to assure that Developer constructs the Affordable Housing Units as a part of Phase I of the Village, Developer hereby

agrees that it shall not commence construction nor shall it apply for or be able to be issued a building permit for the construction of improvements on the Condominium A Parcel until such time as it has commenced construction of the improvements constituting the Apartment Component on the Apartment Parcel. For purposes of this Agreement, “commenced construction of improvements” shall mean both (i) the pouring of footings and foundations for such improvements constituting the Apartment Component and (ii) the commencement of construction of substantial, structural vertical elements (such as, but not limited to, caissons, elevator shafts and support pilings) serving the Apartment Component, as opposed to the purely decorative or architectural features of such improvements. Once Developer has commenced construction of improvements on the Apartment Parcel, Developer shall diligently pursue the completion of same within a reasonable time thereafter, subject to events of force majeure. Developer hereby agrees that if prior to the time that it has commenced construction of improvements on the Apartment Parcel, the Developer shall apply for, take steps to obtain or be issued a building permit for the construction of improvements on the Condominium A Parcel, or if Developer shall commence construction of improvements on the Condominium A Parcel, the County shall have a right to deny the issuance of any such building permit to Developer, and if the building permit has nonetheless been issued by the County, the City and/or Authority shall be entitled to preliminary and permanent injunctive relief to stop issuance of the building permit by the County, require surrender of the building permit by the Developer and/or stop construction of the improvements on the Condominium A Parcel until such time as Developer has commenced construction of improvements on the Apartment Parcel. Such remedies shall be in addition to, and not in lieu of, the remedies set forth in Section 7 of this Article II.

It is the presumption of this Agreement that Developer will provide the Affordable Housing Units within the Apartment Component constructed on the Apartment Parcel. However, and notwithstanding the provisions of this Section 3 to the contrary, Developer shall be permitted to construct and operate the Affordable Housing Units within a residential development constructed on the Condominium A Parcel that may include both “for sale” and “for lease” residential products provided that (i) the Affordable Housing Units satisfy the requirements of this Agreement, (ii) if Developer decides to provide the Affordable Housing Units within a residential development constructed on the Condominium A Parcel, Developer shall send written notice thereof to the City, County and Authority concurrently with its application for a building permit for any improvements on the Condominium A Parcel and (iii) Developer shall not apply for nor shall it be able to be issued a building permit for the construction of improvements on the Apartment Parcel until such time as it has commenced construction of improvements (as such term has previously been defined) on the Condominium A Parcel. Once Developer has commenced construction of improvements on the Condominium A Parcel, Developer shall diligently pursue the completion of same within a reasonable time thereafter, subject to events of force majeure. Developer hereby agrees that if Developer has given written notice that it will provide the Affordable Housing Units within the Condominium A Parcel and that if prior to the time that it has commenced construction of improvements on the Condominium A Parcel, the Developer shall apply for, take steps to obtain or be issued a building permit for the construction of improvements on the Apartment Parcel, or if Developer shall commence construction of improvements on the Apartment Parcel, the County shall have a right to deny the issuance of any such building permit to Developer, and if the building permit has nonetheless been issued by the County, the City and/or Authority shall be entitled to preliminary and permanent injunctive relief to stop issuance of the building permit by the

County, require surrender of the building permit by the Developer and/or stop construction of the improvements on the Apartment Parcel until such time as Developer has commenced construction of improvements on the Condominium A Parcel. Such remedies shall be in addition to, and not in lieu of, the remedies set forth in Section 7 of this Article II.

Developer agrees that Developer's application for a building permit for the Affordable Housing Units, whether constructed within the Apartment Component constructed on the Apartment Parcel or within a residential development constructed on the Condominium A Parcel that may include both "for sale" and "for lease" residential products, will identify with specificity the initial location of the thirty (30) Affordable Housing Units within the overall housing development that is the subject of the building permit application. Upon the completion of the Apartment Component, the location of the Affordable Housing Units may be modified within the Apartment Component provided that any modified location is in compliance with the provisions of Section 2 of Article II of this Agreement.

4. Term of Restrictive Covenants. The restrictive covenants as more particularly set forth in this Article II shall remain in full force and effect for the Restrictive Covenant Term, that is, for a period beginning on December 1, 2012 and ending forty (40) years from and after the Commencement Date.

5. Covenants to Run with the Land. The covenants, reservations and restrictions set forth herein (i) shall be deemed covenants running with the land and shall pass to and be binding upon the Developer, and its successors and assigns in title to the Apartment Parcel and the Condominium A Parcel and all subsequent owners of the Apartment Parcel and the Condominium A Parcel and (ii) are not merely personal covenants of the Developer. The parties hereby agree that as of the Commencement Date, the Parcel that has not been developed to include the Affordable Housing Units, whether it be the Apartment Parcel or the Condominium A Parcel, shall no longer be subject to the restrictive covenants set forth in this Article II and upon the prior written request of Developer or its successors and assigns in title to the Parcel that has not been developed to include the Affordable Housing Units, the City, County and Authority shall execute a release in recordable form releasing such restrictive covenants from the Parcel that has not been developed to include the Affordable Housing Units. The parties further agree that if the Affordable Housing Units are developed in compliance with this Agreement within the Condominium A Parcel that includes "for sale" condominium units, then upon the prior written request of any purchaser of a condominium unit located on the Condominium Parcel A the City, County and Authority shall execute a release in recordable form releasing such restrictive covenants from any such condominium unit.

The Developer hereby agrees that any and all requirements of the laws of the State of North Carolina in order for the provisions of this Agreement to constitute restrictions and covenants running with the title to the Apartment Parcel and the Condominium A Parcel and which touch and concern the Apartment Parcel and the Condominium A Parcel shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the land. Each and every contract, deed or other instrument hereafter executed covering or conveying the Apartment Parcel and the Condominium A Parcel or any portion thereof shall conclusively be deemed to have been executed, delivered and accepted

subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments unless the same has been released pursuant to the provisions of this Agreement. If a portion or portions of the Apartment Parcel and the Condominium A Parcel are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Apartment Parcel and the Condominium A Parcel.

This Agreement shall be recorded concurrently with the deed (the “Deed”) from the City to the County conveying the City Property to the County. For purposes of this Agreement, the “Effective Date” shall be the date the Deed and this Agreement are recorded in the Mecklenburg County Public Registry. As of the Effective Date, the restrictive covenants set forth in this Article II shall be deemed to encumber and be enforceable only against the portion of the City Property that is located within the boundaries of the Apartment Parcel and the Condominium A Parcel. The parties hereby agree that at such time as the County conveys the Brooklyn Village Tract to Developer, the parties will enter into a supplement to this Agreement to acknowledge that the restrictive covenants set forth in this Article II shall thereupon encumber and be enforceable against only the portions of the County Property and the City Property that are located within the boundaries of the Apartment Parcel and the Condominium A Parcel and any such acknowledgement may include a legal description of the Apartment Parcel and the Condominium A Parcel or a reference to a recorded subdivision plat of the Apartment Parcel and the Condominium A Parcel. The form of the supplement to this Agreement to be entered into by the County and Developer is attached hereto as Exhibit E and made a part hereof. If the Brooklyn Village Tract is not conveyed to Developer on or prior to June 1, 2013, or if at any time after the date of this Agreement the County shall convey the City Property or the Apartment Parcel back to the City, then these restrictions shall automatically terminate and expire and be of no further force and effect in which event the parties hereto shall join in the termination of this Agreement and the termination thereof will be promptly recorded in the Mecklenburg County Public Registry.

6. **Compliance Monitoring.** The Developer and any subsequent owner of all or any portion of the Apartment Parcel and the Condominium A Parcel shall submit any information, documents or certifications requested by the City or the Authority which the City or the Authority shall deem reasonably necessary to substantiate the Developer’s and/or subsequent owners’ continuing compliance with the restrictive covenants set forth in this Agreement.

7. **Remedies; Enforceability.** The Developer hereby acknowledges and agrees that the primary purpose for requiring compliance by the Developer and any subsequent owners of all or any portion of the Apartment Parcel and the Condominium A Parcel with the restrictions provided in this Agreement is to assure compliance of the Apartment Parcel and the Condominium A Parcel with the covenants regarding the Affordable Housing Units as set forth herein and by reason thereof, the Developer hereby agrees and consents on behalf of itself and any subsequent owners of all or any portion of the Apartment Parcel and the Condominium A Parcel that each of the City and the Authority shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to obtain (i) specific performance by the Developer and any subsequent owners of the Apartment Parcel and the Condominium A Parcel of the obligations under this Agreement and/or (ii) preliminary and permanent injunctive relief against any of such parties in any court of competent jurisdiction.

The Developer hereby further specifically acknowledges and agrees that the City and the Authority cannot be adequately compensated by monetary damages in the event of default hereunder.

These remedy provisions are imposed upon and made applicable to the Apartment Parcel and the Condominium A Parcel and shall run with the land and shall be enforceable against the Developer and/or any other person or entity that has or had an ownership interest in the Apartment Parcel and the Condominium A Parcel at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach of violation hereof at any later time or times.

ARTICLE III

RIGHT OF FIRST OFFER

1. **Right of First Offer.** If at any time the Developer decides to sell all or part of the Apartment Component that contains the Affordable Housing Units, it shall notify the Authority in writing thereof (the "First Offer Notice"). The First Offer Notice shall contain the terms and conditions upon which Developer intends to offer the Apartment Component for sale, including the purchase price and other material business terms. Upon receipt of the First Offer Notice, the Authority shall have sixty (60) days (the "Acceptance Period") to determine whether the terms and conditions contained therein are acceptable to the Authority and to either accept the offer to buy the Apartment Component or within the Acceptance Period negotiate an agreement with Developer for purchase of the Apartment Component upon such other terms and conditions as are acceptable to the parties. If the terms and conditions contained in the First Offer Notice are acceptable to the Authority, the Authority shall so indicate by providing written notice thereof to Developer prior to expiration of the Acceptance Period and Developer shall sell the Apartment Component to the Authority upon such terms. If the terms and conditions contained in the First Offer Notice are unacceptable to the Authority, and if Developer and the Authority are unable to reach agreement on other terms and conditions acceptable to both parties prior to expiration of the Acceptance Period, then Developer shall be free to market and sell the Apartment Component to other persons for a price not less than the highest purchase price offered by the Authority during the Acceptance Period (the "Minimum Purchase Price") and other terms not materially more favorable to the purchaser than those offered by the Authority during the Acceptance Period. Notwithstanding the forgoing, Developer may reduce the purchase price to an amount that is at least ninety percent (90%) of the Minimum Purchase Price. If, however, Developer determines to reduce the purchase price for the Apartment Component to an amount that is less than ninety percent (90%) of the Minimum Purchase Price, then Developer shall not agree to do so without first notifying the Authority thereof in writing and granting the Authority fifteen (15) days, time being of the essence, to agree to acquire the Apartment Component at such reduced purchase price and on such other material business terms as are contained in an agreement mutually acceptable to Developer and the Authority.

2. **Conversion of Apartment Component to Condominium.** Developer shall have the right, in its sole discretion, to convert the Apartment Component that contains the Affordable

Housing Units to for-sale condominium units. In the event Developer elects to convert the Apartment Component to condominium units, Developer shall deliver the First Offer Notice only with respect to the Affordable Housing Units contained in the Apartment Component, and the parties shall agree upon or negotiate for the sale of such Affordable Housing Units as condominium units in accordance with Section 1 of this Article III. The First Offer Notice shall identify with specificity the location of the thirty (30) Affordable Housing Units within the overall conversion project that are the subject of the First Offer Notice and whether the Authority shall elect to exercise its right of first offer or not, the thirty (30) Affordable Housing Units so identified shall continue to be operated as the Affordable Housing Units in compliance with the provisions of Section 2 of Article II of this Agreement for the Restrictive Covenant Term. Upon the prior written request of any purchaser of a condominium unit located in the conversion project, the City, County and Authority shall execute a release in recordable form releasing such restrictive covenants from any such condominium unit, provided that in no event shall the purchasers of any or all of the Affordable Housing Units so identified in the First Offer Notice be entitled to any such release and the Affordable Housing Units shall remain subject to the restrictive covenants set forth in this Agreement for the Restrictive Covenant Term.

3. **Limitations on Right of First Offer.** Notwithstanding anything contained in this Agreement to the contrary, if the Authority shall fail to make an offer to purchase the Apartment Component that contains the Affordable Housing Units (or the Affordable Housing Unit condominium units in the case of a conversion and sale as contemplated by Section 2 of this Article III) prior to expiration of the Acceptance Period, Developer shall be free to sell the Apartment Component, or such condominium units, as applicable, at such price and on such terms as Developer, in its sole discretion, shall deem desirable and this right of first offer shall be deemed terminated. This right of first offer shall not be binding on any successor in interest to Developer subsequent to the exercise of or failure to exercise the right of first offer. Time is of the essence with respect to all dates and notice periods in the First Offer procedure.

ARTICLE IV

MISCELLANEOUS

1. **Amendment.** No amendment, modification or change to this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought.

2. **Successors and Assigns.** This Agreement shall bind the parties and their successors and assigns.

3. **Waiver.** No delay or omission by any party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

4. **Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such

counterparts shall together constitute one agreement. All signatures need not be on the same counterpart.

5. Rule Against Perpetuities. It is the understanding, intent and desire of the parties that the provisions of this Agreement, including the Authority's Right of First Offer set forth herein, are not and shall not be subject to the Rule Against Perpetuities or any other rule of law with respect to remoteness of vesting of property interests, and such parties hereby covenant not to make any contrary assertion, contention, claim or counterclaim, or seek the benefit of the Rule Against Perpetuities or other such rule of law, in any action, suit or other legal proceeding involving this Agreement. In the event, however, that the Rule Against Perpetuities, or any rule of law with respect to the remoteness of vesting of property interests, shall limit the time within which any property interest granted herein must vest, then such vesting shall occur only within the period of time permitted for such vesting by the Rule Against Perpetuities or any other rule of law, which period of time the parties agree, for their mutual convenience, shall be measured as that period commencing on the date of this Agreement and terminating on the date which is twenty-one (21) years from and after the date of the death of the last survivor of the now living descendants of (i) George W. Bush, President of the United States, and (ii) Her Majesty Queen Elizabeth II, Queen of the United Kingdom of Great Britain and Northern Ireland. In the event that the future vesting of such property rights ever shall be so limited in time, it is the further mutual intent and desire of the parties to amend or supplement this Agreement, if and to the extent permitted by law, at some future time to cause such future property rights to be valid, enforceable and exercisable throughout the term expressed herein.

6. Assignment of Developer's Interest. Prior to the Commencement Date, Developer shall not be entitled to voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation) sell, assign or transfer its rights with respect to this Agreement or any rights, privileges or benefits hereunder without first obtaining the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed. For purposes hereof, the admission of one or more additional members to the Developer that will own in the aggregate more than ten percent (10%) of Developer, or a change of ownership other than among any existing members of Developer of more than ten percent (10%) of the membership interests or other beneficial interests in Developer, or a material change in the structure of Developer, shall be deemed an assignment of Developer's right, title and interest to this Agreement and accordingly shall require the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed. For purposes of this Agreement, the admission of Spectrum Investment Services, Inc. or an affiliate thereof as an additional member of Developer shall not be deemed to constitute a material change in the structure of Developer. Further, for purposes of this Agreement, Developer shall be permitted without obtaining the prior written consent of the City to assign its rights with respect to this Agreement or any rights, privileges or benefits hereunder, and any member of Developer may transfer all or any portion of its interest in Developer, to an affiliate of Massachusetts Mutual Life Insurance Company ("MassMutual"), including Cornerstone Real Estate Advisers LLC ("Cornerstone"), or an entity formed by MassMutual or an affiliate of MassMutual to invest in, among other things, apartment projects and/or entities owning apartment projects and over which MassMutual or an affiliate thereof, including Cornerstone, has, directly or indirectly, management control as the sole general partner, managing general partner, sole manager or managing member. The provisions of this

Section 6 shall terminate and expire and be of no further force and effect from and after the Commencement Date.

[Signatures and notary acknowledgements on following pages]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the dates set forth below:

City:

THE CITY OF CHARLOTTE, a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

County:

MECKLENBURG COUNTY, a political subdivision of the State of North Carolina

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

This instrument has been pre-audited in the manner required by the Local Government Fiscal Control Act:

County Attorney

Director of Finance

Authority:

HOUSING AUTHORITY OF THE CITY OF CHARLOTTE, N.C.

By: _____

Name: _____

Title: President/CEO

Date: _____

[Developer signature on following page.]

Developer:

SPECTRUM INVESTMENT SERVICES, INC.,
a North Carolina corporation.

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

Description of the City Property

[To be attached]

EXHIBIT B

Description of the County Property

[To be attached]

EXHIBIT C

Site Plan

[To be attached]

EXHIBIT D

Subdivision Plat of the Brooklyn Village Tract

[To be attached]

EXHIBIT E

Form of Supplement to Agreement

[To be attached]