

AGREEMENT REGARDING PRIORITY AND SUBORDINATION

This AGREEMENT REGARDING PRIORITY AND SUBORDINATION (the "**Agreement**") is made effective as of this ____ day of _____, 2021, by and among (i) **SSCC Development, LLC**, a Kentucky limited liability company whose address is P.O. Box 247, West Point, Georgia 31833 ("**Borrower**"); (ii) **City of Dayton, Kentucky**, a Kentucky city of the Home Rule Class and duly organized and existing under the laws of the Commonwealth of Kentucky with an address of 514 Sixth Street, Dayton, KY 41075 ("**City**"); (iii) **The Huntington National Bank**, a national banking association, with an address of 525 Vine Street, 14th Floor, Cincinnati, Ohio 45202 ("**Trustee**" and, together with the City, "**Subordinate Mortgagee**"); (iv) **Dayton Independent Board of Education (the "School District")**; and (v) **General Electric Credit Union**, an Ohio corporation, with an address of 10485 Reading Road, Cincinnati, OH 45241 ("**Senior Lender**"). All of the parties hereto shall be collectively known as "**Parties**" and individually a "**Party**."

PRELIMINARY STATEMENT:

A. WHEREAS, the City, the School District and Manhattan Development Group, LLC, a Kentucky limited liability company ("**Manhattan**") entered into an Agreement in Lieu of Taxes effective as of the 26th day of March, 2020, and thereafter amended such Agreement in Lieu of Taxes pursuant to the First Amendment to Agreement in Lieu of Taxes made effective as of the 1st day of November, 2020 (collectively the "**Pilot Agreement**").

B. WHEREAS, Manhattan partially assigned the Pilot Agreement to Borrower for the purpose of developing a residential project (the "**Project**") on the property more fully described on Exhibit A (the "**Property**"), subject to the Pilot Agreement.

C. WHEREAS, the Pilot Agreement states that, for the construction of the Project, Borrower may obtain one construction mortgage loan that may be first and superior to the Pilot Mortgage (as such term is defined in the Pilot Agreement, and noting that the Pilot Mortgage was recorded March 29, 2021 in Book M2276, Page 718 of the Campbell County, Kentucky Records).

D. WHEREAS, Borrower has previously obtained one construction mortgage loan from Lender for the construction of the Project securing the principal amount of \$4,848,073.00 (the "**First Construction Mortgage Loan**") such mortgage being recorded in Book M2276, Page 697 of the Campbell County, Kentucky Records on March 29, 2021 (the "**First Construction Mortgage**") and has requested that Lender extend a second construction mortgage loan in the principal amount of \$860,819 (the "**Second Construction Mortgage Loan**") to facilitate the financing of the Project, such Second Construction Mortgage Loan to be secured by a mortgage on the Property (the "**Second Construction Mortgage**").

E. WHEREAS, as a condition of extending the Second Construction Mortgage Loan, Lender has required that the Second Construction Mortgage Loan also be first and superior to the Pilot Mortgage.

F. NOW THEREFORE, in consideration of the foregoing premises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Recitals. The foregoing recitals are true and accurate and are hereby incorporated into this Agreement.
2. Representations and Warranties of Borrower. As additional inducement for the City and the School District to enter into this Agreement, the Borrower hereby represents and warrants as follows: (a) that the proceeds of the First Construction Mortgage Loan have been utilized exclusively to pay the costs of the Project and for no other purpose; (b) that the proceeds of the Second Construction Mortgage Loan will be utilized exclusively to pay the costs of the Project and for no other purpose; (c) that Borrower is not in default under the terms of any agreement or document relating to the First Construction Mortgage Loan or the Second Construction Mortgage Loan; (d) that Borrower is not in default under any of the documents or agreements relating to the City's Series 2020A and Series 2020B Industrial Building Revenue Bonds (the "**Series 2020 Bonds**"), including but not limited to the Lease Agreement relating to such the Series 2020 Bonds, the Trust Indenture, the Pilot Mortgage, and/or the Pilot Agreement.

3. Priority and Subordination. The Parties hereto agree that, notwithstanding anything to the contrary in the Pilot Agreement or any of the other Subordinate Documents (as such term is defined in Exhibit B attached hereto), the Second Construction Mortgage shall have priority over the Pilot Mortgage, and the Pilot Mortgage shall be and hereby is subject, subordinate and junior to the lien and interests of the Second Construction Mortgage, and to the rights and interests of the Lender in and to the Second Construction Mortgage and the Second Construction Mortgage Loan as fully and with the same effect as if the Second Mortgage Construction Loan had been fully disbursed prior to the execution of the Pilot Mortgage and the Second Construction Mortgage had been recorded prior to the recordation of the Pilot Mortgage. By this Agreement, the Parties hereto intend that, the Pilot Agreement notwithstanding, the rights of Lender under the Second Construction Mortgage, as compared to the rights of the Subordinate Mortgagee under the Pilot Mortgage, shall be prior and shall be controlling until the Second Construction Mortgage is paid in full and the Second Construction Mortgage has been terminated and released.

4. Intercreditor, Subordination, and Standstill Agreement. The Parties hereto further agree and acknowledge that the Intercreditor, Subordination, and Standstill Agreement attached hereto as Exhibit B shall be executed by the Parties hereto (with the exception of the School District) and shall have full force and effect notwithstanding the terms of the Pilot Agreement. In the event that any terms of the Pilot Agreement conflict with this Agreement or the Intercreditor, Subordination, and Standstill Agreement, the terms of this Agreement, or the Intercreditor, Subordination, and Standstill Agreement as the case may be, shall prevail.

5. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

- Signature Pages Follow -

IN WITNESS WHEREOF, the Borrower has executed this instrument as of the day and year first above written.

Borrower:

SSCC Development, LLC, a Kentucky limited liability company

By: S & S Development – The Narrows, LLC,
a Florida limited liability company
its Manager

By: Riverbend Development at Manhattan Harbour,
LLC, a Florida limited liability company
Manager

By: _____
Brendan Sullivan, Manager

IN WITNESS WHEREOF, the City has executed this instrument as of the day and year first above written.

City of Dayton, Kentucky

By: _____
Ben Baker, Mayor

IN WITNESS WHEREOF, the Subordinate Mortgagee has executed this instrument as of the day and year first above written.

Subordinate Mortgagee:

The Huntington National Bank

By:_____

Print:_____

Its:_____

IN WITNESS WHEREOF, the School District has executed this instrument as of the day and year first above written.

School District:

Dayton Independent Board of Education

By: _____

Print: _____

Its: Chairperson

IN WITNESS WHEREOF, the Senior Lender has executed this instrument as of the day and year first above written.

Senior Lender:

General Electric Credit Union

By:_____

Print:_____

Its:_____

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by _____, the _____ of **General Electric Credit Union**, an Ohio corporation on behalf of the corporation. This is an acknowledgement clause without the use of an oath of affirmation.

Notary Public

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by _____, the _____ of **CITY OF DAYTON, KENTUCKY**, a Kentucky city of the Home Rule Class and political subdivision organized and existing under the laws of the Commonwealth of Kentucky, on behalf of the City. This is an acknowledgement clause without the use of an oath of affirmation.

Notary Public

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by Brendan Sullivan the Manager of Riverbend Development at Manhattan Harbour, LLC, a Florida limited liability company, such company being the Manager of S & S Development – The Narrows, LLC, a Florida limited liability company, such company being the Manager of SSCC Development, LLC, a Kentucky limited liability company, on behalf of the companies. This is an acknowledgment clause without the use of an oath or affirmation.

Notary Public

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by _____, the _____ of **The Huntington National Bank**, a national banking association, on behalf of the association. This is an acknowledgement clause without the use of an oath of affirmation.

Notary Public

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by _____, the _____ of Dayton Independent Board of Education, a _____, on behalf of the _____. This is an acknowledgement clause without the use of an oath of affirmation.

Notary Public

EXHIBIT A

Group Number: 30596/G1

PIDN: 999-99-33-462.62

All that certain real property located in Campbell County, Kentucky, generally known, located or described as "Parcel G" on that certain plat of survey entitled "MANHATTAN HARBOUR SECTION 6" dated March 9, 2020, certified by Joseph Kramer, P.L.S. 3663, and being recorded on May 8, 2020, at Cabinet E, Slides 672A, 672B, and 673A, Group 30596/G1, in the real estate records of Campbell County, Kentucky.

Being the same property as conveyed to SSCC Development, LLC, a Kentucky limited liability company by virtue of a deeds recorded in Deed Book 812, page 572, of the Campbell County Clerk's Records at Newport, Kentucky.

EXHIBIT B

INTERCREDITOR, SUBORDINATION, AND STANDSTILL AGREEMENT

This INTERCREDITOR, SUBORDINATION, AND STANDSTILL AGREEMENT (the "**Agreement**") is made effective as of this ____ day of _____, 2021, by and among (i) **SSCC Development, LLC**, a Kentucky limited liability company whose address is P.O. Box 247, West Point, Georgia 31833 ("**Borrower**"); (ii) **City of Dayton, Kentucky**, a Kentucky city of the Home Rule Class and duly organized and existing under the laws of the Commonwealth of Kentucky with an address of 514 Sixth Street., Dayton, KY 41075 ("**City**"); (iii) **The Huntington National Bank**, a national banking association, with an address of 525 Vine Street, 14th Floor, Cincinnati, Ohio 45202 ("**Trustee**" and, together with the City, "**Subordinate Mortgagee**"); and (iv) **General Electric Credit Union**, an Ohio corporation, with an address of 10485 Reading Road, Cincinnati, OH 45241 ("**Senior Lender**"). All of the parties hereto shall be collectively known as "**Parties**" and individually a "**Party**".

PRELIMINARY STATEMENT:

A. Borrower has a leasehold interest in the real and personal property and improvements located on the real estate more fully described on Exhibit A attached hereto and incorporated herein (the "**Mortgaged Property**") pursuant to that certain Lease Agreement executed between Borrower and the City relating to the lease of the Mortgaged Property dated March 1, 2021 (the "**Lease**").

B. The City has issued Taxable Industrial Building Revenue Bonds, the "Waterfront Project," in the maximum aggregate principal amount of \$6,000,000 Series 2020A and \$2,000,000 Series 2020B (together, the "**Bonds**") in order to finance the construction, installation and equipping of the Mortgaged Property; such Bonds being issued under the Trust Indenture dated as of March 1, 2021 (the "**Indenture**") between the City and the Trustee.

C. In connection with the issuance and sale of the Bonds, pursuant to a Partial Assignment and Assumption of Agreement In Lieu of Taxes, Borrower has accepted an assignment of the obligations of Manhattan Development Group, LLC (the "**Master Developer**") to make certain payments to the City in lieu of ad valorem real estate taxes with respect to the Mortgaged Property ("**Project PILOT Payments**") all as set forth under that certain Agreement in Lieu of Taxes made by and among Master Developer, the City, and the Dayton Independent School District ("**School District**"), dated March 26, 2020, as amended by that First Amendment to Agreement In Lieu of Taxes, having an effective date of November 1, 2020 (collectively the "**PILOT Agreement**").

D. The PILOT Agreement provides that the Project PILOT Payments shall be paid to the City for further distribution to the City, School District, Campbell County (the "**County**"), and the City's local development area, all as set forth under the PILOT Agreement (collectively, the "**Project Governmental PILOT Payments**") and, after the payment of the Project Governmental PILOT Payments, any remaining portion of the Project PILOT Payments shall be paid to the Trustee and held under the Indenture for the benefit of Senior Lender while the Senior Loan is Outstanding (the "**Assigned Project PILOT Payments**").

E. Pursuant to the Indenture, Lease, and other documents executed by Borrower in connection therewith, Borrower granted to Subordinate Mortgagee certain rights and security interests in, *inter alia*, the Lease, the Mortgaged Property, the Bonds, and any other rights of Borrower that are granted to the City or the Subordinate Mortgagee (the "**Bond Security Interests**").

A. In order to further secure Borrower's obligation to make Project PILOT Payments in accordance with the PILOT Agreement, Borrower has granted to Subordinate Mortgagee that certain Open-End Leasehold Mortgage, Security Agreement, Assignment and Agreement as to Real Estate Matters securing an amount of up to

the Maximum Mortgage Amount (as such term is defined in the Subordinate Mortgage) and recorded in Mortgage Book 2276, Page 718 in the Office of the Campbell County Clerk (collectively, as amended and as may be further amended from time to time, the "**Subordinate Mortgage**" and together with any instrument creating the Bond Security Interests, the "**Subordinate Documents**").

F. Senior Lender has made an acquisition loan to Borrower in the amount of \$1,650,000.00, a construction loan to Borrower in the amount of \$4,848,073.00, and is making a second construction loan in the amount of \$860,819.00 to Borrower (collectively referred to as the "**Senior Loan**") as evidenced by those certain promissory notes from Borrower in favor of Lender in the principal amount of \$1,650,000.00 being executed on April 24, 2020, in the principal amount of \$4,848,073.00 and being effective as of March 25, 2021, and in the principal amount of \$860,819.00 and having an effective date on or around the effective date of this Agreement (as may be amended from time to time, collectively the "**Senior Note**"). The repayment of the Senior Note is secured in part by that certain (i) an Open-End Mortgage, Assignment of Rents, Security Agreement and Fixture Filing executed on April 24, 2020 and recorded on May 8, 2020 in Official Record Book M2221, Page 499 of the Campbell County, Kentucky Records, (ii) an Open-End Leasehold Mortgage and Security Agreement (With Lessor Joinder) effective as of March 25, 2021 and recorded on March 29, 2021 in Official Record Book M2276, Page 697 of the Campbell County, Kentucky Records, and (iii) an Open-End Leasehold Mortgage and Security Agreement (With Lessor Joinder) having an effective date on or around the effective date of this Agreement recorded in Mortgage Book _____, Page _____, in the Office of the Campbell County, Kentucky Records all from Borrower in favor of Senior Lender encumbering the fee and leasehold estate of the Mortgaged Property (as may be amended from time to time, collectively the "**Senior Mortgage**"), (iv) an Assignment of Rents and Leases being recorded in Official Record Book 719, Page 240 of the Campbell County, Kentucky Records (v) an Assignment of Rents and Leases having an effective date on or around the effective date of this Agreement recorded in Official Record Book _____, Page _____, in the Office of the Campbell County, Kentucky Records (as may be amended from time to time, collectively the "**Senior Assignment**"), (vi) that certain UCC Fixture Filing recorded in Mortgage Book 2276, Page 715 of the Campbell County, Kentucky Records (vii) that certain UCC fixture filing recorded in Mortgage Book _____, Page _____ in the Office of the Campbell County, Kentucky records (collectively the "**Senior Fixture Filing**") (viii) that certain Construction Loan Agreement and the Amended and Restated Construction Loan Agreement by and among Senior Lender and Borrower, (as may be amended from time to time, collectively the "**Senior Loan Agreement**"), and (ix) those certain guaranty agreements from the "Guarantors" named therein (collectively, the "**Senior Guaranty**"). The Senior Note, Senior Mortgage, Senior Loan Agreement, Senior Assignment, Senior Fixture Filing, Senior Guaranty, together with all other documents entered into by Borrower or Guarantors in connection therewith, shall be hereinafter collectively referred to as the "**Senior Loan Documents**".

G. As a condition under the Senior Loan Documents, Senior Lender must obtain the subordination of the Subordinate Documents to the Senior Loan Documents in the manner set forth herein.

H. It is and will continue to be of substantial benefit to Subordinate Mortgagee and to Borrower for Senior Lender to disburse the Senior Loan proceeds.

I. Subordinate Mortgagee is willing to subordinate the Subordinate Documents on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Subordination. The Subordinate Documents and the liens and security interests created thereby, and the rights of Subordinate Mortgagee, and the City in, to or under the Subordinate Documents and the Mortgaged Property are hereby subjected to and subordinated and shall remain in all respects and for all purposes subject, subordinate and junior to the liens and interests of the Senior Loan and the Senior Loan Documents, and to the rights and interests of the holder of the Senior Loan Documents, as fully and with the same effect as if the Senior Loan secured thereby had been fully disbursed prior to the execution of the Subordinate Documents and the Senior Loan Documents has been recorded prior to the recordation of the Subordinate Documents. Until the Senior Loan Documents have been released, if any provision of the Subordinate Documents is inconsistent with a provision of the Senior Loan Documents, the Senior Loan Documents shall govern and control. By this paragraph

the parties hereto intend that the rights of Senior Lender under the Senior Loan Documents, as compared to the rights of the Subordinate Mortgagee and the City under the Subordinate Documents, shall be prior and shall be controlling until the Senior Loan is paid in full and the Senior Loan Documents, including the liens created thereby, shall have been terminated and released.

2. Default under the Subordinate Documents.

(a) Notwithstanding the Subordinate Mortgagee's rights under applicable law or any provision of the Subordinate Documents to the contrary, the Subordinate Mortgagee hereby acknowledges and agrees that it shall not (A) accelerate payment of the Project PILOT Payments secured by the Subordinate Mortgage or any portion thereof, or (B) take any Enforcement Action (defined below), until, in any such case, the earlier of (i) ninety-one days following the satisfaction in full of the Senior Loan, (ii) ninety-one days following the acquisition of the Senior Loan by Subordinate Mortgagee, or (iii) ten days following the commencement of an Enforcement Action by Senior Lender (as the case may be, the "**Subordinate Mortgagee Remedies Trigger Date**"). Subordinate Mortgagee hereby waives any right to require that Senior Lender marshal any assets of Borrower in favor of Subordinate Mortgagee and Subordinate Mortgagee agrees that it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any of the Mortgaged Property or the proceeds therefrom that is or may be prior to any of the Senior Loan Documents. As used above, an "**Enforcement Action**" shall mean the commencement of the exercise of any remedies against Borrower, City, or any Guarantors including, without limitation, the commencement of any litigation or proceeding, including, without limitation, the commencement of any foreclosure proceeding, the sale by advertisement, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other Enforcement Action against, or the taking of possession or control of any of the Mortgaged Property or membership interests of the Borrower; provided however, any remedy sought in connection with the enforcement of the Senior Mortgage against the City shall be limited to Senior Lender seeking an *in rem* judgment against the City's fee simple interest in the Mortgaged Property. Following Senior Lender's receipt of a notice of default under the Subordinate Loan, Subordinate Mortgagee agrees that Senior Lender may, but in no event shall be required to, cure the default by Borrower described therein, which such cure shall be accepted by Subordinate Mortgagee as if performed by the Borrower.

(b) Until the occurrence of the Subordinate Mortgagee Remedies Trigger Date, Subordinate Mortgagee hereby covenants and agrees that it will not acquiesce, petition or otherwise invoke or cause any other individual, corporation, trust, trustee, partnership, unincorporated association, government, governmental agency, or court or other authority, including without limitation, any officer appointed by any court or other authority, to invoke the process of the United States of America, any state or other political subdivision thereof or any other jurisdiction, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government for the purpose of commencing or sustaining a case against Borrower or any Guarantors for any cause of action, including under a Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Borrower or Guarantors or all or any part of its property or assets or ordering the winding-up or liquidation of the affairs of Borrower or Guarantors, as the case may be.

(c) Subordinate Mortgagee hereby agrees that (i) until the Subordinate Mortgagee Remedies Trigger Date, it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Insolvency Proceeding (as defined below) by or against the Borrower or Guarantors without the prior consent of Senior Lender, (ii) in the event the Subordinate Mortgagee is deemed a "secured creditor" of the Borrower in any Insolvency Action, Senior Lender may vote in any such Insolvency Proceeding any and all claims of Subordinate Mortgagee, and Subordinate Mortgagee hereby appoints the Senior Lender as its agent, and grants to the Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Subordinate Mortgagee in connection with any case by or against Borrower in any Insolvency Proceeding, including without limitation, the right to file and/or prosecute any claims, to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code; provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Senior Lender may vote on behalf of Subordinate Mortgagee only if the proposed plan would result in Senior Lender being "impaired" (as such term is defined in the United States Bankruptcy Code) and (iii) in the event the Subordinate Mortgagee is deemed a "secured creditor" of the Borrower in any Insolvency Action, Subordinate Mortgagee shall not challenge the validity or amount of any claim submitted in such Insolvency Proceeding by Senior Lender in good faith or any valuations of the Mortgaged Property or other Senior Loan collateral submitted by Senior Lender in good faith, in

such Insolvency Proceeding or take any other action in such Insolvency Proceeding, which is adverse to Senior Lender's enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code). For purposes herein, "**Insolvency Proceeding**" means any proceeding under Title 11 of the United States Code (11 U.S.C. Sec. 101 et. seq.) or any other insolvency, liquidation, reorganization or other similar proceeding concerning the Borrower or any of the Guarantors, any action for the dissolution of the Borrower, any proceeding (judicial or otherwise) concerning the application of the assets of the Borrower or any of the Guarantors, for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of the Borrower or any of the Guarantors or any other action concerning the adjustment of the debts of the Borrower or any of the Guarantors, the cessation of business by the Borrower, except following a sale, transfer or other disposition of all or substantially all of the assets of the Borrower in a transaction permitted under the Senior Loan Documents.

3. Subordinate Documents. Except as otherwise set forth herein, nothing herein contained or done pursuant hereto shall affect or be construed to affect the Subordinate Documents and the terms and conditions of Subordinate Documents shall remain unchanged. Subordinate Mortgagee hereby agrees that it will not materially amend the Subordinate Documents without the written consent of Senior Lender, which consent shall not be unreasonably withheld; provided, however, such consent may be withheld in Senior Lender's sole and absolute discretion for any proposed amendment that (i) increases amounts due under the Subordinate Documents, (ii) alters the maturity date thereunder, or (iii) provides for different or additional collateral to secure the obligations secured by the Subordinate Documents.

4. Subordinate Mortgagee Waivers.

(a) Without limiting the generality of any other provision in this Agreement, Senior Lender may at any time and from time to time without the consent of, or notice to, Subordinate Mortgagee, and without incurring responsibility to Subordinate Mortgagee, upon or without any terms or conditions and in whole or in part:

(i) modify, amend, restate, replace, extend, or alter, any portion of the Senior Loan or any other obligations of any person or entity evidenced or secured by the Senior Loan Documents, any security therefor, or any liability incurred directly or indirectly in respect thereof, provided that Senior Lender shall not increase the maximum amount secured by the Senior Mortgage to an amount greater than \$7,358,892 without Subordinate Mortgagee's written consent, provided further that the making of any protective advances or other advances by Senior Lender or interest accruals or accretions and any compounding thereof (including default interest) shall not be deemed an increase of the maximum amount secured by the Senior Mortgage for purposes of this subsection (i).

(ii) sell, exchange, release, surrender, commence legal action, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged to secure, or howsoever securing, the Senior Loan or any other obligations of any person or entity evidenced or secured by the Senior Loan Documents, or any liabilities incurred directly or indirectly in respect thereof, and/or any offset there against;

(iii) exercise or refrain from exercising any rights against the Borrower, City or others or otherwise act or refrain from acting;

(iv) settle or compromise any portion of the Senior Loan or any other obligations of any person or entity evidenced or secured by the Senior Loan Documents, any security therefor or any liability incurred directly or indirectly in respect thereto;

(v) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrower to Senior Lender regardless of what liability or liabilities of the Borrower remain unpaid or unperformed, except those remittances made by the Borrower to the Senior Lender for the purpose of repaying the Senior Loan shall be applied as payments to the Senior Loan in accordance with the Senior Loan Documents; and/or

(vi) consent to or waive any breach of, or any act, omission or default under, any of the Senior Loan Documents, or otherwise amend, modify or supplement any of the Senior Loan Documents or any

other instruments or agreements executed and delivered in connection therewith or otherwise relating thereto.

(b) Subordinate Mortgagee and Senior Lender assume all responsibility for remaining informed as to the condition (financial or otherwise) of Borrower, the condition of the Mortgaged Property and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither Senior Lender nor Subordinate Mortgagee shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. Subordinate Mortgagee agrees that Senior Lender owes no fiduciary duty to Subordinate Mortgagee in connection with the administration of the Senior Loan and the Senior Loan Documents and Subordinate Mortgagee agrees not to assert any such claim. Senior Lender agrees that Subordinate Mortgagee owes no fiduciary duty to Senior Lender in connection with the administration of the PILOT Agreement and the Subordinate Documents and Senior Lender agrees not to assert any such claim.

(c) No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no protective advance by Subordinate Mortgagee shall entitle Subordinate Mortgagee to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan, and Subordinate Mortgagee agrees that, except with respect to the enforcement of its remedies under the Subordinate Documents permitted hereunder, prior to the satisfaction of the Senior Loan it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Mortgaged Property or any other collateral securing the Senior Loan or the proceeds therefrom.

6. Payment of Assigned Project PILOT Payments to City. Except as set forth herein, annual Project Governmental PILOT Payments paid by Borrower pursuant to the PILOT Agreement may be made to the City the School District, and the County; provided, however, that Assigned Project PILOT Payments shall be held by the Trustee for the benefit of Senior Lender and paid over to Senior Lender in an Event of Default, and provided further that following Subordinate Mortgagee's receipt of written notice from Senior Lender that an "**Event of Default**" (as defined in the Senior Loan Agreement) has occurred and continues under the Senior Loan Agreement, no Assigned Project PILOT Payment shall be made by or on behalf of Borrower or any of the Guarantors for or on account of the Subordinate Mortgage, and the Subordinate Mortgagee shall not take or receive from Borrower or Guarantors, directly or indirectly, in cash or other property or by setoff or in any other manner, including, without limitation, from or by way of collateral, payment of all or any Assigned Project PILOT Payment, unless and until (a) the Event of Default is cured, or (b) the Senior Loan shall have been indefeasibly paid in full. Any Assigned Project PILOT Payment received by Subordinate Mortgagee after an Event of Default has occurred under the Senior Loan Agreement and notice of the same has been provided to Subordinate Mortgagee shall be transferred in full from Subordinate Mortgagee to Senior Lender within thirty (30) days of Senior Lender's written request for the same. For avoidance of doubt, nothing herein shall preclude or prevent the City, the School District, or the County from receiving and accepting Project Governmental PILOT Payments during an Event of Default and none of the City, the School District or the County shall have any obligation hereunder to transfer any or all of the Project Governmental PILOT Payments to the Senior Lender.

5. Distributions Held in Trust. All Assigned Project PILOT Payments upon or with respect to the PILOT Agreement which are actually received by Subordinate Mortgagee contrary to the provisions of this Agreement shall be received and shall be held in trust by the Subordinate Mortgagee for the benefit of Senior Lender and, with prior written direction delivered to the Subordinate Mortgagee, shall be paid over to Senior Lender to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or performance of the Senior Loan in accordance with the terms of the Senior Loan Documents.

6. Reliance By Senior Lender. The parties are executing this instrument in order to induce Senior Lender to make the Senior Loan, and the parties further agree that Senior Lender's execution hereof and the disbursement by Senior Lender of all or any part of the indebtedness secured by the Senior Loan Documents shall constitute conclusive reliance by Senior Lender upon this instrument and the provisions hereof and the subordination effected hereby.

7. Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of the Subordinate Documents or the Senior Loan Documents, the provisions of this Agreement or the Senior Loan Documents, in Senior Lender's discretion, shall prevail.

8. Notices. All notices, consents, approvals and requests required or permitted hereunder shall be

given in writing and shall be effective for all purposes if hand delivered or sent by (a) hand delivery, with proof of attempted delivery, (b) certified or registered United States mail, postage prepaid, or (c) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed to the parties at the addresses noted above, or such other address as requested by any party in writing that is delivered to the non-requesting parties in accordance with the terms hereof. A Party receiving a notice which does not comply with the technical requirements for notice under this Section 9 may elect to waive any deficiencies and treat the notice as having been properly given. A notice shall be deemed to have been given: (a) in the case of hand delivery, at the time of delivery; (b) in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; or (c) in the case of expedited prepaid delivery upon the first attempted delivery on a business day.

9. No Third Party Beneficiary; Assignment of Senior Loan; Capacity of Subordinate Mortgagee. No person other than the parties hereto and their successors and assigns as holders of the Senior Loan Documents and the Subordinate Documents shall have any rights under this Agreement. Nothing in this Agreement shall be deemed to prohibit Senior Lender from transferring, assigning, conveyancing, selling, participating, encumbering, granting a security interest in or otherwise disposing of the Senior Loan. Notwithstanding anything contained in this Agreement to the contrary, the agreements and representations made and entered into by Subordinate Mortgagee in this Agreement are made and entered into by Subordinate Mortgagee solely in its capacity as a lender under the Subordinate Documents and not in any other capacity, including its capacity as an owner of the collateral subject to the Subordinate Documents after the conclusion of any Enforcement Action.

10. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon the parties hereto, and shall inure to the benefit of the parties hereto and their respective successors, successors-in-interest, and assigns. The Subordinate Mortgagee shall not pledge, assign, hypothecate, transfer, convey or sell (any such event, a "**Transfer**") the PILOT Agreement (as it relates to the Mortgaged Property) or other Subordinate Documents or any interest in the PILOT Agreement (as it relates to the Mortgaged Property) or Subordinate Documents without the prior written consent of Senior Lender, which consent may be withheld in Senior Lender's sole and absolute discretion. In the event Senior Lender withholds such consent, Senior Lender may, but shall not be obligated to, purchase the Subordinate Mortgagee's interest which was the subject of the proposed Transfer under the same terms as the proposed Transfer. In the event Senior Lender does consent to any Transfer of the PILOT Agreement (as it relates to the Mortgaged Property) or the Subordinate Documents (without implying any obligation on the part of Senior Lender to approve such Transfer), Subordinate Mortgagee shall cause any transferee to execute and deliver to Senior Lender an assignment and assumption agreement whereby such transferee agrees to be bound to the terms and provisions of this Agreement and assumes all of the obligations of Subordinate Mortgagee hereunder with respect to the PILOT Agreement and Subordinate Documents accruing from and after the date of such Transfer (and which will impose no obligations on Senior Lender other than obligations contained herein).

11. Governing Law. This Agreement is made and executed under and in all respects is to be governed and construed by the laws of the Commonwealth of Kentucky.

12. No Waiver. No failure or delay on the part of any Party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

13. Captions and Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confirming or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

14. Amendments. No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against a Party against whom the enforcement of such amendment, supplement, modification, waiver or termination would be asserted, unless such amendment, supplement, modification, waiver or termination was made in a writing signed by such Party.

15. Time is of the Essence. Time is of the essence with respect to all obligations contained hereunder.

16. Equitable Remedies. Each Party hereto acknowledges that to the extent that no adequate remedy at law exists for breach of its obligations under this Agreement, in the event either Party fails to comply with its obligations hereunder, the other Party shall have the right to obtain specific performance of the obligations of such defaulting Party, injunctive relief or such other equitable relief as may be available.

17. Attorneys' Fees. If any Party to this Agreement employs an attorney and commences an action any other Party arising out of or in connection with, this Agreement, the prevailing Party shall be entitled to have and recover from the losing Party all costs and expenses, including reasonable attorneys' fees, costs of suit, investigation expenses, discovery costs, and costs of appeal.

18. Counterparts. This instrument may be executed in multiple counterparts, each of which shall constitute an original and when placed together, shall constitute the entire agreement.

- Signature Pages Follow -

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

Borrower:

SSCC Development, LLC, a Kentucky limited liability company

By: S & S Development – The Narrows, LLC,
a Florida limited liability company
its Manager

By: Riverbend Development at Manhattan Harbour,
LLC, a Florida limited liability company
Manager

By: _____

Brendan Sullivan,
Manager

ATTEST:

City:

City of Dayton, Kentucky

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Print: _____

Its: _____

Trustee:

The Huntington National Bank

By: _____

Print: _____

Its: _____

Senior Lender:

General Electric Credit Union

By: _____

Print: _____

Its: _____

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by _____, the _____ of **General Electric Credit Union**, an Ohio corporation on behalf of the corporation. This is an acknowledgement clause without the use of an oath of affirmation.

Notary Public

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by _____, the _____ of **CITY OF DAYTON, KENTUCKY**, a Kentucky city of the Home Rule Class and political subdivision organized and existing under the laws of the Commonwealth of Kentucky, on behalf of the City. This is an acknowledgement clause without the use of an oath of affirmation.

Notary Public

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by Brendan Sullivan the Manager of Riverbend Development at Manhattan Harbour, LLC, a Florida limited liability company, such company being the Manager of S & S Development – The Narrows, LLC, a Florida limited liability company, such company being the Manager of SSCC Development, LLC, a Kentucky limited liability company, on behalf of the companies. This is an acknowledgment clause without the use of an oath or affirmation.

Notary Public

COMMONWEALTH OF _____
COUNTY OF _____

The foregoing document was acknowledged before me, a notary public in and for said county and state, this _____ day of _____, 2021 by _____, the _____ of **The Huntington National Bank**, a national banking association, on behalf of the association. This is an acknowledgement clause without the use of an oath of affirmation.

Notary Public

EXHIBIT A