

**SUBORDINATION  
AND  
INTERCREDITOR  
AGREEMENT**

This instrument was drafted by and  
after recordation to be returned to:

*Michael Riopel  
Husch Blackwell LLP  
550 E. Wells Street, Suite 1900  
Milwaukee, WI 53202*

Tax Key No.: See Exhibit A

*Space above this line reserved for recording data*

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2018, is by and between MILL ROAD LIBRARY REDEVELOPMENT, LLC, a Wisconsin limited liability company ("Borrower"), the CITY OF MILWAUKEE, a Wisconsin municipal corporation ("CITY Lender"), CUPED Corporation, a Wisconsin Nonstock Corporation ("AHP Lender") (each a "Subordinate Lender", and collectively, the "Subordinate Lenders") and TOWN BANK (and its successors and assigns, the "Senior Lender") (Senior Lender, CITY Lender and AHP Lender are each a "Lender" and together, the "Lenders").

**RECITALS:**

A. Borrower is the owner of certain land located in the City of Milwaukee, Milwaukee County, Wisconsin as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Land"), and is the owner of the improvements located thereon (the "Improvements") (the Land and Improvements being collectively referred to herein as the "Property").

B. CITY Lender is the owner and holder of that certain Promissory Note in the amount of \$2,350,000.00 executed on or about the date hereof by Borrower, payable to the order of CITY Lender (the "CITY Note evidencing that certain loan (the "CITY Loan") made by CITY Lender to Borrower pursuant to that certain Good Hope Library Purchase, Sale & Development Agreement ("CITY Development Agreement") between Borrower and CITY Lender on or about the date hereof. The CITY Note and the CITY Development Agreement are defined as "CITY Loan Documents."

C. AHP Lender is the owner and holder of that certain Promissory Note in the amount of \$750,000.00 executed on or about the date hereof by Borrower, payable to the order of AHP Lender (the "AHP Note"), evidencing that certain loan (the "AHP Loan", and collectively with the CITY Loan, the "Subordinate Loans") made by AHP Lender to Borrower on or about the date hereof pursuant to that certain Loan Agreement ("AHP Loan Agreement") between Borrower and AHP Lender. The AHP Loan is being made subject and pursuant to a certain second priority mortgage, dated the date hereof ("Subordinate Mortgage"). The AHP Note, the AHP Loan Agreement and Subordinate Mortgage are

defined as "AHP Loan Documents," and together with the CITY Loan Documents are collectively defined as "Subordinate Loan Documents."

D. Senior Lender is the owner and holder of that certain Promissory Note in the amount of \$9,450,000.00 executed on or about the date hereof by Borrower, payable to the order of Senior Lender ("Senior Note"), evidencing that certain construction loan ("Senior Loan") made by Senior Lender to Borrower on or about the date hereof pursuant to that certain Construction Loan Agreement of even date herewith between Borrower and Senior Lender ("Senior Loan Agreement"). The Senior Loan is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing of even date herewith given by Borrower to Senior Lender (a "Senior Mortgage"). The Senior Loan is guaranteed by a Guaranty executed by Kevin L. Newell, a Wisconsin individual, Royal Capital Group, LLC, a Wisconsin limited liability company, Mill Road Library Redevelopment Managing Member, LLC, a Wisconsin limited liability company and Mill Road Library Developer, LLC, a Wisconsin limited liability company (collectively, the "Senior Guarantor") in favor of and for the benefit of Senior Lender (a "Senior Guaranty"). The Senior Note, Senior Loan Agreement, Senior Mortgage, the Senior Guaranty, and all other documents that evidence or secure the Senior Loan, together with all extensions, amendments and modifications thereto and all restatements, consolidations and replacements thereof, are herein collectively referred to as the "Senior Loan Documents."

E. The CITY Loan, AHP Loan and the Senior Loan, are herein each referred to as a "Loan" and, together, the "Loans." The Subordinate Loan Documents and the Senior Loan Documents are herein collectively referred to as the "Loan Documents." The Senior Mortgage and the Subordinate Mortgage are herein collectively referred to as the "Mortgages."

Senior Lender and Subordinate Lenders desire to set forth herein certain agreements among them regarding their respective priorities regarding collection of their respective obligations and Loans to Borrower, notwithstanding the date the Loans were made or any funds were or shall be advanced thereunder, or the order in which the Senior Mortgage and the Subordinate Mortgage are executed or the security interests created thereby are perfected.

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties hereby covenant and agree with and among each other as follows:

## **ARTICLE I**

### **DEFINED TERMS**

Section 1.01. Definitions. All terms not defined in this Agreement shall have the meaning as set forth in the Senior Loan Agreement. The following terms shall have the meanings herein specified unless the context otherwise requires (such meanings to apply to such terms in both the singular and plural forms):

"AHP Lender Indebtedness" shall mean, collectively, all of the indebtedness, liabilities and obligations of the Borrower evidenced by or arising out of the AHP Loan Documents.

"Enforcement Action" means the commencement of the exercise of any remedies against the Borrower including, without limitation, the commencement of any litigation or proceeding, including 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 Improvements by the Senior Lender, but

specifically excludes: (a) requests and demands made upon the Borrower by delivery of notices to the Borrower by the Senior Lender with respect to any default or Event of Default by the Borrower under the Senior Loan Documents, or (b) assertion or enforcement of any right of either Subordinate Lender to receive payment from proceeds of a foreclosure sale of any property incident to foreclosure of the liens or security interests of the Senior Loan Documents which may remain after payment of costs and expenses of such foreclosure and payment and satisfaction in full of the Senior Indebtedness, and the filing of claims in any Insolvency Proceeding concerning the Borrower that may be required to protect and preserve the right of such Subordinate Lender to participate in such Insolvency Proceeding as a creditor and to participate in distributions of assets of the Borrower in said Insolvency Proceeding with respect to the CITY Loan or AHP Loan after payment and satisfaction in full of the Senior Indebtedness, but subject in all respects to the rights of the Senior Lender under and as provided in this Agreement and without in any way impairing or affecting the right of the Senior Lender to require performance and observance by CITY Lender or AHP Lender of, or the obligations of CITY Lender or AHP Lender to perform and observe the covenants, undertakings and agreements of, CITY Lender or AHP Lender, under and as provided in this Agreement.

“Event of Default” means, in relation to the Senior Loan a breach or violation of the Senior Loan Documents that continues uncured beyond such grace or cure period (if any) provided with respect to such breach or violation under the Senior Loan Documents.

“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, any action for the dissolution of the Borrower, any proceeding (judicial or otherwise) concerning the application of the assets of the Borrower, 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 other action concerning the adjustment of the debts of the Borrower, or 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.

“Joint Collateral” means the Property described in the Senior Loan Documents.

“Managing Member” has the meaning given to it in the Operating Agreement.

“CITY Lender Indebtedness” shall mean, collectively, all of the indebtedness, liabilities and obligations of the Borrower evidenced by or arising out of the CITY Loan Documents.

“Person” means any 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.

“Plan Voting Rights” means, with respect to any Person, the rights of such Person to vote to approve or reject any plan of reorganization in respect of the Borrower in an Insolvency Proceeding.

“Senior Indebtedness” shall mean, collectively, all of the indebtedness, liabilities, and obligations of Borrower evidenced by the Senior Note and all amounts due or to become due pursuant to the Senior Loan Documents, and any other amounts payable in respect thereof or in connection therewith.

## ARTICLE II

### SUBORDINATION; STANDSTILL; PAYMENTS

#### Section 2.01. Subordination; Payments; Priorities.

(a) Subordination. Subordinate Lenders hereby agree that the Loans are and shall be subordinate, to the extent and in the manner hereinafter set forth, to the prior indefeasible payment in full of the Senior Indebtedness. Notwithstanding the foregoing, Subordinate Lenders may receive and retain from the Borrower any scheduled payment of principal and/or interest with respect to the Loans and payment of any fees and expense reimbursements required pursuant to the Loan Documents, in accordance with the priority set forth herein, so long as immediately before and after giving effect thereto, Subordinate Lenders have not received written notice that any Event of Default shall exist under the Senior Loan Documents whereupon all such payment shall be subject to Section 2.07 herein below.

(b) Priorities of Payments. All funds or amounts paid by or on behalf of Borrower with respect to Borrower's respective obligations to the Lenders under the Loans shall be applied to Borrower's respective obligations to the Senior Lender, CITY Lender and AHP Lender as follows:

(i) First, to the Senior Lender in satisfaction of all amounts currently due or outstanding on the Senior Loan, until the Senior Indebtedness is paid in full;

(ii) Second, to the CITY Lender in accordance with the CITY Note; and

(iii) Third, to AHP Lender in accordance with the AHP Note.

(c) Conveyance of Library Unit and CITY Reversionary Rights. Notwithstanding anything to the contrary contained in this Agreement, Borrower may prepay all or a portion of the CITY Note through the conveyance of the Library Unit (as defined in the CITY Development Agreement) at any time in accordance and in strict compliance with the terms of the CITY Development Agreement. Furthermore, nothing in this Agreement shall be construed as modifying or limiting CITY's rights pursuant to Sections 18 and 19 of the CITY Development Agreement.

#### Section 2.02. Priority

In addition to the above subordination, the parties agree at all times, whether before, during or after the pendency of any bankruptcy, reorganization or insolvency proceeding, and notwithstanding the priorities that ordinarily would result under the UCC and other applicable law from the order of granting or perfecting of the security interests (including, without limitation, purchase money security interests) or the recording of any mortgage or other security instruments, that the parties shall have the following priorities:

(a) Senior Lender shall have a first-priority lien and security interest in the Joint Collateral.

(b) AHP Lender shall have a second-priority lien and security interest in the Joint Collateral.

CITY Lender acknowledges and confirms that the CITY Loan is uncollateralized.

Each party shall cooperate to effect the agreement expressed in this paragraph and from time to time shall execute such other and further documents, including subordination agreements, assignments of claim and otherwise as may be necessary or appropriate to implement the provisions of this Agreement.

2.03 Standstill; Limitation on Subordinate Lenders' Rights.

(a) At all times during which a Senior Loan is outstanding, the following provisions shall apply:

(i) Notwithstanding any Subordinate Lender's rights under applicable law or any provision of the Loan Documents to the contrary, each Subordinate Lender hereby acknowledges and agrees that it shall not, for a period not less than one hundred eighty (180) calendar days following an Event of Default and written notice thereof to each Lender ("Initial Standstill Period"), take any Enforcement Action with respect to the Joint Collateral or Borrower, without the express, written consent of the Senior Lender, until the satisfaction in full of the Senior Indebtedness. The CITY Lender and AHP Lender each agree and acknowledge that the Standstill Period shall be extended for such additional time as reasonably necessary for the Senior Lender to complete an Enforcement Action (the "Additional Standstill Period", collectively with the Initial Standstill Period being the "Standstill Period") if during the Initial Standstill Period the Senior Lender has commenced an Enforcement Action under the Senior Loan Documents and is in good faith actively continuing to pursue an Enforcement Action; provided that if Senior Lender has initiated a foreclosure action, the AHP Lender may join such action to protect and realize upon its subordinate interests in the Property; provided further that no Subordinate Lender may challenge the validity or priority of the Senior Loan Documents or otherwise hinder or interfere with the Senior Lender's enforcement of the Senior Loan Documents, and any and all recoveries by the Subordinate Lenders therein shall be applied in the priority set forth in Section 2.01(b) above. Each Subordinate Lender hereby waives any right it may have to require that the Senior Lender marshal any assets of the Borrower in favor of such Subordinate Lender and each Subordinate Lender agrees that it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any of the Improvements or the proceeds therefrom that is or may be prior to any of the Senior Loan Documents.

(ii) If, at the end of the Initial Standstill Period, the Senior Lender has elected not to pursue an Enforcement Action, or, if applicable, during an Additional Standstill Period not to exceed ninety (90) days, the Senior Lender has not continued to pursue its Enforcement Action in good faith, then each Subordinate Lender, with ten (10) Business Days' prior written notice to Senior Lender, may exercise any of their rights and remedies under the Subordinate Loan Documents (including, without limitation, CITY's rights pursuant to Section 18 and 19 of the CITY Development Agreement), as applicable, and/or under applicable laws; except that if the Senior Lender has advised or at any time advises the Subordinate Lenders that the Senior Lender intends to pursue in good faith foreclosure, collection or other enforcement proceedings or activities in a prompt and expeditious manner, Subordinate Lenders shall coordinate any Enforcement Action with respect to the Borrower or the Joint Collateral; and provided further, that in the event of any disagreement regarding any foreclosure action, the decision of Senior Lender shall control (but the Senior Lender shall not be entitled to prevent the Subordinate Lenders from protecting and realizing upon their subordinate interests in the Property concurrently with the Senior Lender in any foreclosure or similar Enforcement Action by the Senior Lender, nor shall Senior Lender's rights hereunder be construed as

modifying or limiting CITY's rights pursuant to Sections 18 and 19 of the CITY Development Agreement). Each Subordinate Lender acknowledges and agrees that if and to the extent such Subordinate Lender exercises any Enforcement Action or activities as permitted by the terms of this Agreement all collections, monies and proceeds received by such Subordinate, as the case may be, from or attributable to the Joint Collateral, the Borrower or otherwise shall be remitted to the Senior Lender until all of the Senior Indebtedness has been paid in full.

(iii) In no event may the Subordinate Lenders consent to any voluntary bankruptcy filing by Borrower or commence or join in any involuntary bankruptcy filing against Borrower.

(b) [Intentionally Omitted]

(c) Until the satisfaction in full of the Senior Indebtedness, each Subordinate Lender hereby covenants and agrees that they will not acquiesce, petition or otherwise invoke or cause any other Person to commence a case against the Borrower, under a Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian or other similar official of the Borrower or all or any part of its property or assets or ordering the winding-up or liquidation of the affairs of the Borrower.

Section 2.04. Non-Interference by Subordinate Lenders. Until such time as the Subordinate Lenders are permitted to take an Enforcement Action in accordance with the terms of Section 2.03, Subordinate Lenders shall not institute any judicial or administrative proceeding against the Borrower or the Senior Lender which directly or indirectly would interfere with or delay the exercise by the Senior Lender of its rights and remedies in respect of the Property or any part thereof or under the Senior Loan Documents or this Agreement without the written consent of Senior Lender. Without limiting the generality of the foregoing, in the event of a bankruptcy or insolvency of the Borrower, Subordinate Lenders shall not object to or oppose any efforts by the Senior Lender to obtain relief from the automatic stay under Section 362 of the United States Bankruptcy Code or to seek to cause such entity's bankruptcy estate to abandon the Property (or any portion thereof) that is subject to the Senior Mortgages.

Section 2.05. Assignment of Voting Rights. Subject to the terms of Section 2.06 herein below and until the Senior Loans have been indefeasibly paid in full, each Subordinate Lender agrees to assign and set over to the Senior Lender all of its Plan Voting Rights in any Insolvency Proceeding respecting the Borrower if so requested by the Senior Lender.

Section 2.06. Specific Powers in Insolvency Proceedings; Retained Rights of Subordinate Lenders. In any Insolvency Proceedings, until the Senior Indebtedness shall have been indefeasibly paid in full, each Subordinate Lender hereby irrevocably authorizes the Senior Lender:

(a) To prove and enforce any claims on the Subordinate Loans owed by the Borrower to any Subordinate Lender in the name of such Subordinate Lender as the attorney-in-fact of such Subordinate Lender if (but only if) such Subordinate Lender is not diligently undertaking to so prove or enforce such claims at least ten (10) days prior to the expiration of the time, without giving effect to discretionary extensions of time, for the filing of such claims;

(b) To accept and receive any payment or distribution made with respect to Subordinate Loans and to apply such payment or distribution to the payment of the Senior Indebtedness; and

(c) With prior written notice to the appropriate Subordinate Lender, to take any and all action and to execute any and all instruments reasonably necessary to effectuate the foregoing in the name of such Subordinate Lender as the attorney-in-fact of such Subordinate Lender.

Notwithstanding anything to the contrary contained herein, each Subordinate Lender shall be permitted to file notices of claims in any Insolvency Proceedings and take reasonable actions to preserve and defend such claims, subject to the limitations in Section 2.04 above.

Section 2.07. Payments and Distributions Held in Trust. If payments, proceeds and/or Joint Collateral are received by any party (including, without limitation, (a) any distribution arising directly or indirectly from any lien of the Senior Lender being avoided, declared to be fraudulent, or otherwise set aside under the provisions of any law governing fraudulent conveyances or transfers, and (b) any distribution arising directly or indirectly by reason of or in connection with an Insolvency Proceeding), other than in accordance with the rights and priorities established hereunder, including any payments made by setoff of amounts owed to any party: (a) the other party's portion of such payments, proceeds and/or Joint Collateral shall be delivered forthwith by the receiving party to the other party for application to the indebtedness by such other party and (b) receiving party shall promptly notify Borrower of such transfer of payment, and Borrower shall make appropriate adjustment to its books and records necessary to reflect such transfer of payment and to reflect all payments to each party hereto consistent with the requirements of this Agreement. Until so delivered, any such payments, proceeds and/or Joint Collateral shall be held by the receiving party in trust for the other party and shall not be commingled with any other funds or property of the receiving party. If for any reason, including but not limited to by reason of a payment being made by setoff, any party receives a payment other than in accordance with the rights and priorities established hereunder and such payment is not applied as provided in clauses (a) and (b) above, then the receiving party shall pay the amount thereof in cash to the party entitled to such payment hereunder, and in such event, the party making such payment in cash pursuant to this sentence shall be subrogated to the rights of the party receiving such payment in cash pursuant to this sentence, but shall not exercise such right of subrogation until the party receiving such payment is paid in full.

Section 2.08. Joint Collateral. In the event that, while a Default or Event of Default has occurred and is continuing under the Senior Loan Documents, any Joint Collateral is sold, transferred, conveyed or otherwise disposed of in favor of a third party unrelated to Borrower or its Affiliates (i) as permitted under the Senior Loan Documents (including the exercise of the rights and remedies of the Senior Lender thereunder), or (ii) as otherwise consented to by the Senior Lender and the applicable Borrower, then each Subordinate Lender shall release all rights to and interests in such Joint Collateral and such Joint Collateral shall be sold, transferred, conveyed or otherwise disposed of free and clear of all Liens held by or in favor of each Subordinate Lender. Nothing in this Agreement should be construed as a release of any of CITY Lender's rights or interests under the CITY's Development Agreement, or any provisions thereof, recorded on title to the Joint Collateral. Notwithstanding the obligations imposed on each Subordinate Lender under the terms of the preceding sentence, each lien securing the AHP Lender Indebtedness shall continue with respect to the proceeds of any Joint Collateral or other property sold, transferred, conveyed or disposed of to the extent that the aggregate of such proceeds exceed the total amount of the Senior Indebtedness.

### ARTICLE III

#### **NOTICE OF DEFAULT; SUBSTITUTE PERFORMANCE CONSENT**

Section 3.01. Notice of Default. In the event of a default by the Borrower under any of the Senior Loan Documents, the Senior Lender will provide to the Subordinate Lenders a copy of any related notice of default delivered to the Borrower, and such notice shall be sent to the Subordinate Lenders in

the manner provided for in Section 5.01. In the event of a default by the Borrower under any of the Subordinate Loan Documents, the applicable Subordinate Lender will provide to the other Subordinate Lender and the Senior Lender a copy of any related notice of default delivered to the Borrower and such notice shall be sent to the Senior Lender in the manner provided for in Section 5.01.

Section 3.02. Performance by Subordinate Lenders; Waiver of Subrogation. The Senior Lender shall accept performance by a Subordinate Lender of any of the obligations of the Borrower within the cure period set forth in the Senior Loan Documents as though performed by the Borrower. Notwithstanding any such performance by Subordinate Lenders of any such obligations of the Borrower, each Subordinate Lender hereby subordinates and waives any rights it may have, by contract, at law or in equity, to be subrogated to the Senior Lender's rights against the Borrower under the Senior Loan Documents or to the Senior Lender's liens on any of the Joint Collateral until payment in full of the Senior Indebtedness or acquisition of the Senior Indebtedness by any Subordinate Lender.

Section 3.03. Consent by the Subordinate Lenders. Each Subordinate Lender (in its capacity as lender) hereby consents and agrees that any lawful action taken by or on behalf of the Senior Lender in the exercise of its rights and/or remedies under the Senior Loan Documents (including, without limitation, any foreclosure or acquisition of title to the Improvements (or any part thereof by deed in lieu of foreclosure or otherwise)) are hereby deemed to be consented to and approved by each Subordinate Lender in all respects.

#### ARTICLE IV

#### **ADDITIONAL REPRESENTATIONS AND COVENANTS OF THE SUBORDINATE LENDER AND SENIOR LENDER**

Section 4.01. Representations and Covenants. Each Subordinate Lender and the Senior Lender (in their capacity as lenders) hereby further represents, warrants, covenants and agrees (but only with respect to itself) as follows:

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

(1) change the manner, place or terms of payment or performance of, and change or extend the time of payment or performance of, renew or alter, any portion of the Senior Indebtedness or any other obligations of any Person evidenced or secured by the Senior Loan Documents, any security therefor, or any liability incurred directly or indirectly in respect thereof;

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

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



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

(5) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrower under the Senior Indebtedness regardless of what liability or liabilities of the Borrower remain unpaid or unperformed;

(6) 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; and/or

(7) modify the Senior Loan Documents, including without limitation, change or extend the maturity date or take additional collateral; provided, that the Senior Lender shall not increase the principal amount of the Senior Loans (other than making protective advances, compounding unpaid interest, or adding costs and expenses incurred by the Senior Lender in connection with the Senior Loans to the principal balance thereof).

(b) No Subordinate Lender shall amend or modify any document relating to any Subordinate Loan in any respect, including, without limitation, any amendment or modification which shall have the effect of (i) changing or extending the maturity date thereof, (ii) increasing the interest rate (it being agreed that the application of a default rate of interest or late charge under the terms of the Subordinate Loan Documents as applicable shall not be considered increasing the interest rate of any Subordinate Loan), (iii) changing the payment terms, (iv) increasing the principal amount of any Subordinate Loan (other than making protective advances, compounding unpaid interest, or adding costs and expenses incurred by the Subordinate Lenders in connection with the Subordinate Loans to the principal balance thereof), or (v) increasing the obligations of Borrower (except as described immediately above) (each a "Loan Modification"), without the prior written consent of the Senior Lender and other Subordinate Lenders, not to be unreasonably withheld, denied, or delayed. Notwithstanding the foregoing, with prior written notice to Senior Lender, the Subordinate Lenders may make modifications to extend the maturity date, extend payment dates, reduce interest rates, defer or waive principal payments or interest payments, modify other obligations that do not increase or accelerate the financial obligations of the Borrower. Each Subordinate Lender seeking a Loan Modification of any Subordinate Loan Document ("Requesting Lender") shall send to the Senior Lender such proposed Loan Modification amendments relating to such Subordinate Loan. Senior Lender shall be deemed to have denied its consent to a proposed Loan Modification if it does not give its consent in writing, delivered to the Requesting Lender within twenty (20) Business Days after it receives written request for consent to such proposed Loan Modification; provided that the Requesting Lender may resubmit the request to Senior Lender if no response is received.

(c) Each Subordinate Lender hereby makes the following representations and warranties on behalf of itself to the Senior Lender as of the date hereof:

(1) The Subordinate Lender has the power, authority and legal right to execute, deliver and perform this Agreement. This Agreement has been duly authorized by all necessary action of the Subordinate Lender, duly executed and delivered by the Subordinate Lender and constitutes valid and binding obligations of the Subordinate Lender enforceable against the Subordinate Lender in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors

generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(2) Neither the execution, delivery or performance by Subordinate Lender of this Agreement nor compliance by it with the terms and provisions hereof, (i) will, to the best of Subordinate Lender's knowledge, contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will, to the best of the Subordinate Lender's knowledge, conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of the property or assets of the Subordinate Lender pursuant to the terms of any indenture, mortgage, credit agreement, loan agreement, partnership agreement or any other agreement, contract or instrument to which the Subordinate Lender is a party or by which it or any of its property or assets are bound or to which such property or assets may be subject or (iii) will violate any provision of the organizational documents of the Subordinate Lender.

(3) No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with, (i) the execution, delivery and performance by the Subordinate Lenders of this Agreement or (ii) the legality, validity, binding effect or enforceability of this Agreement with respect to the Subordinate Lenders.

(4) The Subordinate Lenders entered into the transactions contemplated by the Subordinate Loan Documents to which it is a party and made the loan evidenced thereby to the Borrower without reliance upon any information or advice from the Senior Lender. Each Subordinate Lender made its own underwriting analysis in connection with its respective Subordinate Loans, its own credit review of the Borrower and investigated all matters pertinent, in such Subordinate Lender's judgment, to its determination to make its respective loan to the Borrower and to execute and deliver the respective Subordinate Loan Documents.

(5) The Subordinate Mortgage is, and shall remain, subordinate to the Senior Mortgages.

(d) The Senior Lender hereby makes the following representations and warranties to the Subordinate Lenders as of the date hereof:

(1) The Senior Lender has the power, authority and legal right to execute, deliver and perform this Agreement. This Agreement has been duly authorized by all necessary action of the Senior Lender, duly executed and delivered by the Senior Lender and constitutes valid and binding obligations of the Senior Lender enforceable against the Senior Lender in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(2) Neither the execution, delivery or performance by the Senior Lender of this Agreement nor compliance by it with the terms and provisions hereof, (i) will, to the

best of the Senior Lender's knowledge, contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will, to the best of the Senior Lender's knowledge, conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of the property or assets of the Senior Lender pursuant to the terms of any indenture, mortgage, credit agreement, loan agreement, partnership agreement or any other agreement, contract or instrument to which the Senior Lender is a party or by which it or any of its property or assets are bound or to which such property or assets may be subject or (iii) will violate any provision of the organizational documents of the Senior Lender.

(3) No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with, (i) the execution, delivery and performance by the Senior Lender of this Agreement or (ii) the legality, validity, binding effect or enforceability of this Agreement with respect to the Senior Lender.

(4) The Senior Lender entered into the transactions contemplated by the Senior Loan Documents to which it is a party and made the loan evidenced thereby to the Borrower without reliance upon any information or advice from the Subordinate Lenders. The Senior Lender made its own underwriting analysis in connection with the Senior Indebtedness, its own credit review of the Borrower and investigated all matters pertinent, in such Senior Lender's judgment, to its determination to make its loan to the Borrower and to execute and deliver the respective Senior Loan Documents.

(5) The Senior Lender, in its capacity as Construction Servicer pursuant to that certain Construction Monitoring and Disbursement Agreement of even date herewith, by and between Senior Lender, Borrower and AHP Lender, acknowledges that CITY Loan proceeds may be used only for construction of the Library Unit (as such term is defined in the CITY Development Agreement), which includes an agreed upon allocation of costs for certain Project elements common to the Library Unit and the Apartment Unit, as described on Exhibit B attached to the CITY Development Agreement. As such, Borrower agrees to provide CITY Lender a copy of any request for disbursement of such funds and Senior Lender, in its capacity as Construction Servicer, shall allow CITY Lender five (5) business days to provide written denial of the disbursement of any CITY Loan proceeds. In the event CITY Lender fails to deny any disbursement within the time period described in the preceding sentence, such disbursement of CITY Loan Proceeds shall be conclusively deemed approved by CITY Lender and Senior Lender, in its capacity as Construction Servicer, may rely on such deemed approval.

(6) Senior Lender agrees to release all its liens and mortgages from the Library Unit prior to Borrower's conveyance of the Library Unit to the City.

## ARTICLE V

### MISCELLANEOUS

Section 5.01. Notices. All notices requested hereunder or pertaining hereto shall be in writing, shall be deemed delivered and effective upon the earlier of (a) delivery, or (b) refusal of the addressee to accept delivery or failure of delivery after at least one attempt, in each case, as such events are recorded in the ordinary business records of the delivery entity, if such notice is sent by a nationally recognized express courier service, with all charges prepaid or charged to the sender's account, or by United States Mail, certified or registered, return receipt requested, and with all postage and other charges prepaid, in either case to the applicable addresses as set forth in this Agreement, and shall be addressed as follows:

To Lender:	Town Bank 850 W. North Shore Drive Hartland, WI 53029 Attn: George Justice
With copy to:	Husch Blackwell LLP 555 E Wells, Suite 1900 Milwaukee, WI 53202 Attn: Michael Riopel, Esq.
To Borrower:	Mill Road Library Redevelopment, LLC c/o Royal Capital Group, LLC 710 N. Plankinton Avenue, Suite 300 Attn: Kevin Newell, President
With copy to:	Michael Best & Friedrich LLP 100 East Wisconsin Avenue, Suite 3300 Milwaukee, WI 53202 Attn: Danielle Bergner, Esq.
And a copy to:	Maures Development Group, LLC 1420 West Center Street, Suite 2 Milwaukee, WI 53206 Attn: Melissa N. Goins, President
With a copy to:	HCP-ILP, LLC 15910 Ventura Boulevard, Suite 1100 Encino, California 91436 Attention: Jeffrey N. Weiss Email: <a href="mailto:jeff.weiss@huntcompanies.com">jeff.weiss@huntcompanies.com</a>

And with a copy to: Ballard Spahr LLP  
1735 Market Street, 51st Floor  
Philadelphia, Pennsylvania 19103  
Attention: Jere G. Thompson  
Email: [thompsonj@ballardspahr.com](mailto:thompsonj@ballardspahr.com)

To CITY Lender: City of Milwaukee  
809 North Broadway  
Milwaukee, WI 53202  
Attn: Commissioner of City Development

With copy to: City Attorney's Office  
841 North Broadway  
Milwaukee, WI 53202  
Attn: Rachel S. Kennedy, Esq.  
Email: [rkenne@milwaukee.gov](mailto:rkenne@milwaukee.gov)

With copy to: Milwaukee Public Library and Milwaukee  
Public Library Board of Trustees  
814 West Wisconsin Avenue  
Milwaukee, WI 53233  
Attn: Paula Kiely, Director  
Email: [pkiely@milwaukee.gov](mailto:pkiely@milwaukee.gov)

To AHP Lender: CUPED Corporation  
c/o Maures Development Group, LLC  
1420 West Center Street, Suite 2  
Milwaukee, Wisconsin 53206  
Attention: Melissa N. Goins, President  
Email: [Melissa@mauresllc.com](mailto:Melissa@mauresllc.com)

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 5.01, the term "Business Day" shall mean any day other than a Saturday, a Sunday, or a federal holiday, on which Senior Lender is open for business.

Any party by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

Section 5.02. Modification. No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 5.03. WAIVER OF JURY TRIAL. THE SENIOR LENDER AND EACH SUBORDINATE LENDER EACH EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY AND EVERY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

Section 5.04. Governing Law.

(a) This Agreement shall be governed by and construed according to the laws, from time to time in effect, of the State of Wisconsin and the laws of the United States of America.

(b) Any legal suit, action or proceeding against any Subordinate Lender or the Senior Lender arising out of or relating to this Agreement may be instituted in any Federal court or in state court situated in Milwaukee County, Wisconsin, and each party hereto waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and each party hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

Section 5.05. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument and shall be binding upon, and shall inure to the benefit of, each of the undersigned individually as fully and completely as if all had signed one instrument.

Section 5.06. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Senior Lender and each Subordinate Lender and their respective successors and assigns, including, as to the Senior Lender, without limitation, any holder of any Senior Note and any affiliate of the Senior Lender which acquires all or part of the Joint Collateral by any sale, assignment or foreclosure under a Senior Mortgage, by deed or other assignment in lieu of foreclosure, or otherwise.

Section 5.07. No Third Party Beneficiaries. Nothing contained in this Agreement shall be deemed to indicate that this Agreement has been entered into for the benefit of any Person other than the Senior Lender and each Subordinate Lender.

Section 5.08. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 5.09. No Waiver.

(a) No waiver shall be deemed to be made by the Senior Lender of any of its rights hereunder, or under the Senior Loan Documents, unless the same shall be in writing and signed by the Senior Lender, and each waiver, if any, shall be a waiver only with respect to the specific instances involved and shall in no way impair the rights of the Senior Lender in any other respect or at any other time.

(b) No waiver shall be deemed to be made by any Subordinate Lender of any of its rights hereunder, or under the Subordinate Loan Documents, unless the same shall be in writing and signed by such Subordinate Lender, as applicable, and each waiver, if any, shall be a waiver only with respect to the specific instances involved and shall in no way impair the rights of such Subordinate Lender in any other respect or at any other time.

Section 5.10 Agreement by Borrower. By its execution of this Agreement, the Borrower agrees to be bound by the terms hereof, to observe the lien priorities and the priorities of payments set forth herein and to conduct its affairs consistently with the terms hereof.

**IN WITNESS WHEREOF**, the parties have executed this Subordination and Intercreditor Agreement on or about the date first written above.

**BORROWER:**

**MILL ROAD LIBRARY REDEVELOPMENT, LLC,**  
a Wisconsin limited liability company

By: Mill Road Library Redevelopment Managing  
Member, LLC, its Managing Member

By: Mill Road MM Holdings, LLC,  
its Manager

By: Royal Capital Group, LLC,  
its Manager

By: \_\_\_\_\_  
Kevin Newell  
President

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

I, a Notary Public in and for said County in the State aforesaid, do hereby certify that Kevin Newell, as President of Royal Capital Group, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized agent, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, all for the uses and purposes set forth therein.

GIVEN under my hand and official seal, this \_\_\_\_ day of July, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Subordination and Intercreditor Agreement on or about the date first written above.

**SENIOR LENDER:**

**TOWN BANK**

By: \_\_\_\_\_  
Ranell G. Washington  
Assistant Vice President

By: \_\_\_\_\_  
George D. Justice  
Senior Vice President

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

SS.

I, a Notary Public in and for said County in the State aforesaid, do hereby certify that Ranell G. Washington, as Assistant Vice President of Town Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized agent, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, all for the uses and purposes set forth therein.

Given under my hand and notarial seal this \_\_\_\_\_ day of July, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

SS.

I, a Notary Public in and for said County in the State aforesaid, do hereby certify that George D. Justice, as Senior Vice President of Town Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized agent, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, all for the uses and purposes set forth therein.

Given under my hand and notarial seal this \_\_\_\_\_ day of July, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_



**IN WITNESS WHEREOF**, the parties have executed this Subordination and Intercreditor Agreement on or about the date first written above.

**CITY OF MILWAUKEE**

By \_\_\_\_\_  
Paula A. Kiely, Director  
Milwaukee Public Library

By \_\_\_\_\_  
Tom Barrett, Mayor

By \_\_\_\_\_  
James R. Owczarski, City Clerk

**Countersigned**

By \_\_\_\_\_  
Martin Matson, Comptroller

State of Wisconsin        )  
  ) **ss.**  
County of Milwaukee     )

Signatures of Paula A. Kiely, Tom Barrett, James R. Owczarski, and Martin Matson authenticated this \_\_\_\_ day of June, 2018.

\_\_\_\_\_  
Rachel S. Kennedy, Assistant City Attorney  
State Bar No. 1066459

[Signatures continue on following page]

[Signature Page to Subordination and Intercreditor Agreement]

**IN WITNESS WHEREOF**, the parties have executed this Subordination and Intercreditor Agreement on or about the date first written above.

**AHP LENDER:**

CUPED CORPORATION

By: \_\_\_\_\_  
Melissa N. Goins  
President

STATE OF WISCONSIN                    )  
  )     SS.  
COUNTY OF MILWAUKEE            )

I, a Notary Public in and for said County in the State aforesaid, do hereby certify that Melissa N. Goins, as President of CUPED CORPORATION, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized agent, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, all for the uses and purposes set forth therein.

Given under my hand and notarial seal this \_\_\_\_\_ day of July, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**REAL PROPERTY**

[insert]