

**Drafted by:**

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Attn: Director of Asset and Facility  
Management, Mark Hahn

**AMENDED AND RESTATED  
BROOKLYN VILLAGE  
INTERLOCAL COOPERATION AGREEMENT**

This **AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT** dated and to be effective as of \_\_\_\_\_, 2019 ("Agreement") between the **COUNTY OF MECKLENBURG, NORTH CAROLINA**, a political subdivision of the State of North Carolina ("County"), and the **CITY OF CHARLOTTE, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina ("City").

*WITNESSETH*

**WHEREAS**, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, cities and counties are authorized to enter into interlocal cooperation undertakings with each other for the contractual exercise by one unit of local government for the other unit of local government of any power, function, public enterprise, right, privilege, or immunity of local government; and

**WHEREAS**, the County and the City entered into the "Brooklyn Village Interlocal Cooperation Agreement" dated November 19, 2013 (the "Current Brooklyn Village Interlocal Agreement"), which Current Brooklyn Village Interlocal Agreement the parties desire to amend and replace with this Agreement; and

**WHEREAS**, the City and County both support the implementation of the first phase of the Second Ward Neighborhood Master Plan in accordance with the Vision Statement and Master Plan attached as **Exhibit A**, and wish to enter into this Agreement to assist each other in the accomplishment of these goals,

which would advance or further City and County economic development, urban revitalization, community development and land use plans; and

**WHEREAS**, the City has conveyed certain real property in Second Ward (Marshall Park) to the County to assist in the development of Brooklyn Village; and

**WHEREAS**, the County previously entered into a sales agreement that included the Brooklyn Village Site, but the developer did not close on the sale thereof; and

**WHEREAS**, in the intervening period since the Current Brooklyn Village Interlocal Agreement was executed, the County has selected BK Partners, LLC, a Delaware limited liability company (“BK”), to serve as master developer in the redevelopment of Brooklyn Village; and

**WHEREAS**, the process for redevelopment of Brooklyn Village negotiated between the County and BK, as outlined in the Master Redevelopment Agreement by and between the County and BK, dated July 10, 2018 and attached hereto as **Exhibit C** (the “MRA”), necessitates modifications in the Current Brooklyn Village Interlocal Agreement, which modifications have been incorporated into this Agreement;

**NOW, THEREFORE**, in consideration of the mutual commitments contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the County agree as follows:

## **ARTICLE I. DEFINITIONS**

The following terms have the meanings herein as set forth herein, unless the context otherwise requires:

**1.01** “*Agreement*” means this Amended and Restated Brooklyn Village Interlocal Cooperation Agreement between the City and the County, and any amendment or supplement thereto.

**1.02** “*Board of Education Building*” means the now-closed building, formerly used by the Board of Education, located on the Brooklyn Village Site, as shown on the map attached hereto as **Exhibit B**.

**1.03** “*Brooklyn Village Site*” means the parcels located in Charlotte, Mecklenburg County, North Carolina, PID Numbers 12507120 and 12507125, as shown on **Exhibit B**.

**1.04** “*City*” means the City of Charlotte, North Carolina.

**1.05** “*County*” means the County of Mecklenburg, North Carolina.

**1.06** “*Developer*” means BK or such other suitable purchaser of the Brooklyn Village Site, as the County may determine.

**1.07** “*Marshall Park*” means the real property having the Parcel ID No. 12507125 as shown on the map attached as **Exhibit B**, and all attachments thereon and appurtenances thereto, excluding any monuments or structures that the City removed from the property.

**1.08** “*Second Ward Neighborhood Master Plan*” means the Second Ward Neighborhood Master Plan adopted in 2002 by the Charlotte City Council, Mecklenburg County Board of Commissioners and the Charlotte-Mecklenburg Board of Education.

**1.09** “*Walton Plaza Site*” means the parcels located in Charlotte, Mecklenburg County, North Carolina, PID Numbers 12517101 and 12517103, as shown on **Exhibit B** (and together, the redevelopment of the Walton Plaza Site and the Brooklyn Village Site shall be referred to herein as the “Project”).

## **ARTICLE II. COUNTY RESPONSIBILITIES**

**2.01** Offer for sale and development the Brooklyn Village Site and Walton Plaza Site as shown on **Exhibit B**. The parcels may be subdivided and may be sold individually or in combination, depending on market conditions.

**2.02** Require Developer to cause the demolition of the Board of Education Building during Phase I of its development (as the term Phase I is defined in the MRA attached hereto as **Exhibit C**).

**2.03** Design and construct, or cause to be designed and constructed, infrastructure improvements (i.e., rerouting of existing storm water drainage pipe, demolition of the Marshall Park pond structures and fountain, preliminary grading, and road construction) as needed for proposed development. Some infrastructure improvements may be implemented incrementally as needed for the development of the Brooklyn Village Site and some might be implemented by Developer.

**2.04** Retain (after conveyance to Developer, and reconveyance to the County after necessary infrastructure work has been completed) an urban park which will be located on the Brooklyn Village Site (the “Park”) as part of the approximately 2.5 acres of Public Open Space (as defined in the MRA attached as **Exhibit C**) that will be developed throughout the Project. The exact size of the Park and other Public Open Space will be determined after the sale of parcel(s) to Developer and determination of allowances for actual public street rights-of-way.

**2.05** The County further acknowledges and agrees that the City shall have no responsibility to fund streets or any other infrastructure or improvements needed for development of the Park as part of Brooklyn Village.

**2.06** The County will require Developer, at its sole cost to: (a) be responsible for the transfer and care of the Martin Luther King statue, and (b) work with the Rabbi & Executive Directors Council to find a suitable location for, transfer and care for the Holocaust Memorial. The County will require Developer, at its own cost, to care for or remove all other monuments and structures on the Marshall Park site not removed by the City within the time period set forth in the Current Brooklyn Village Interlocal Agreement.

## **ARTICLE III. CITY RESPONSIBILITIES**

The City agrees to endeavor to negotiate and enter into a new agreement (if necessary) with the County and the Charlotte Housing Authority (“CHA”) to amend and update the terms and conditions as stated in the Brooklyn Village Memorandum of Agreement among the CHA, the County and the City dated July 5, 2015, and such new agreement (the “Amended BV MOU”) may be executed contemporaneously herewith. The Amended BK MOU will confirm Developer’s obligation to provide a minimum of thirty-five (35) housing units on the Project which shall be available to households with tenant-based Housing Choice Vouchers (“Vouchers”) for a term of at least thirty (30) years. The Amended BK MOU will additionally set forth the CHA’s commitment to support Developer’s affordable housing leasing efforts and actively market the availability of all affordable and senior affordable housing units, pursuant to CHA’s normal processes, to include advertising on CHA’s Voucher website, etc.

#### **ARTICLE IV. REVERSAL OPTION**

If none of the Marshall Park property is sold by the County to Developer or other buyer with restrictions similar to the restrictions attached to the MRA by [December 31, 2029], the County shall, if requested in writing by the City by [April 1, 2030], convey Marshall Park back to the City at no cost to the City within ninety (90) days after receipt of the City's written request. The County Board of Commissioners, by approval of this Agreement, authorizes and directs the County Manager to execute all documents necessary to convey Marshall Park back to the City within such time period upon receipt of a written request from the City pursuant to the preceding sentence.

#### **ARTICLE V. COUNTY EXERCISE OF CITY POWERS**

Pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, and in consideration of the joint actions being taken by the City and County to achieve the shared objectives contemplated by this Agreement, the City has agreed to authorize the County to exercise some City powers as set forth in Sections 5.01 through 5.03 below with respect to the County's disposition of Marshall Park and the Charlotte-Mecklenburg Board of Education property adjacent to Marshall Park (proposed site for Brooklyn Village) and that portion of the Spirit Square Properties which the County may consider selling in the future.

**5.01** County Exercise of the City's Charter Power for Private Sale of Real Property. The City authorizes the County and the Mecklenburg County Board of Commissioners to exercise the City's power to sell or lease real property using the procedures contained in Section 8.22 (d) of the City Charter (with actions stated to be taken by the City to be actions to be taken by the "County", with actions to be taken by the "Council" to be actions taken by the "County Board of Commissioners", with "Council" adopted plans or policies to be "County Board of Commissioners" adopted plans or policies, and with actions to be taken at a "Council" meeting to be actions to be taken at a "County Board of Commissioners" meeting), which section of the Charter reads as follows:

(d) When the Council determines that a sale or disposition of property will advance or further any Council-adopted economic development, transportation, urban revitalization, community development, or land-use plan or policy, the City may, in addition to other authorized means, sell, exchange, or transfer the fee or any lesser interest in real property, either by public sale or by negotiated private sale. The City may attach to the transfer and to the interest conveyed such covenants, conditions, or restrictions (or a combination of them) the City deems necessary to further such adopted policies or plans. The consideration received by the City, if any, for such conveyance, may reflect the restricted use of the property resulting from such covenants, conditions, or restrictions. An interest in property pursuant to this subsection may be conveyed only pursuant to resolution of the Council authorizing the conveyance. Notice of the proposed transaction shall be given at least 10 days prior to adoption of the resolution by publication in a newspaper of general circulation, generally describing:

- (1) The property involved;
- (2) The nature of the interest to be conveyed; and
- (3) All of the material terms of the proposed transaction, including any covenants, conditions, or restrictions which may be applicable. The notice shall give the time and place of the Council meeting where the proposed transaction will be considered and shall announce the

Council's intention to authorize the proposed transaction. Notwithstanding the foregoing, the City may not sell the land or buildings located at 100 Paul Buck Boulevard by private sale.

**5.02 County Exercise of the City's Charter Power to Lease Property.** The City authorizes the County and the Mecklenburg County Board of Commissioners to exercise the City's power to lease real property using the procedures contained in Section 8.131 of the City Charter (with actions stated to be taken by the City to be actions to be taken by the "County", with actions to be taken by the "Council" to be actions taken by the "County Board of Commissioners"), which section of the Charter reads as follows:

Notwithstanding the provisions of G.S. 160A-272, the Council may, in its discretion, lease City-owned property for such terms and upon such conditions as the Council may determine, including terms of more than 10 years without the necessity of following any procedures other than those required by G.S. 160A272 for leases of 10 years or less.

**5.03 County Exercise of Municipal power to improve streets and sidewalks.** The City authorizes the County to exercise its municipal powers to make improvements to streets and sidewalks as necessary to provide the infrastructure improvements to streets in the Brooklyn Village development as identified in **Exhibit B**.

## **ARTICLE VI. DEVELOPMENT OF BROOKLYN VILLAGE**

The County will sell the Brooklyn Village Site to Developer for the purpose of the development of a mixed use urban village in Second Ward ("Brooklyn Village"). The County will endeavor to enter into agreements with Developer to cause development to occur consistent with the following:

**6.01** Brooklyn Village will be a mix of uses that may include but are not limited to condominiums, apartments, office space, retail, hotel, and community facilities designed to encourage diversity and to honor the old Brooklyn neighborhood. The Vision Statement and Master Plan for Brooklyn Village are attached in **Exhibit A** for reference.

**6.02** The Project will include a minimum of thirty-five (35) housing units that shall be available to households with Vouchers received from the CHA for a term of at least thirty (30) years, as further described in Article III herein and the Amended BV MOU.

**6.03** Second Ward Neighborhood Master Plan: Brooklyn Village is the first phase of planned redevelopment in Second Ward. The mission of the Second Ward Neighborhood Master Plan is *"to create a livable and memorable urban neighborhood in the heart of the city through mixed land use, 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"*. The County has worked and will continue to work with Developer and Second Ward stakeholders to ensure that the Brooklyn Village Site is developed consistent with the Second Ward Neighborhood Master Plan vision. Developer has agreed to minority participation goals and other solutions for achieving the goals of the Second Ward Neighborhood Master Plan substantially as provided in the MRA attached hereto as **Exhibit C**.

## **ARTICLE VII. INDEMNIFICATION AND HOLD HARMLESS**

**7.01** To the fullest extent permitted by law, the City shall indemnify and hold harmless the County and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent action or omission of the City, its officers, agents and employees in removing

monuments, structures or other items from Marshall Park after ownership was transferred to the County. In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the City and County, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against the County and its elected officials, officers, agents and employees or jointly against the County and City and their respective elected officials, officers, agents and employees, the City shall satisfy the same.

**7.02** To the fullest extent permitted by law, the County shall indemnify and hold harmless the City and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the County, its officers, agents and employees in performing obligations pursuant to this Agreement, or (ii) which arise from occurrences related to Marshall Park that occurred on or after the effective date of conveyance of Marshall Park to the County. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and the County, the County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and County and their respective elected officials, officers, agents and employees, the County shall satisfy the same.

**7.03** Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to Marshall Park.

#### **ARTICLE VIII. DURATION**

This Agreement will terminate December 31, 2035 or such earlier date as agreed to by the City and the County in writing.

#### **ARTICLE IX. MISCELLANEOUS**

**9.01 Current Brooklyn Village Interlocal Agreement.** The Current Brooklyn Village Interlocal Agreement, including without limitation, the City's right to cause the County to convey Marshall Park back to the City, as described in Article IV therein, is terminated and hereby replaced by this Agreement as of the Effective Date of this Agreement.

**9.02 Amendment.** This Agreement may be amended through an amendment approved in writing by the City Council and the Mecklenburg County Board of Commissioners.

**9.03 Severability.** If any section of this Agreement is deemed to be illegal or otherwise unenforceable, it is the intent of the parties hereto that all other provisions of this Agreement shall remain in full force and effect.

**9.04 Governing Law.** This Agreement is to be governed by and interpreted in accordance with the laws of the State of North Carolina.

**9.05 Time is of the Essence.** Time is of the essence in this Agreement.

**9.06 Execution in Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which constitutes a completed document.

**9.07 Force Majeure.** If either the City or the County shall be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder, as a result of any Force Majeure (as defined below), and, provided that the party delayed, hindered or prevented from performing notifies the other party

both of the commencement and of the expiration of such delay, hindrance or prevention, (each notice being required within fourteen (14) days of the respective event), then the performance of such covenant or obligation shall be excused for the period of such delay, hindrance or prevention and the period for the performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. Failure to so provide the foregoing notice will result in waivers of both excuse in performance and extension of time to perform under this Agreement with respect to any such delay, hindrance or prevention. “Force Majeure” shall mean fire, storm, earthquake, tornado, flood, natural disaster, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, threats of sabotage or terrorism, restraint by court order, acts of God, or labor disputes not due to a breach of an applicable collective bargaining agreement.

**9.08 Effective Date.** This Agreement takes effect on the date first stated above.

**[Signatures are on following pages]**

***IN WITNESS WHEREOF***, the City Manager and the County Manager have each executed this Agreement to evidence the agreement of the parties hereto and the City Clerk and the Clerk to the Board of County Commissioners have affixed the seal of the City and the County, as applicable, to this Agreement.

**CITY OF CHARLOTTE, NORTH CAROLINA**

[SEAL]

By: \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk



**COUNTY OF MECKLENBURG, NORTH CAROLINA**

[SEAL]

By: \_\_\_\_\_  
County Manager

Attest:

\_\_\_\_\_  
Clerk to the Board

Approved as to form:

Pre-audit not required

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
DIRECTOR OF FINANCE  
MECKLENBURG COUNTY