

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Mazzotta & Vagianelis, P.C.
9 Washington Square
Albany, New York 12205
Attention: John N. Vagianelis, Esq.

CPC # 70750

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT dated as of November 6, 2020 (the "Agreement"), by and among the **CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its office at 62 Civic Center Plaza, Poughkeepsie, New York 12601 (the "Agency") on behalf of and for the benefit of the City of Poughkeepsie (the "City"), a municipality having offices at 62 Civic Center Plaza, Poughkeepsie, New York 12601, the Poughkeepsie City School District (the "School District"), having offices at 11 College Avenue, Poughkeepsie, New York 12603 and the County of Dutchess (the "County"), a municipality having offices at 22 Market Street, Poughkeepsie, New York 12601, **160 UNION HOLDINGS LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 15 Sumter Road, Airmont, New York 10952 (the "Company") and **CPC FUNDING SPE 1 LLC**, a New York limited liability company having an office c/o The Community Preservation Corporation, 220 East 42nd Street, 16th Floor, New York, New York 10017 (the "Lender").

WITNESSETH:

WHEREAS, the Agency and the Company have entered into a Fee and Leasehold PILOT Mortgage made as of November 1, 2020, to be recorded in the Dutchess County Clerk's Office (the "PILOT Agreement Mortgage"), by and from the Agency and the Company (collectively, the Company and the Agency, the "Mortgagors"), to the Agency, on behalf of and for the benefit of the City, the County and the School District (hereinafter, the City, the County and the School District are sometimes collectively referred to as the "Affected Tax Jurisdictions"), as Mortgagee, to secure payments in lieu of taxes (the "PILOT Obligations") to be made under Section 5.1 of that certain Lease and Project Agreement dated as of November 1, 2020, between the Agency and the Company (the "Lease Agreement"), and that certain Payment-in-Lieu-of-Tax Agreement dated on or about the date hereof between the Agency and the Company (the "PILOT Agreement") all concerning that certain real property located at (Tax ID No.: 6062-84-910070), known as 160 Union Street, City of Poughkeepsie, County of Dutchess and State of New York, as more particularly described in Schedule "A" attached hereto (the "Property"); and

WHEREAS, to fund the construction, rehabilitation and improvements to the Property, the Company desires to mortgage the Property to Lender by the mortgage more particularly described in Schedule "B" annexed hereto in the maximum principal amount of \$7,200,000.00

(the "Financing Mortgage"), and the Agency has agreed to subordinate the lien of the PILOT Agreement Mortgage to the lien of the Financing Mortgage; provided the Agency's right to receive payments under the PILOT Agreement Mortgage shall be superior to the right of the Lender to receive payments.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The PILOT Agreement Mortgage shall be subordinate in lien to the Approved Mortgages (as defined herein), including the Financing Mortgage, as the same may be amended, modified, supplemented, combined, consolidated, increased and/or amended and restated; provided the right to receive payments under the PILOT Agreement shall not be subordinated. Notwithstanding the subordination of the PILOT Agreement Mortgage provided for in this Agreement, the Agency's right to receive payment of the PILOT Obligations under the PILOT Agreement shall not be subordinated to the Approved Mortgages.

2. For the purposes of this Agreement, the term "Approved Mortgages" shall include the Financing Mortgage and any mortgage or mortgages, deeds of trust or other liens related to the financing of the construction and improvement of the Property, refinancing of the Financing Mortgage, and all amendments, consolidations, modifications, extensions and restatements thereof given by the Company and the Agency in favor of the Lender or any successor lender and other lending institutions which become parties to the Approved Mortgages, respectively; provided, however, said subordination of the lien of this Mortgage is expressly conditioned upon the payment obligations under the Lease Agreement and PILOT Agreement having a priority right of payment over amounts payable under the Approved Mortgages. ANY SUCH APPROVED MORTGAGES SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR ANY OTHER AMOUNT SECURED BY ANY SUCH APPROVED MORTGAGES.

3. If the Company, with respect to all or a portion of the Property and/or such Company's successors and assigns, shall mortgage or grant a security interest in such Company's interest in the Property and, if the mortgagee shall send to the Agency (pursuant to the notice provisions set forth in Paragraph 4 herein) a true copy of its mortgage, together with written notice specifying the name and address of the mortgagee, so long as such mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to the Agency, the following provisions shall, subject to and unless otherwise prohibited by all applicable law including, but not limited to, Title 1 of Article 18-A of the General Municipal Law of the State of New York duly enacted into law as Chapter 1030 of the Laws of 1969 and Chapter 785 of the Laws of 1976 of the State of New York, apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) Except in the case of an Event of Default (as defined in the PILOT Agreement and Lease Agreement), there shall be no renewal, cancellation, surrender, acceptance of surrender, amendment or modification of the Lease Agreement, PILOT Agreement or the PILOT

Agreement Mortgage by joint action of the Agency and the Company alone, without, in each case, the prior consent in writing of the holder of the Approved Mortgages (each a "Mortgagee"), nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates in the Property or improvements thereon (the "Facility").

(b) The Agency shall, at no cost to the Agency and at the sole cost of the Company, upon receipt of any notice or other communication, whether of default or any other matter, simultaneously serve a copy of such notice upon the Mortgagee, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this Agreement for the giving of notice.

(c) Notwithstanding anything to the contrary herein, in the case of an Event of Default, if the Agency serves a notice of default upon the Company, it shall, at no cost to the Agency and at the sole cost of the Company, also serve a copy of such notice upon the Mortgagee (provided the Agency has been given prior written notice of such Mortgagee, together with its address for service).

(d) In the case of an Event of Default by the Company under the Lease Agreement, PILOT Agreement or PILOT Agreement Mortgage, the Mortgagee shall have forty-five (45) days for a monetary default and ninety (90) days in the case of any other default, after notice to the Mortgagee of such default (which notice shall be given in the manner set forth in Paragraph 4), to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of such Mortgagee as if same had been done by the Company. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(e) If, before the expiration of Mortgagee's cure period as provided in paragraph (d) above, Mortgagee shall have notified the Agency in writing of its agreement to pay or cause to be paid to the Agency, within forty-five (45) days after the expiration of Mortgagee's cure period, all payments in the Lease Agreement or PILOT Agreement Mortgage provided for and then in default, and/or in the case of non-monetary defaults, shall have agreed within ninety (90) days to commence or caused to be commenced the cure of such non-monetary defaults, if any are then in default (other than defaults which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "extended cure period"), then the Agency shall not exercise any of its rights and remedies hereunder or under the PILOT Agreement Mortgage until expiration of the extended cure period but shall have the right to bring a collection action related to the payment priority.

(f) The Company (and not the Agency) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the parties hereto, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

(g) The Company shall cause the name of the Mortgagee to be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by the Company on behalf of the Agency in respect of the Facility, and all such policies shall state

that the insurance proceeds are to be paid as provided in the Mortgage (this subsection (g) shall in no way be construed to require the Agency to obtain, bear the cost of or maintain any insurance with respect to the Facility and shall have no effect on the insurance requirements contained in the Lease Agreement).

(h) Any award or payment in condemnation or eminent domain in respect of the Facility shall be paid by the Company to the Mortgagee to be applied in the manner specified in the applicable Mortgage provided all payments under the PILOT Agreement are brought current.

(i) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain except in accordance with the terms of the Mortgage.

(j) Except where the Mortgagee has succeeded to the interest of the Company in the Facility or assumed the right to cure as provided in this Paragraph 3, no liability for any payments to be made pursuant to this Agreement or the performance of any of the Company's covenants and agreements under this Agreement shall attach to or be imposed upon the Mortgagee, and if the Mortgagee or its nominee or designee succeeds to the interest of the Company in the Project, all of the obligations and liabilities of the Mortgagee or its nominee or designee shall be limited to such entity's interest in the Facility and as otherwise imposed by this Agreement and shall cease and terminate upon assignment of this Agreement (any such further assignment to be approved by the Agency).

(l) Notwithstanding any provision of this Agreement, the Lease Agreement, or the PILOT Agreement Mortgage to the contrary, provided payments are current under the PILOT Agreement, foreclosure of a mortgage or any sale of the Company's interest in this Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings, or any conveyance of the Company's interest in this Agreement and/or the Facility to the Mortgagee or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of the Company's interest in this Agreement and/or the Facility by the Mortgagee or its nominee or designee, shall (i) not require the consent or approval of the Agency and shall not be a default or Event of Default hereunder and shall not affect the validity or enforceability of this Agreement and (ii) not affect the validity or enforceability of this Agreement.

(m) The Agency acknowledges that this Paragraph 3 shall be deemed to apply to the Approved Mortgages without further action by the Mortgagee.

4. All notices, certificates and other communication hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by a nationally recognized courier such as Federal Express, or by telecopy or other electronic means of communication, followed by prompt written confirmation thereof, or by such other means as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communication hereunder shall be delivered are as follows:

To the Agency:

City of Poughkeepsie Industrial Development Agency
28 Garfield Place
Poughkeepsie, New York 12601
Attention: Chair

With a copy to:

Harris Beach PLLC
90 Garnsey Road
Pittsford, New York 14534
Attention: Christopher A. Andreucci, Esq.

To the Company:

160 Union Holdings LLC
15 Sumter Road
Airmont, New York 10952
Attention: Bernard Kohn

To Mortgagee:

CPC Funding SPE 1 LLC
c/o The Community Preservation Corporation
220 East 42nd Street, 16th Floor
New York, New York 10017
Attention: Portfolio Services
Loan No.: 70750

With a Copy to:

CPC Funding SPE 1 LLC
c/o The Community Preservation Corporation
220 East 42nd Street, 16th Floor
New York, New York 10017
Attention: General Counsel
Loan No.: 70750

Any party, by notice given hereunder to each of the other parties, may designate any further or different address to which subsequent notices, certificates or other communications to them shall be sent. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

6. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7. This shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

8. This Agreement shall be recorded or filed, as the case may be, in the Office of the Clerk of Dutchess County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

[Signature Page to Subordination Agreement]

IN WITNESS WHEREOF, the Agency, the Company and the Lender have caused this Agreement to be executed in their respective names, all as of the date first above written.

**CITY OF POUGHKEEPSIE INDUSTRIAL
DEVELOPMENT AGENCY**

By: Melanie Vetter
Name: Melanie Vetter
Title: Chair

160 UNION HOLDINGS LLC

By: _____
Name: Bernard Kohn
Title: Sole Member

CPC FUNDING SPE 1 LLC,
a New York limited liability company

By: The Community Preservation Corporation,
its Sole Member

By: _____
Name: Joya Cohen
Title: Vice President

[Signature Page to Subordination Agreement]

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DEVELOPMENT AGENCY**

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Name: Melanie Vetter
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160 UNION HOLDINGS LLC

By:  _____
Name: Bernard Kohn
Title: Sole Member

CPC FUNDING SPE 1 LLC,
a New York limited liability company

By: The Community Preservation Corporation,
its Sole Member

By: _____
Name: Joya Cohen
Title: Vice President

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**CITY OF POUGHKEEPSIE INDUSTRIAL
DEVELOPMENT AGENCY**

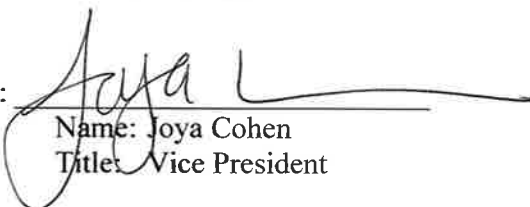
By: _____
Name: Melanie Vetter
Title: Chair

160 UNION HOLDINGS LLC

By: _____
Name: Bernard Kohn
Title: Sole Member

CPC FUNDING SPE 1 LLC,
a New York limited liability company

By: **The Community Preservation Corporation,**
its Sole Member

By: 
Name: Joya Cohen
Title: Vice President

[Acknowledgment Page to Subordination Agreement]

State of New York)
County of Monroe) ss.:

On the 5th day of November in the year 2020, before me, the undersigned, personally appeared **MELANIE VETTER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public, State of New York

AMY C. ABBINK
Notary Public, State of New York
No. 01AB5057993
Qualified in Ontario County
Commission Expires April 1, 2022

State of New York)
County of) ss.:

On the _____ day of October in the year 2020, before me, the undersigned, personally appeared **BERNARD KOHN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

State of New York)
County of) ss.:

On the ____ day of October in the year 2020, before me, the undersigned, personally appeared **JOYA COHEN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

[Acknowledgment Page to Subordination Agreement]

State of New York)
County of Dutchess) ss.:

On the ____ day of November in the year 2020, before me, the undersigned, personally appeared **MELANIE VETTER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York

State of New York)
County of **DUTCHESS**) ss.:

On the 2nd day of November in the year 2020, before me, the undersigned, personally appeared **BERNARD KOHN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York
JACQUELINE T. MARTIN
Notary Public, State of New York
Registration No. 02MA4760797
Qualified in Ulster County
Commission Expires November 30, 2022

State of New York)
County of) ss.:

On the ____ day of November in the year 2020, before me, the undersigned, personally appeared **JOYA COHEN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

[Acknowledgment Page to Subordination Agreement]

State of New York)
County of Dutchess) ss.:

On the ____ day of October in the year 2020, before me, the undersigned, personally appeared **MELANIE VETTER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York

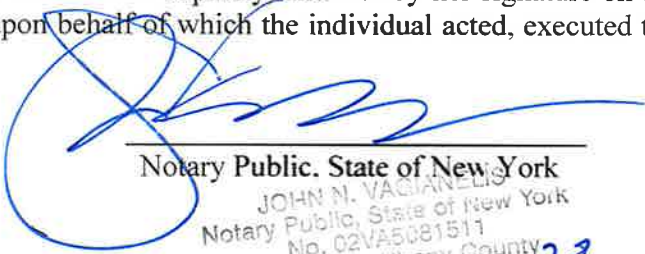
State of New York)
County of) ss.:

On the ____ day of October in the year 2020, before me, the undersigned, personally appeared **BERNARD KOHN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

State of New York)
County of Kings) ss.:

On the 30th day of October in the year 2020, before me, the undersigned, personally appeared **JOYA COHEN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public, State of New York
JOHN N. VAGIANELIS
Notary Public, State of New York
No. 02VA5081511
Qualified in Albany County
Commission Expires July 7, 2023

SCHEDULE A

LEGAL DESCRIPTION

ALL that certain plot, piece or parcel of land situate, lying and being in the City of Poughkeepsie, County of Dutchess, State of New York and being more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of Union Street at the northeasterly corner of the herein described parcel, said point being distant 150.59 feet from the easterly end of a curve connecting the southerly side of Union Street with the easterly side of Jefferson Street Extension and running;

THENCE southerly along the division line between the herein described parcel on the west and the south and lands now or formerly of Colonial Realty Holding LLC as described in deed Document No. 02-2019-1594 on the east and north, South 19° 02' 28" East 75.65 feet and easterly along the same, North 70° 57' 32" East 25.12 feet to a point;

THENCE southerly along the division line between the herein described parcel on the west and lands now or formerly of Church the Living God United as described in Liber 753 of deeds at page 453, lands now or formerly of Paul Hesse as described in deed Document No. 02-2020-50951, lands now or formerly of Robert C. Caccomo as described in deed Document No. 02-2015-600, lands now or formerly of Nora A. McCallop as described in deed Document No. 02-2013-1068, lands now or formerly of 50 South Bridge Street Holding LLC as described in deed Document No. 02-2017-563, lands now or formerly of PHD IC LLC as described in deed Document No. 02-2018-8552 and lands now or formerly of Thomas J. Gannon as described in deed Document No. 02-2004-10775 respectively on the east, South 02° 18' 28" East 184.50 feet;

THENCE westerly along the northerly side of Poughkeepsie East-West Arterial Highway North 82° 04' 23" West 30.20 feet, North 83° 22' 08" West 30.51 feet and North 89° 26' 58" West passing through a monument found on line at 4.5 feet for a total distance of 129.68 feet to the southerly end of a non-tangent curve connecting the easterly side of Jefferson Street Extension;

THENCE northerly along said non-tangent curve to the right having a radius of 20.00 feet an arc length of 12.08 feet and a chord bearing North 17° 42' 04" West 11.90 feet to a point of reverse curvature;

THENCE northerly along the easterly side of Jefferson Street Extension, along a reverse curve to the left having a radius of 1,025.00 feet an arc length of 80.58 feet and a chord bearing North 02° 39' 00" West 80.56 feet to a point of tangency and North 04° 54' 08" West 78.88 feet to the southerly end of a tangent curve connecting Union Street;

THENCE along said tangent curve to the right having a radius of 20.00 feet an arc length of 18.62 feet and a chord bearing North 21° 46' 08" East 17.95 feet;

THENCE easterly along the southerly side of Union Street North 69° 56' 32" East 150.59 feet to the point or place of BEGINNING.

Being the same premises as described in Deed Document No. 02-2019-1596.

For Information Only:

Said Premises being known as 160 Union Street, Poughkeepsie, NY
Section: 6062 Block: 84 Lot: 910070

SCHEDULE B

FINANCING MORTGAGE

1. Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by 160 Union Holdings LLC and City of Poughkeepsie Industrial Development Agency to CPC Funding SPE 1 LLC in the principal amount of \$7,200,000.00, dated as of November 6, 2020, and intended to be recorded in the Dutchess County Clerk's Office.