

**TAX ABATEMENT AGREEMENT
BETWEEN THE CITY OF STAMFORD AND
SPRUCE CT OWNER LLC**

This AGREEMENT made this ____ day of _____, 2021, (hereinafter the "Agreement") is by and between **THE CITY OF STAMFORD**, a municipal corporation organized and existing under the laws of the State of Connecticut with a principal place of business located at Government Center, 888 Washington Boulevard, Stamford, Connecticut (hereinafter the "City"), acting herein by _____, its duly authorized Mayor, and **SPRUCE CT OWNER LLC**, a domestic limited liability company with a principal place of business located at 2 Enterprise Drive, Suite 406, Shelton, Connecticut (hereinafter the "Owner"), acting herein by Spruce NCM LLC, its duly authorized Managing Member.

W I T N E S S E T H

WHEREAS, the Owner is Contract Purchaser for an 89 unit cooperative low and moderate income complex known as Coleman Towers, located at 72 Spruce Street, Stamford, Connecticut, (hereinafter "Property" or "Coleman Towers") which is more particularly described in Schedule A hereto and made a part hereof;

WHEREAS, it is the intent of the Owner to completely renovate and rehabilitate the Property and increase the total number of units from 89 to 132. Of these 132 units and in compliance with its committed Connecticut Housing Finance Authority ("CHFA") financing, a total of 115 units shall be maintained at below market rate rents for a minimum of forty years, with 27 units of these units affordable for those persons or households at or below 50% of the Area Median Income ("AMI"), with the remaining 88 units exclusively available to persons or households at or below 60% AMI. The 27 units maintained at 50% of AMI shall remain so in perpetuity, with the balance of the units permitted to be rented at market rate at the expiration of the CHFA financing, i.e., in forty years;

WHEREAS, the Property was constructed in 1971 as an affordable rental complex, and was later converted to a cooperative form of ownership to provide home ownership opportunities to low and moderate income families;

WHEREAS, the Property is in need of maintenance and improvement;

WHEREAS, Owner has secured a Conditional Commitment from the Connecticut Housing Finance Authority to provide Construction and Permanent Financing for the purchase and renovation of the Property in an amount not to exceed \$28,070,000, on the conditions, among others, that the affordability limitations described above are maintained for the life of the loan, i.e., 40 years from the completion of its renovation and issuance of a Certificate of Occupancy;

WHEREAS, among the uses to which such financing (and other funds of Owner) shall be put, shall include the payment of approximately \$1,725,000.00 in delinquent real property

taxes interest and penalties owed by the current owners of Coleman Towers to the City of Stamford;

WHEREAS, the Owner has agreed to: (1) maintain the affordability requirements of its CHFA financing as described above until its maturity as provided therein, and (2), shall maintain 27 units at 50% AMI in perpetuity;

WHEREAS, the City is empowered to grant a real property tax abatement for rental Units used for low and moderate income persons or families under Chapter 220 of the Stamford Charter and Code of Ordinances, in accordance with the powers granted by Sections 8-215 of the Connecticut General Statutes, as amended;

WHEREAS, the Owner is requesting that the City grant its request for an abatement of seventy five percent (75%) of all real property taxes assessed on Coleman Towers, as such taxes may vary from year to year, for the purpose(s) described herein as such abatement is more particularly described in this Agreement provided the Owner satisfies the further terms and conditions set forth herein;

WHEREAS, the City is willing to grant such abatement to the Owner in accordance with the terms and conditions set forth in this Agreement and subject to the approval of the City's Tax Abatement Committee and Board of Representatives;

NOW THEREFORE, in consideration of the mutual undertaking herein contained and other valuable consideration, the parties hereby agree as follows:

1. Each fiscal year during the term of this Agreement, commencing as of the Commencement Date (as defined below), the Owner agrees, warrants and represents that it will pay the City twenty five percent (25%) of real property taxes due annually, provided that the Owner satisfies all of the further terms and conditions set forth in this Agreement.
2. The term of this Agreement shall be for a period of forty years commencing on the date the Owner purchases and rehabilitates the Property as contemplated herein and receives a Final Certificate of Occupancy (the "Commencement Date"), for all 132 units in the building constituting the Property, which term may be extended pursuant to Section 5(d) below. No real property taxes, or interest or penalties arising therefrom, that accrued before the Commencement Date, shall be abated in any way pursuant to this Agreement. Further, the parties agree that this Agreement and the tax abatement set forth in Section 1 hereof shall not be terminated or altered in the event that during the term hereof the Property becomes partially or totally vacant for the purpose of remediation, renovation, redevelopment or other improvements or alterations to the Property provided that the primary intended use of the Property as housing low- and moderate-income persons or families is not being changed;

3. The Owner agrees, warrants and represents that, for the entire term of this Agreement, including any extension thereof, that 115 Units on the Property shall be deemed “affordable units” within the meaning provided for in Section 42 of the Internal Revenue Code (“IRC”) in that these units will be exclusively occupied by low- or moderate-income persons or households at either 50% or 60% of the Area Median Income (“AMI”) as per most current periodic calculation published by the United States Department of Housing and Urban Development (“HUD”). At all times under this Agreement not less than 27 of the 115 affordable units shall be set aside and made available for occupancy by income eligible persons or households at or below 50% of AMI with the balance of the affordable units (88 units) reserved for income eligible persons or households at or below 60% of the AMI. The Owner further agrees that all monies equal to the amount of the taxes abated pursuant to this Agreement shall be used exclusively for any one or more of the following purposes: to reduce rents below the level which would be achieved in the absence of such abatement, or to improve the quality and design of such housing, or to effect occupancy of such housing by persons and families of varying income levels within limits approved by the City, or to provide necessary related facilities or services in such housing.

Notwithstanding anything herein to the contrary, the Owner further agrees, warrants and represents that monies equal to the amount of taxes so abated, throughout the entire term of this Agreement, and any extensions thereto, shall be used to fund any applicable long-term debt service in support of a mortgage loan providing funds to be used to implement major repairs and capital improvements intended to ensure the ongoing viability of the Property as an affordable housing resource, and any portions of the abated amount not so utilized shall be expended directly to defray the cost of repairs or capital improvements. The financial records and annual independent audits of the Owner shall identify amounts expended for debt service and shall also identify amounts expended directly for repairs and capital improvements during each fiscal year;

4. The tax abatement described herein shall be effective as of the Commencement Date as set forth in Section 2 above and shall continue thereafter until terminated as provided herein. Further, the annual payments described in paragraph numbered one above shall be paid to the City in the same manner and same timeframes as real property taxes are paid within the City. Any payment that is more than thirty (30) days late shall accrue interest at the same rate and in the same manner as delinquent real property taxes as provided for in Sec. 12-146 of the Connecticut General Statutes, as may be amended from time to time;
5. This Agreement shall terminate immediately upon the occurrence of:
 - a. At any time when the Owner fails to provide the number of affordable house units at the rates set forth in Section 3, above;
 - b. At any time when the Owner fails to use the monies described in Section 3, above, for the purposes so described in said section;

- c. In the sole discretion of the City, at any time when the Owner is in material breach of this Agreement and has not reasonably cured such breach within 60 days (or 30 days in the event of a payment default) after written notice thereof from the City provided, however, that if the nature of the Owner's obligation (other than a payment default) is such that more than 60 days are required to cure such breach then the Owner shall not be in breach hereunder if the Owner commences performance within such 60 day period and thereafter diligently prosecutes the same to completion; and/or
- d. On the date(s) set forth in Section 2, above. Notwithstanding the foregoing, at the request of the Owner, and provided that the Owner is compliance with all the terms of this Agreement, this Agreement may be extended by the City, in its sole discretion, which shall not be unreasonably withheld, for two (2) additional, successive term(s) of thirty years (30) each, and thereafter one additional eight (8) year period, not to exceed one hundred eight (108) years in total, by notifying the Owner in writing prior to the expiration of each term;
6. Any amount payable by the Owner in accordance with this Agreement above shall be adjusted on a pro rata basis for any fiscal year during which the tax abatement is in effect for less than the entirety of such fiscal year, or the tax abatement hereunder is terminated, such that the amount owed will be equal to the product of (a) the per annum amount otherwise due under this Agreement, and (b) the quotient obtained by dividing the number of days during which the tax abatement was operative, by 365;
7. a. The Owner agrees, warrants and represents that it shall comply with all applicable federal, state and local laws, rules, regulations, ordinances, charters, statutes, codes, orders, policies and procedures relating to the Property;
- b. Notwithstanding anything in the Agreement to the contrary, if at any time during the term of this Agreement the Owner is without an "affordable use agreement" (i.e. a contract with any governmental agency which regulates and verifies that units are being rented to persons or families at or below the Area Median Income, or other similar agreement), the Owner shall screen all tenants for initial income eligibility at or below the percentages of the Area Median Income agreed to by Owner pursuant to this Agreement and otherwise fulfill the initial eligibility requirements as if a Low Income Housing Tax Credit affordable use agreement was in effect.
8. For so long as this Agreement shall remain in full force and effect, the Owner agrees (i) to make all financial books and records available to the Tax Abatement Committee and the Board of Representatives of the City or to any person duly, selected, hired or engaged by said Committee and/or Board for the review, inspection, audit and reproduction of any documentation or portion thereof, and (ii) to maintain such books and records in accordance with Generally Accepted Accounting Principles (GAAP). On or before the 31st day of August of every calendar year, the Owner agrees, warrants and represents that, unless otherwise agreed by the City, it shall provide the City with a comprehensive, annual financial statement prepared by an independent, Certified Public Accountant (CPA), regarding the Property. The Owner further agrees, warrants and represents that it

shall provide the City on or before August 25th of each calendar year with a certification prepared by said independent CPA that the Owner is substantially in compliance with its obligations set forth in Paragraph 3 of this Agreement. In addition, the Owner will make available to the Tax Abatement Committee, each calendar year, a copy of any compliance verification form or certification that it has submitted to (i) any lender, capital provider, tax credit investor or provider or purchaser of tax credits or provider of other form financing to the Project, (ii) any grantor of grant money or such grantor's designated agent or regulating authority or (iii) a regulatory agency for the purpose of attesting that the occupancy of the below market rate units has been restricted to low and moderate income households. The Tax Abatement Committee may, at its discretion, utilize this form of certification in determining that the Owner is in compliance with this Agreement;

9. In the event this Agreement is terminated as provided herein, all monies due and owing to the City shall be immediately due and payable to the City upon written demand and the abatement of taxes shall terminate on the date calculated in section 5, above;
10. The Tax Abatement Committee may, by majority vote, extend any of the audit report deadlines set forth in this Agreement, if the Owner reasonably demonstrates the necessity for any such extension(s);
11. This Agreement shall continue in effect throughout its initial term, and any extensions, in the event of sale of the land and/or improvements by the current or subsequent owners so long as the affordability requirements and other provisions of the Agreement are met;
12. Notwithstanding anything contained in this Agreement to the contrary, the rights of the City against the Owner shall be satisfied solely and exclusively out of the assets consisting of (i) the real property of the Property, and (ii) any income or proceeds arising from the operation or sale of the Property;
13. The Agreement constitutes the entire contract between the parties hereto, and no oral statements or promises and no understanding not embodied in this writing shall be valid or binding. Any modification of this Agreement shall be in writing and executed with the same formality as this Agreement. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement;
14. This Agreement shall be governed by the laws of the State of Connecticut. It is agreed by the parties that if either party commences suit, action or any other legal proceeding against the other, the venue shall be the State Superior Court for the Judicial District of Stamford/Norwalk at Stamford, Connecticut or the Federal District Court in Bridgeport, Connecticut;
15. Any statutory reference contained herein shall include any and all amendments thereto and replacements thereof; and

16. Any notice required under this Agreement shall be given to the respective parties as follows:

To the City of Stamford:

Director of Administration
City of Stamford
888 Washington Boulevard
Stamford, CT 06904-2152

With a copy to:

Director of Legal Affairs and Corporation Counsel
City of Stamford
Office of Legal Affairs
888 Washington Boulevard
Stamford, CT 06904-2152

To the Owner:

Spruce CT Owner LLC
2 Enterprise Drive Suite 406
Shelton, CT 06484

[REMAINDER OF PAGE LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year above written.

Signed, Sealed and Delivered
In the Presence of:

CITY OF STAMFORD

Print:

By: _____
_____, Mayor

Print:

SPRUCE CT OWNER LLC

Solomon Kinraich

Print:

By: 

*Solomon Kinraich, Member
duly authorized.*

Print:

Approved as to Form:

Chris Dellaselva
Asst. Corporation Counsel