

*****ATTACHMENTS*****

III

4.2

R. O. No. 322 15 - 16. By DIR. OF PLANNING & DEVELOPMENT. April 6, 2016.

Submitting a communication from Mr. Chad Pelishek, Director of Planning and Development, on behalf of the City of Sheboygan, Sheboygan County Economic Development Corporation and Sheboygan Squared, requesting the use of one of the City's free Blue Harbor Conference Center days to host a reception as part of the Developer's/Retail Summit on August 8, 2016.

Finance

DIR. OF PLANNING & DEV

III

III

5.2

Res. No. 186 - 15 - 16. By Alderperson Hammond. April 6, 2016.

A RESOLUTION to authorize a transfer of appropriations in the 2016 Budget.

Establish estimated revenue and appropriation for donation from Webster Bank for Police Department Bike Rodeo:

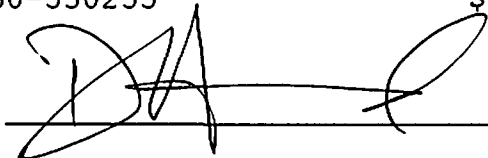
<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Police Department Contribution 10121100-467101	General Fund Police Department-Patrol Police Supplies 10121100-530210	\$2,000

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Advance to TID XVI 101-133426	TID XVI Land Improvements 42661100-611200	\$500,000

Finance

Establish estimated revenue and appropriation for damage fees received:

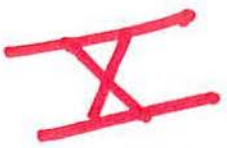
<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Damage Fees 10131100-451301	General Fund Traffic Control Equipment 10133250-530255	\$21,500
	General Fund Street Lighting Equipment 10133160-530255	\$12,500



I HEREBY CERTIFY that the foregoing Resolution was duly passed by the
Common Council of the City of Sheboygan, Wisconsin, on the _____ day of
_____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor



7.1

Gen. Ord. No. 54 - 15 - 16. By Alderperson Hammond. April 6, 2016.

AN ORDINANCE amending Section 2-3 of the Municipal Code relating to petty cash funds.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Section 2-3 of the Municipal Code entitled, "Petty Cash Funds", is hereby amended in Subsection (a) to read as follows:

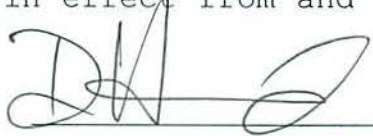
Section 2-3

(a) Petty cash funds for small or emergency expenditures shall be established in the following departments in the indicated amounts:

Library Board	\$434
Building Inspection	\$150
Fire Department	\$50
Police Department	\$525
Municipal Court	\$100
Sheboygan Transit	\$500
City Clerk	\$100

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

France



I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

Other Matters

9.3

Res. No. 187 - 15 - 16. By Alderperson Hammond. April 6, 2016.

A RESOLUTION to authorize a transfer of appropriations in the 2016 Budget.

RESOLVED: That the Finance Director be and is hereby authorized and directed to make the following transfers of appropriations in the 2016 Budget for the purposes of:

Establish appropriation for purchase of an adjacent lot to Wildwood Athletic field which is now available for expansion of the park to add additional parking and facilities to host major tournaments:

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
Tourism Fund Unreserved Fund Balance 260-253000	Tourism Fund Land 26053000-611100	\$40,000

Finance



I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

Res. No. - 15 - 16 . By Alderperson Hammond. April 11, 2016.

A RESOLUTION approving the First Amendment to Contract for Sale of Land for Private Development By and Between the City of Sheboygan and Eighth Street Housing Corporation.

RESOLVED: That the City of Sheboygan hereby approves the First Amendment to Contract for Sale of Land for Private Development By and Between the City of Sheboygan and Eighth Street Housing Corporation, in form substantially similar to the documents attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**FIRST AMENDMENT
TO
CONTRACT FOR
SALE OF LAND FOR PRIVATE DEVELOPMENT
BY AND BETWEEN
CITY OF SHEBOYGAN, WISCONSIN
AND
EIGHTH STREET SHEBOYGAN HOUSING CORPORATION**

THIS FIRST AMENDMENT TO CONTRACT FOR SALE OF LAND FOR PRIVATE DEVELOPMENT (this "**Amendment**") is made and entered into as of March __, 2016, by and between the City of Sheboygan (the "**City**"), and Eighth Street Sheboygan Housing Corporation, a Wisconsin domestic business corporation ("**Developer**").

RECITALS:

WHEREAS, Developer and the City entered into that certain Contract for Sale of Land for Private Development dated as of December 11, 2015 (the "**Agreement**") whereby the City agreed to convey and Developer agreed to acquire and develop the Property (as such term is defined in the Agreement);

WHEREAS, Developer and the City hereby desire to modify the Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the City, intending to be bound, hereby agree as follows:

1. Recitals and Definitions. The foregoing Recitals are hereby incorporated as if fully set forth herein. Capitalized terms not otherwise defined herein shall have the same meaning as when defined in the Agreement.
2. Amendments. The Agreement is hereby amended as follows:
 - a. Construction Schedule and Property Conveyance Date. The anticipated construction schedule and Property conveyance date set forth in Article I are hereby deleted in their entirety and replaced with the following:

It is anticipated that the construction schedule for the Project will be carried out as follows:

City Plan Approvals (Conditional Use/Architectural Review)	June 2016
Issuance of Building Permits	July 2016
Start Construction	July 2016
Substantial Completion	July 2017

of Developer, "Fill Management Plan") being jointly developed by Developer and the City, and that is to be approved by the Wisconsin Department of Natural Resources ("WDNR"). The entire cost and expense incurred to prepare the Fill Management Plan in a manner acceptable to the WDNR and Developer, and complete all activities specified therein, is herein referred to in the aggregate as the "Plan Implementation Costs." Plan Implementation Costs include, but are not limited to sampling, management and disposal, or relocation, of Fill Materials and any costs for activities that were not included in Developer's Development Pro Forma that are required by WDNR to get Case Closure as defined in Ch. NR726, Wis. Admin. Code.

- (b) Based on prior information that the City provided to Developer regarding suitable and uncontaminated fill materials at the Property, Developer's Development Pro Forma included \$225,600 toward the cost of excavating and managing suitable and uncontaminated fill materials that were anticipated site-wide.
- (c) Developer will construct the Project in compliance with the Fill Management Plan. Developer will be responsible for excavation costs up to but not to exceed \$225,600 ("Developer Site Preparation Costs"). Developer will provide the City with copies of the portions of the draw requests applicable to the Plan Implementation Costs and will provide the City with reasonable proof of payment of the Developer Site Preparation Costs. The City will be responsible for timely paying the Plan Implementation Costs. The City shall make such payments on a monthly draw basis in accordance with the terms of a Disbursement Agreement to be entered into by Developer, the City, the Title Company and Developer's lender in form and substance reasonably acceptable to such parties (the "Disbursing Agreement"). The Disbursing Agreement shall provide for the City to deposit with the Title Company on a monthly basis and within five (5) business days after request therefor, the full amount of Plan Implementation Costs payable under the applicable draw request in accordance with the applicable terms of the Disbursing Agreement and will authorize the Title Company to disburse the same to Developer or the applicable contractors as more particularly provided therein.

SEC. 504. Site Preparation Savings. In order to minimize Plan Implementation Costs, the WDNR approved Fill Management Plan may include the excavation, transportation and use of fill materials from the Greenspace Parcel (as hereinafter defined) either at the Property or deposited at another location, and allow the disposal of contaminated or unsuitable Fill Materials on the Greenspace Parcel, but only if it results in an overall Project cost savings, taking into account lower disposal and transportation costs, but potentially higher development costs ("Extraordinary Costs") to address incidental geotechnical, environmental and construction conditions on the Greenspace Parcel. Extraordinary Costs shall be included in the Plan Implementation Costs. In addition, the City may elect to provide a City owned location for depositing clean fill materials from the Greenspace Parcel.

SEC. 505. WPDES Permit. Developer may elect to secure a WPDES permit to allow the discharge of water from the Property to the storm sewer. This may not be practical or permissible based on site conditions and potential contamination, and subject to routine

permitting and approval, the City will allow the Developer to dewater and discharge pumped water to the City sanitary sewer system at no charge to Developer.

SEC. 506. Exempt Material: Concrete. The Property contains extensive concrete slabs and walls. To the extent that the concrete is unpainted and regarded as an exempt material under the Fill Management Plan, it may be crushed on, or off, site and reused.

SEC. 507. Post-Excavation Sampling and Case Closure. At reasonable distance intervals following the removal of the lowest level of concrete slab(s), the City shall provide for Stantec, its environmental professional, to observe and document the condition of the sub-slab soils, and incorporate its report into a final request for Case Closure to the WDNR pursuant to Ch. NR726, Wis. Admin. Code. Developer will ensure the filing of the Case Closure report and the cost will be included in the Plan Implementation Cost.

g. **Submittal and Approval of Plans.** Section 701 is hereby amended by deleting the reference to “April 30, 2016” and replacing it with “June 15, 2016” in the first paragraph thereof and deleting “May 13, 2016” in both places it appears in the last paragraph of Section 701 and replacing them with “July 15, 2015.”

3. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. It shall not be necessary in making proof of this Amendment to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of all of the parties hereto. Electronically transmitted counterparts of this Amendment or signature pages hereof shall have the same force and effect as originals.

4. **Amendment; Ratification.** By their signatures hereto, Developer and the City agree to be bound by the provisions of the Agreement, as amended by this Amendment. Except as amended hereby, the Agreement shall remain in full force and effect and is ratified and confirmed.

(Remainder of Page Left Intentionally Blank; Signature Pages Follow

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date set forth above.

CITY:

**CITY OF SHEBOYGAN,
WISCONSIN**

BY:

Michael J. Vandersteen,
Mayor

ATTEST:

Susan Richards
City Clerk

CITY COMPTROLLER

BY:

Nancy Wasmer
Comptroller/City Treasurer

[Signature Page 1 of 2 to First Amendment to Contractor for Sale of Land for Private Development by and between City of Sheboygan, Wisconsin and Eighth Street Sheboygan Housing Corporation]

Error! Unknown document property name.

DEVELOPER:

EIGHTH STREET HOUSING CORPORATION

BY: _____
Michael Morey,
President

BY: _____
Michael C. Morey,
Vice President

[Signature Page 2 of 2 to First Amendment to Contractor for Sale of Land for Private Development by and between City of Sheboygan, Wisconsin and Eighth Street Sheboygan Housing Corporation]

Res. No. - 15 - 16 . By Alderperson Hammond. April 11, 2016.

A RESOLUTION approving the terms and conditions of the Development Agreement between the City of Sheboygan, Redevelopment Authority and South Pier Sheboygan, LLC.

RESOLVED: That the City of Sheboygan hereby approves the terms and Conditions of the Developers Agreement between South Pier Sheboygan, LLC and the City of Sheboygan/Redevelopment Authority, in form substantially similar to the documents attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

DIRECT REFERRAL

Res. No. _____ - 15 - 16. By Alderperson Hammond. April 11, 2016.

A RESOLUTION approving the terms and conditions of the Development Agreement between the City of Sheboygan, Redevelopment Authority and South Pier Sheboygan, LLC.

RESOLVED: That the City of Sheboygan hereby approves the terms and Conditions of the Developers Agreement between South Pier Sheboygan, LLC and the City of Sheboygan/Redevelopment Authority, in form substantially similar to the documents attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

*Trance
Redevelopment Auth*

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**COOPERATION AGREEMENT
FOR THE
CONVEYANCE AND PRIVATE DEVELOPMENT
OF LAND**

(South Pier Townhomes Project)

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**COOPERATION AGREEMENT
FOR THE
CONVEYANCE AND PRIVATE DEVELOPMENT
OF LAND**

(South Pier Townhomes Project)

AGREEMENT, made this ____ day of _____, 2016, by and among the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin, the Redevelopment Authority of the City of Sheboygan, a public body corporate and politic organized and existing under the laws of the State of Wisconsin (“RDA”), South Pier Sheboygan, LLC, a Wisconsin limited liability company (“SPS”) and _____, [an “S” corporation and affiliate of SPS] (“S”), (collectively, SPS and S are referred to herein as “Developer”).

WITNESSETH

WHEREAS, the South Pier District is within the boundaries of Tax Incremental District No. 6 – Harbor Centre Redevelopment Area (“TID-6”) and Amendment No. 2 to the TID-6 Project Plan provides for the funding of development incentives as TID-6 Project Costs; and

WHEREAS, RDA is the owner of certain real property located within the South Pier District, generally bounded by South Pier Drive, Illinois Avenue and Blue Harbor Drive, which includes four interior parcels with an aggregate area of approximately 4.52 acres, which are depicted as Lots 6, 7, 8 and 9 on EXHIBIT A (the “Project Site”); and

WHEREAS, the RDA is also the owner of two public parking lots located immediately adjacent to the Project Site, with an aggregate area of approximately 2.48 acres, which are depicted on EXHIBIT B (the “Parking Lots”); and

WHEREAS, Developer proposes to construct its South Pier Townhomes Project (the “Project”) on the Project Site in two phases, with Phase I of the Project, consisting of approximately 52 residential units, to be constructed on Lots 6 and 7 of the Project Site and with Phase II of the Project, consisting of approximately 36 residential units, to be constructed on Lots 8 and 9 of the Project Site; and

WHEREAS, RDA is willing to convey the Project Site to Developer pursuant to the terms of a ground lease in substantially the form attached as EXHIBIT C (the “Ground Lease”) in order to promote implementation of the Project; and

WHEREAS, RDA is willing to execute and deliver to Developer an access easement over the Parking Lots in substantially the form attached as EXHIBIT D (the “Parking Lot Easement”) in order to provide access to the Project Site and to promote development of the Project; and

WHEREAS, City is willing to provide a development incentive to the Project by

depositing \$1,710,000 TID-6 Funds into an escrow and disbursement agreement in substantially the form attached as EXHIBIT E (the “Disbursing Agreement”) for disbursement to S as Project costs are incurred; and

WHEREAS, it is anticipated that the construction schedule for the Project will be carried out as follows:

City Plan Approvals (Conditional Use/Architectural Review	June 2016
Issuance of Building Permits for Phase 1	July 2016
Start of Construction for Phase 1	August 2016
Substantial Completion for Phase 1	April 2017
Issuance of Building Permits for Phase 2	July 2017
Start of Construction for Phase 2	August 2017
Substantial Completion for Phase 2	April 2018

WHEREAS, this Agreement permits SPS to undertake the Project in cooperation with various Affiliates in consideration of SPS’s covenant to direct the operations of all of its Affiliates involved in the Project. CITY and RDA acknowledge that they will rely upon SPS, both as the primary developer of the Project and for the performance of all substantive obligations under this Agreement, notwithstanding the fact that title to portions of the Project may be held by SPS’s Affiliates; and

WHEREAS, City and RDA believe that the development of the Project Site through construction of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City, RDA and the health, safety and welfare of City’s residents.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others as follows:

1. DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms when used in this Agreement shall have the following meanings:

“Affiliate” means a person, entity or entities directly or indirectly under the same control or management as SPS or a person, entity or entities controlling or managing SPS.

“City Investment” means the amount of \$1,710,000, to be made available by City from TID-6, or such other sources as may be determined by City, in order to allow the City, RDA and Developer to implement the Project in accordance with this Agreement. References in this Agreement to City Investment shall include the Initial City Investment and Subsequent City Investment.

“Completion Certificate” means a certificate in substantially the form attached as EXHIBIT F.

“Disbursing Agreement” means an Escrow Disbursement Agreement, dated even herewith, in substantially the form attached as EXHIBIT E.

“Ground Lease” means a ground lease, dated even herewith, in substantially the form attached as EXHIBIT C.

“Hard Costs” means _____.

“Initial City Investment” means up to \$1,008,900.

“Parking Lots” means two public parking lots located immediately adjacent to the Project Site which are depicted on Exhibit D.

“Parking Lot Easement” means access an easement over the Parking Lots, dated herewith, in substantially the form attached as EXHIBIT D.

“Phase” means each phase of the Project currently contemplated by Developer, as depicted on the Project Site Plan and described on the Project Timetable. The Phases may be revised from time to time during the term of this Agreement with the written approval of City.

"Project" means the project more particularly described in Article II hereof.

"Project Documents" means the instruments, agreements and documents listed on EXHIBIT G.

"Project Plans" means plans and specifications for the Project, including separate final plans and specifications for each Phase of the Project, which are subject to the approval of City.

"Project Site" means the real Project Site described on EXHIBIT A attached hereto.

“Project Site Plan” means a site plan for the Project Site, depicting the two Phases as currently contemplated by Developer, attached as EXHIBIT H. The Project Site Plan may be revised from time to time during the term of this Agreement with the written approval of City.

“Project Timetable” means the preliminary schedule for implementation of the Project set forth in the “Whereas” clause above. The Project Timetable may be revised from time to time during the term of this Agreement, provided that material changes shall be subject to the written approval of City.

“Soft Costs” means _____.

“Substantial Completion” means _____.

“Subsequent City Investment” means up to \$701,100.

“TID-6” means Tax Incremental District No. 6 – Harbor Centre Redevelopment Area.

“Unit Started” means footings, foundation and slab up to grade.

1.2 **Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) The table of contents, captions, and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction, or effect.

(c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

2. **PROJECT DESCRIPTION**

The Project consists of the construction of an approximately 88 unit townhouse development with approximately 232 parking spaces in two phases. Phase I will include construction of an estimated 52 townhome units with approximately 129 parking spaces in the areas depicted as “Development C” and “Development D” on the Project Site Plan. Phase II will include construction of an estimated 36 townhome units with approximately 103 parking spaces in the area depicted as “Development A” and “Development B” on the Project Site Plan. The total estimated Project cost for both Phases is approximately \$11,500,000. Developer contemplates the use of first mortgage financing for 70% of Project costs with the remaining 30% of Project costs to be comprised of a Developer contribution of \$1,710,000 and the City Investment.

3. **DEVELOPER OBLIGATIONS**

3.1 **Developer Obligations.** During the term of this Agreement, and with respect to each Phase, Developer shall, in accordance with the Project Timetable:

(a) Submit any revisions to the Project Plans and Project Timetable to City for approval.

(b) Submit to the City, in a form reasonably satisfactory to the City, evidence that Developer has received all federal, state and local agency approvals which are necessary to undertake the construction of the Project.

(c) Secure the written approval of City of final Project Plans for each Phase of the Project.

(d) Undertake the Project in Phases and in a manner generally consistent with the Project Description and the Project Plans, and substantially complete each such Phase in accordance with the Project Timetable,

(e) As development of the Project proceeds, submit to City, as appropriate and required, copies of any material changes, additions, and/or refinements to the plans and

specifications for the Project and, with respect to any change, addition, or refinement that constitutes a material modification to the Project description, as theretofore revised or amended, obtain the prior written consent City.

(f) Execute and deliver all Project Documents to which it is a party.

4. SPS COVENANTS

4.1 Affiliates. SPS shall direct the operations of each of its Affiliates involved in the Project to assure performance of all substantive obligations of SPS under this Agreement notwithstanding the fact that title to portions of the Project may be held by SPS's Affiliates from time to time. In addition, upon City's written request, SPS shall direct its Affiliates to join in and to execute Project Documents which relate to portions or Phases of the Project to be undertaken by such Affiliates. The parties contemplate that SPS's Affiliate S will be party to the Disbursement Agreement and receive disbursements of City Investment as Project costs are incurred.

5. EASEMENTS AND CONVEYANCES

The parties acknowledge that upon execution and delivery of this Agreement RDA will, pursuant to the Ground Lease, execute a metes and bounds conveyance of the Project Site to Developer in order to accommodate closing on financing for the Project and the commencement of construction of Phase I. Developer, as a condition to securing financing for the Project, has committed to its lender to initiate a certified survey map to further divide and delineate the various parcels included in the Project Site. Such certified survey map is a Project Document.

The parties agree to cooperate in the finalization of the certified survey map in conjunction with the finalization of plans and specifications for the Project pursuant to Section 11. The parties further agree to execute and record such documents as may be necessary to substitute new legal descriptions referencing the recorded certified survey maps for the initial metes and bounds legal descriptions and area depictions attached to the recorded Ground Lease and Parking Lot Easement.

CITY and RDA will also assist Developer in the finalization of all additional easements and conveyances necessary to implement the Project.

6. CITY OBLIGATIONS

6.1 During the term of this Agreement City shall undertake the following, in accordance with the Project Timetable:

(a) Initial City Investment. Directly fund the City Investment hereunder through the deposit of \$1,710,000 pursuant to the terms of the Disbursement Agreement, for disbursement to S in order to allow Developer to commence the Project as provided herein.

(b) Assist Developer in obtaining as expeditiously as possible, all permits, approvals, variances, licenses, certificates, inspections, and consents that may be necessary or desirable to enable Developer to commence and carry out all obligations and actions under this

Agreement and the Project Documents; provided that nothing contained herein shall be deemed to limit or waive the City's independent right and authority to review and consider each request for such approvals.

(c) Within twenty (20) business days following submission of final plans and specifications for each Phase by Developer, either provide Developer with City's written approval of said plans and specifications or a written explanation of the modifications necessary in order to secure such approval.

(d) Execute and deliver all Project Documents to which it is a party.

(e) Approve disbursement of funds under the Escrow Disbursement Agreement subject to Developer's compliance with the requirements of this Agreement and the Escrow Disbursement Agreement.

7. RDA OBLIGATIONS

7.1 During the term of this Agreement, RDA shall undertake the following in accordance with the Project Timetable:

(a) Assist Developer in obtaining as expeditiously as possible, all permits, approvals, variances, licenses, certificates, inspections, and consents that may be necessary or desirable to enable Developer to commence and carry out all obligations and actions under this Agreement and the Project Documents.

(b) Through the provision of staff assistance, aid Developer in the finalization of any Developer actions required by this Agreement.

(c) Execute and deliver all Project Documents to which it is a party.

8. CONDITIONS PRECEDENT

8.1 The parties obligations to execute and deliver this Agreement and the Project Documents referenced herein shall be subject to the Developer's satisfaction, or waiver thereof, of each of the following conditions:

(a) Project Site Conveyance. Developer determining, after receipt of the survey and the environmental audit reports referenced below, and such other information as determined appropriate by Developer, whether it will accept conveyance of the Project Site under this Agreement.

(b) Financing Contingency. Developer obtaining and delivering pursuant to the following section, a written loan commitment from a lending institution of Developer's choice in an amount and with such terms and conditions acceptable to Developer, within Developer's sole discretion, for the construction of the Project and any and all Improvements (as defined below) related thereto.

(i) City Contribution. Notwithstanding other costs and expenses paid or incurred as of the date of this Agreement and in order for this Project to occur, based on a total project cost of \$11,500,000 consisting of both hard costs in the amount of approximately \$10,485,000 and soft costs in the amount not-to-exceed \$1,015,000, the City is responsible to pay for 15% of the total cost not to exceed \$1,710,000 divided by 88 units or \$19,432 per unit, when the Building Inspector has certified the number of Units Started per phase of the Project.

(ii) Evidence of Equity Capital and Bank Mortgage Financing. As promptly as possible, but not later than the date of this Agreement, Developer shall submit to City evidence reasonably satisfactory to City that Developer has the equity capital and commitments for mortgage financing necessary for the timely completion of construction of the Project.

(c) Environmental. City delivering to Developer, within fifteen (15) days prior to execution of this Agreement, all environmental information in the possession of City and/or City's agents, attorneys, consultants or independent contractors, including, but not limited to, any and all environmental Phase I and Phase II environmental reports, soil and groundwater test results, correspondence with and orders or directives from governmental agencies (e.g. the Environmental Protection Agency, the Wisconsin Dept. of Natural Resources and other such agencies), case closure letters, remedial action plans and similar information.

Developer's obligation to proceed is further contingent upon Developer determining, in Developer's sole discretion, not less than ten (10) days prior to the date of this Agreement, that (i) such information does not disclose the existence of any recognized environmental conditions or any other environmental issues, hazardous conditions, materials or substances located on, in or with respect to the Project Site to which Developer may object or (ii) Developer, at its expense, after reviewing for its own purposes and satisfying such requirement for Developer's lender, the environmental Phase II or soil and groundwater tests inspections, determines to move forward with the Project.

For purposes of this Subsection (c), a hazardous material, condition, or substance, recognized environmental condition, or any other environmental condition shall include, but not be limited to, any condition, material or substance that does not comply with federal, state or local environmental laws, rules or regulations, any material or condition defined as hazardous within the meaning of such laws, rules or regulations, or any condition, material or substance defined as a recognized environmental condition as determined by the Standards of the American Society for Testing and Materials (ASTM), or the presence of asbestos, underground storage tanks, petroleum products or similar substances.

In the event such information, audits or reports disclose or confirm the presence of any hazardous material, condition or substance on, in or with respect to the Project Site, or the existence of any recognized environmental condition or any other environmental condition affecting or relating to the Project Site, Developer may, in Developer's sole discretion, accept conveyance of the Project Site "as-is" despite the presence of such hazardous material, condition or substance or the existence of such recognized environmental condition or other environmental condition.

(d) Title. RDA delivering to Developer, within 10 days prior to the date of this Agreement, a commitment in favor of Developer for an ALTA Form (2006 or its current equivalent form) owner's policy of title insurance (the "Title Commitment") with respect to the Project Site, from a title insurance company agreed upon by the parties ("Title Company") (the title insurance premium for such Title Commitment shall be paid by RDA).

Within ten (10) days after Developer's receipt of the Title Commitment, Developer shall notify RDA in writing of any unacceptable exceptions which are disclosed in the Title Commitment. The Title Commitment shall contain such endorsements required by Developer, which endorsements shall be obtained at Developer's expense. In the event Developer disapproves of any matter pertaining to title, Developer may request and RDA shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that RDA is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to title shall be extended for a commensurate period. Any mortgages, liens or judgments shown on the Title Commitment will be paid or satisfied by RDA or insured over by the Title Company on or prior to execution and delivery of the Ground Lease.

In the event that RDA elects to cure, but is unable to satisfy any such defect or disapproved matter within such fifteen (15) day period, or in the event that RDA elects not to cure any defect or disapproved matter, Developer may, within ten (10) days after receipt of written notice from RDA that RDA has been unable to cure or is unwilling to cure and accept conveyance of the Project Site "as-is."

(e) Survey. Developer's receipt, of a current survey of the Project Site (the "Survey") from RDA made by a surveyor licensed in the State of Wisconsin. Developer shall notify City and RDA in writing of any unacceptable exceptions which are disclosed in the Survey. In the event Developer disapproves of any matter pertaining to the Survey, Developer may request and City and RDA shall, upon receipt of written request from Developer, use their best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that City and RDA are attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to the Survey shall be extended for a commensurate period.

If such Survey continues to show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Project Site, as determined by Developer, within Developer's sole discretion, Developer may accept conveyance of the Project Site "as-is" despite the existence of such condition on the Survey.

9. SPECIAL PROVISIONS

9.1 Minimum Hard Cost Investment. Developer shall utilize the Project Site by constructing the Project and all related improvements, at a minimum hard cost of Ten Million Four Hundred Eighty-Five Thousand and 00/100 Dollars (\$10,485,000.00) dollars] (the "Minimum Hard Cost Investment").

The Minimum Hard Cost Investment includes hard costs for construction of all buildings and other improvements on Project Site and leasehold improvements together with all other costs incurred by Developer or its successors or assigns, in connection with the Project, on or before the final completion date of construction of the Project on the Project Site as required by this Agreement, or such later date as the parties may hereafter agree, including, without limitation, any and all costs (remediation costs or otherwise) Developer may incur with respect to any environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Project Site.

Any provision of this Agreement to the contrary notwithstanding, City and Developer hereby acknowledge and agree that the failure of Developer, its successors or assigns, to satisfy the Minimum Hard Cost Investment requirements by the dates set forth in the Project Timetable shall not constitute a default or breach by Developer under this Agreement nor subject Developer, its successors or assigns, to any penalty, liability or remedy available to City hereunder or otherwise available to it at law or in equity, provided that the cause of such failure by Developer, its successors or assigns, is unavoidable delay due to (a) acts of God or other matters beyond the control of Developer as referenced below, or (b) environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Project Site not arising from the act or omission of Developer, its successors or assigns; it being the purpose and intent of this provision that in the event of the occurrence or existence of such causes of delay, the time or times for satisfying the Minimum Investment requirements set forth herein shall be extended by the minimum period required for the completion of all necessary remediation of the Project Site, or a time period commensurate with the period of delay, as the case may be.

10. RIGHTS OF ACCESS TO PROJECT SITE

10.1 Right of Entry for Utility Service. City reserves for itself, and any public utility company, as may be appropriate, the unqualified right to enter upon the Project Site at all reasonable times and upon reasonable advance written request, for the purpose of reconstructing, maintaining, repairing, or servicing public utilities located within the Project Site boundary lines and provided for in easements of record.

10.2 Developer Not to Construct Over Utility Easements. Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in such easement or has been approved by City, and unless Developer indemnifies and agrees to hold harmless City and any public utility company as may be appropriate from all loss or damage to property or injury to persons arising from such construction.

10.3 Access to Project Site. After the conveyance of the Project Site by RDA to Developer, pursuant to the Ground Lease, upon reasonable advance written request, Developer shall permit the representatives of City access to the Project Site at all reasonable times which City deems necessary for the purposes of this Agreement including, but not limited to, inspection of all work being performed in connection with the construction of the Project. No

compensation shall be payable nor shall any charge be made in any form for the access provided for in this section.

11. CONSTRUCTIONS PLANS; CONSTRUCTION OF IMPROVEMENTS; CERTIFICATE OF COMPLETION

11.1 Plans for Construction of Improvements. Plans and specifications with respect to the development of the Project Site and the construction of the Project thereon shall be in material conformity with this Agreement, and all applicable federal, state and local laws and regulations. As promptly as possible after the date of execution of this Agreement, Developer shall submit to City, for approval by the City, plans, drawings, specifications and related documents, and the proposed construction schedule for Phase I (which plans, drawings, specifications, related documents and progress schedule, together with any and all changes therein that may thereafter be made and submitted to the City as herein provided are, except as otherwise clearly indicated by the context, hereinafter collectively called "Construction Plans"), with respect to Phase I of the Project to be constructed by Developer on the Project Site, in sufficient completeness and detail to show that such improvements and construction thereof will be materially in accordance with the provisions of this Agreement.

City shall, if the Construction Plans originally submitted materially conform to the provisions of this Agreement, approve in writing such Construction Plans and no further filing by the Developer or approval by City thereof shall be required for Phase I except with respect to any material change. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by City, in whole or in part, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of their receipt by City.

If City, in its reasonable discretion, rejects the Construction Plans in whole or in part as not being in material conformity with this Agreement, Developer shall submit new or corrected Construction Plans which are in material conformity with this Agreement within thirty (30) days after written notification to Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans hereinabove provided with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by City, which approval shall not be unreasonably withheld or delayed, provided, that in any event Developer shall submit Construction Plans which are in material conformity with the requirements of this Agreement, as determined by City, no later than ninety (90) days after the date Developer receives written notice from City of City's first rejection of the original Construction Plans submitted to it by Developer.

All work with respect to the Phase I of the Project to be constructed or provided by the Developer on the Project shall be in material conformity with the Construction Plans as approved by City.

11.2 Changes in Construction Plans. If Developer desires to make any material change in the Construction Plans for either Phase after their approval by City, Developer shall submit the proposed change to City for its approval. If the Construction Plans, as modified by the proposed change, materially conform to the requirements of Section 11.1 hereof with respect to such previously approved Constructions Plans, City shall approve the proposed change and notify the

Developer in writing of its approval, which approval shall not be unreasonably withheld or delayed. Such change in the Construction Plans shall, in any event, be deemed approved by City unless rejection thereof, in whole or in part, by written notice thereof by City to Developer, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of City's receipt of notice of such change.

11.3 Progress Reports. Subsequent to the conveyance of the Project Site, or any part thereof, to Developer, and until construction of the Project has been completed, Developer shall make monthly reports, in such detail as may reasonably be requested by City, as to the actual progress of Developer with respect to such construction.

11.4 Phase II. The procedures, terms and conditions set forth in this Section shall also separately apply to the submission and approval of Construction Plans for Phase II of the Project.

12. RESTRICTIONS UPON USE OF PROJECT SITE

12.1 Restrictions on Use. Developer agrees for itself, and its successors and assigns, and every successor in interest to the Project Site, or any part thereof, and any conveyance shall contain covenants on the part of Developer for itself, and such successors and assigns, that Developer, and such successors and assigns, shall:

(a) devote the Project Site to, and only to and in accordance with, the uses specified in this Agreement for a period of not less than twenty-five (25) years from date of completion of the Project; and

(b) not discriminate upon the basis of race, color, creed, sex, religion, ancestry, disability, sexual orientation, marital status, family status, lawful source of income, age or national origin in the sale, lease or rental or in the use or occupancy of the Project Site or any improvements erected or to be erected thereon, or any part thereof.

12.2 Covenants; Binding Upon Successors in Interest; Period of Duration. It is intended and agreed, and any conveyance shall so expressly provide, that the agreements and covenants provided in this section shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, City and any successor in interest to the Project Site, or any part thereof, against Developer, its successors and assigns and every successor in interest to the Project Site, or any part thereof or any interest therein, and any party in possession or occupancy of the Project Site or any part thereof.

12.3 City Rights to Enforce. In amplification, and not in restriction of, the provisions of the preceding Section, it is intended and agreed that City and its governmental successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 12.1 hereof, for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided in Section 12.1. Such agreements and covenants shall (and any conveyance shall so state) run in favor of City for the entire period during which

such agreements and covenants shall be in force and effect, without regard to whether City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. City shall have the right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

13. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

13.1 Representations as to Project. Developer represents and covenants that its acceptance of the conveyance of the Project Site, and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of development of the Project Site and not for speculation in land holding. The Developer further recognizes that, in view of the importance of the development of the Project Site to the general welfare of the community that the qualifications and identity of Developer are of particular concern to the community and City. Developer further recognizes that it is because of such qualifications and identity that City is entering into this Agreement with Developer and, in so doing, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby by it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

13.2 Prohibition Against Transfer of Ownership Interests. For the foregoing reasons, Developer represents and agrees for itself, its members, and any successor in interest of itself and its members, respectively, that prior to substantial completion of each Phase of the Project as certified by City in the form of a final Completion Certificate for such Phase of the Project and without the prior written approval of City:

(a) there shall be no transfer of ownership interests in Developer (including any of its constituent organizations or Affiliates) by any party owning ten percent (10%) or more of the ownership interests in Developer (which term shall be deemed for the purposes of this and related provisions to include successors in interest);

(b) nor shall any such owner suffer any such transfer to be made;

(c) nor shall there be or be suffered to be by Developer, or by any owner of ten percent (10%) or more of the ownership interests therein, any other similarly significant change in the ownership of such company, or with respect to the identity of the parties in control of Developer or the degree thereof, by any other method or means.

With respect to this provision, Developer and the parties signing this Agreement on behalf of Developer represent that they have the authority of all of its existing members to agree to this provision on their behalf and to bind them with respect thereto.

13.3 Prohibition Against Transfer of Project Site and Assignment of Agreement. For the foregoing reasons Developer represents and agrees for itself, and its successors and assigns, that:

(a) Except only by way of security for, and only for,

(i) the purpose of obtaining financing necessary to enable Developer or any successor in interest to the Project Site, or any part thereof, to perform its obligations with respect to constructing the Project under this Agreement, and

(ii) any other purpose or as otherwise authorized by this Agreement, Developer, its successors or assigns, (except as so authorized) has not made or created, and that it will not, prior to substantial completion of each Phase of the Project as certified by City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Project Site encompassing any uncompleted Phase, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of City, which approval shall not be unreasonably withheld or delayed.

(b) City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer (or, in the event the transfer is of or relates to part of the Project Site, such obligations to the extent that they relate to such part).

(ii) Any proposed transferee, by instrument in writing satisfactory to City and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of City, have expressly assumed all of the obligations of Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to part of the Project Site, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project Site, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by City) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit City of or with respect to any rights or remedies or controls with respect to the Project Site or the construction of the Project; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Project Site or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Project Site and the construction of the Project that City would have had, had there been no such transfer or change.

(c) There shall be submitted to City for review all instruments and other legal documents involved in effecting transfer; and if approved by City, which approval shall not be unreasonably withheld or delayed, its approval shall be indicated to Developer in writing.

In the event, the transferee satisfies the foregoing conditions, and City approves the sale, assignment, conveyance, lease or transfer to the transferee, then any and all obligations under this Agreement shall be transferred to the transferee and Developer shall be released from any and all obligations under this Agreement. Notwithstanding anything contained in this Section or this Agreement to the contrary, Developer, prior to completion of the Project, shall have the right to enter into agreements with third parties for the pre-leasing or leasing of any apartments or townhouses which are part of the Project and such third parties (and the agreements entered into by Developer with them) shall not be subject to any approval by City.

13.4 Information as to Members. In order to assist in the effectuation of the purposes of this Section, Developer agrees that during the period between execution of this Agreement and completion of the Project as certified by the City:

(a) Developer will promptly notify City of any and all changes of greater than ten percent (10%) in the ownership of the company, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership of such company, or with respect to the identity of the parties in control of Developer or the degree thereof, of which it or any of its members have been notified or otherwise have knowledge or information; and

(b) Developer, its successors or assigns, shall, at such time or times as City may request, furnish City with a complete statement, subscribed and sworn to by the authorized or managing member(s) of Developer, setting forth all of the members of Developer and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Developer their names and the extent of such interest, all as determined or indicated by the records of Developer, by specific inquiry made by any such member, of all parties who on the basis of such records own ten percent (10%) or more interest in Developer, and by such other knowledge or information as such authorized representative shall have. Such lists, data and information shall in any event be furnished to City annually thereafter on the anniversary of the date of this Agreement.

14. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

14.1 Limitation Upon Encumbrance of Project Site. Prior to the substantial completion of each Phase of the Project, as certified by City in the form of an Completion Certificate, neither Developer nor any successor in interest to the Project Site or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon such Phase of the Project Site, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Project Site, except for the purposes of obtaining:

(a) funds only to the extent necessary for construction of the Project; and,

(b) such additional funds, if any, unless requested by Developer and approved by City in its reasonable discretion.

Except for the financing, mortgage, encumbrances or liens permitted above, Developer (or successor in interest) shall notify City in advance of any financing, secured by mortgage or

other similar lien instrument, it proposes to enter into with respect to the Project Site, or any part thereof, and in any event it shall promptly notify City of any encumbrance or lien that has been created on or attached to the Project Site, whether by voluntary act of Developer or otherwise.

14.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such holder who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including:

(a) any other party who thereafter obtains title to the Project Site or such part from or through such holder; or,

(b) any other purchaser at foreclosure sale other than the holder of the mortgage itself;)

Shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed to so obligate such holder. Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in this Agreement.

14.3 Copy of Notice of Default to Mortgagee. Whenever City shall deliver any notice or demand to Developer with respect to any breach or default by the Developer in its obligations under this Agreement, City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of City.

14.4 Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section 14.3 hereof, which has not been cured by Developer within seventy-five (75) days (of receiving notice of such breach or default from City, each such holder of a mortgage authorized by this Agreement shall (insofar as the rights of City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Provided, that if the breach or default is with respect to construction of the Project, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to City, by written agreement satisfactory to City, to complete, in the manner provided in this Agreement, the Project on the Project Site or the part thereof to which the lien or title of such holder relates.

14.5 City's Option to Cure Mortgage Default. In the event of Developer failing to cure a default or breach within the applicable cure period prior to the completion of the either Phase of the Project by Developer, or any successor in interest, in or of any of its obligations under, and

to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Project Site or part thereof, City may at its option cure such default or breach, in which case City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Developer or Developer's successors in interest of all costs and expenses incurred by City in curing such default or breach and to a lien upon the Project Site (or the part thereof to which the encumbrance or lien relates) for such reimbursement. Provided, that any such lien shall be subordinate and subject always to the lien or liens of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Project Site authorized by this Agreement, including but not limited to, the lien of Developer's mortgage holder.

14.6 Mortgage and Holder. For the purposes of this Agreement: The term "mortgage" shall include mortgages, deeds of trust or other instrument creating an encumbrance or lien upon the Project Site, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall also include any insurer or guarantor of any obligation or condition secured by such mortgage or deeds of trust.

15. REMEDIES

15.1 In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, or any successor to such party, such party (or successor) shall, upon written notice from any other party, proceed immediately to cure or remedy such default or breach and, in any event, within seventy-five (75) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time after the initial seventy-five (75) days, the aggrieved party may take such action as set forth under this Agreement or allowed by law as may be necessary or desirable in its opinion to cure and remedy such default or breach including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

15.2 Vesting Title in City Upon Happening of Event Subsequent to Conveyance to Developer. In the event that subsequent to conveyance of the Project Site pursuant to the Ground Lease and prior to completion of the Project as certified by City in the form of the Completion Certificate:

(a) Developer (or successor in interest) shall materially default in or materially violate its obligations with respect to the construction of the Project (including the nature and the dates for the beginning and completion thereof as set forth in this Agreement) or shall abandon or substantially suspend construction work (except for any abandonment or suspension that is the result of any events which are beyond the control of Developer), and any such default, violation, abandonment or suspension shall not be cured, ended or remedied within three (3) months, six (6) months if the default is with respect to the date for completion of the Project) after written demand by City so to do; or

(b) Developer (or successor in interest) shall fail to pay real estate taxes or assessments on the Project Site or any part thereof when due or within any applicable grace period, or shall place thereon any encumbrance or lien unauthorized by this Agreement or

approved by City, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to City made for such payment, removal or discharge, within:

- (i) ninety (90) days after written demand by City so to do, or
 - (ii) the applicable time period provided under any applicable State or local law, rule or regulation, whichever is longer, or;
 - (iii) or if, the Developer is protesting such payment of taxes and/or assessment on the Project Site and has posted adequate reserves with the title company; or
- (c) there is, in material violation of this Agreement, any transfer of the Project Site or any part thereof, and such material violation shall not be cured within ninety (90) days after written demand by City to Developer;

Then City shall have the right to re-enter and take possession of the Project Site and to terminate (and vest in City) the estate conveyed to Developer, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Project Site to Developer shall be made upon, and that the Ground Lease or any deed shall contain, a condition subsequent to the effect that in the event of any such default, failure, violation or other action or inaction by Developer specified in subdivisions (a), (b) and (c) of this section, failure on the part of Developer to remedy, end or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated in such subdivisions, City at its option may declare a termination in favor of City of the title, and of all the rights and interests in and to the Project Site conveyed by the Ground Lease or any deed to Developer, and that such title and all rights and interests of Developer, and any assigns or successors in interest to and in the Project Site, shall revert to City. Provided, that such condition subsequent and any vesting of title as a result thereof in City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way, the lien of any mortgage authorized by this Agreement and any rights or interests provided in this Agreement for the protection of the holders of such mortgages.

15.3 Other Rights and Remedies of City; No Waiver by Delay. City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section. Provided, however, that any delay by City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that City should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by City with respect to any specific default by Developer under this Section be considered or treated as a waiver of the rights of City with respect to any other defaults by Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

15.4 Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of this Agreement, neither City, RDA nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, the obligations with respect to the commencement and completion of the Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unavailability of materials, unusually severe weather, or delays of subcontractors due to any of the foregoing causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of Developer with respect to construction of the Project, or progress in respect thereto, as the case may be, shall be extended for the period of the enforced delay. Provided, that the parties seeking the benefit of the provisions of this section shall, within ten (10) business days after the beginning of any such enforced delay, have first notified the other parties thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

15.5 Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or any of its remedies for any other default or breach by the other party. No waiver made by any such party with respect to the performance, or manner or time thereof, or any obligation of another party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of parties making the waiver or any other obligations of any other party.

15.6 Indemnification.

(a) Developer releases from and covenants and agrees that City, RDA, the governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "City Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the City Indemnified Parties against any loss or damage to Project Site or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the City Indemnified Parties that are not contemplated by this Agreement or which result from negligent acts or willful misconduct of the City Indemnified Parties in fulfilling the obligations of City, RDA or their agents as set forth under this Agreement.

(b) Except for any negligent acts or any willful misrepresentation of the City Indemnified Parties, Developer agrees to protect and defend the City Indemnified Parties, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from

the actions or inactions of Developer (or other persons acting on its behalf or under its direction or control) with respect to the Project work to be performed by Developer under this Agreement.

(c) City and RDA agree to protect and defend Developer, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Developer Indemnified Parties"), and further agree to hold Developer Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the negligence, willful misrepresentation of City or RDA (or other persons acting on their behalf or under their direction or control) under this Agreement, or the transactions contemplated hereby. All covenants, stipulations, promises, agreements and obligations of City and RDA contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any governing body member, officer, agent, servant or employee of City or RDA, as the case may be.

16. MISCELLANEOUS

16.1 Conflict of Interests; City and RDA Representatives Not Individually Liable. No member, official or employee of City or RDA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects such person's personal interests or the interests of any corporation, partnership or association in which such person is, directly or indirectly, interested. No member, official or employee of City or RDA shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement

16.2 Equal Employment Opportunity. Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in this Agreement:

(a) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours. Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by City setting forth the provisions of this nondiscrimination clause.

(b) Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense

force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours.

(c) Developer will furnish all information and reports required by law and any and all applicable federal, state and local rules, regulations and orders, and will permit access to Developer's books, records and accounts by City, or appropriate governmental entity, for purposes of investigation to ascertain compliance with such laws, rules, regulations and orders.

(d) In the event of Developer's noncompliance with the nondiscrimination clauses of this section, or with any of the said rules, regulations or orders, this Agreement may be temporary suspended in whole or in part, and such other sanctions may be imposed and remedies invoked as provided by such law, rule, regulation or order, or as otherwise provided by law.

(e) Developer will include the provisions of Paragraphs (a) through (d) of this Section in every contract or purchase order, and will use its best efforts to require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by such rules, regulations or orders, so that such provisions will be binding upon each such contractor, subcontractor or vendor, as the case may be. Developer will take such action with respect to any construction contract, subcontract or purchase order as City may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract or purchase order, as required hereby, the first three lines of this section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows: and the term "Developer" shall be changed to "Contractor."

16.3 Provisions Not Merged with Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Project Site from RDA to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

16.4 Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

16.5 Successors and Assigns. This Agreement shall be binding upon the respective successors and assigns of the parties. Notwithstanding anything contained in this Agreement to the contrary, Developer may assign this Agreement by one or more successive assignments to any related entity or Affiliate of Developer; provided, however, that the members or owners of any such related entity or affiliate include one or more of the principals of SPS. Upon any such assignment, the assignee shall have the rights and obligations of Developer hereunder and Developer shall thereupon, automatically and without execution of further instruments or documents, be relieved and released from any obligations under this Agreement, without any further action or approval of the parties.

16.6 Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by

registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of Developer, is addressed to or delivered personally to Developer at _____;

(b) in the case of City, is addressed to or delivered personally to City, Attention: City Clerk, at 828 Center Avenue, Sheboygan, Wisconsin 53081;

(c) in case of RDA, is addressed or delivered personally to RDA at Attention: Department of Planning & Development, 828 Center Avenue, Suite 104, Sheboygan, Wisconsin 53081.

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section. If delivered by registered or certified mail, such notice, demand or other communication shall be deemed delivered and received upon deposit in the U.S. Mail.

16.7 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

16.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures delivered by facsimile, email (in pdf form) or similar electronic methods shall be deemed to be original signatures for all purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in their names and, behalf by their duly authorized representatives as of the day first above written.

CITY OF SHEBOYGAN,
WISCONSIN

DEVELOPER

BY: _____
Michael J. Vandersteen, Mayor

BY: _____

ATTEST:

REDEVELOPMENT AUTHORITY OF THE
CITY OF SHEBOYGAN

Susan Richards, City Clerk

BY: _____
Roberta-Filicky-Peneski, Chairperson

ATTEST:

Chad Pelishek, Executive Director

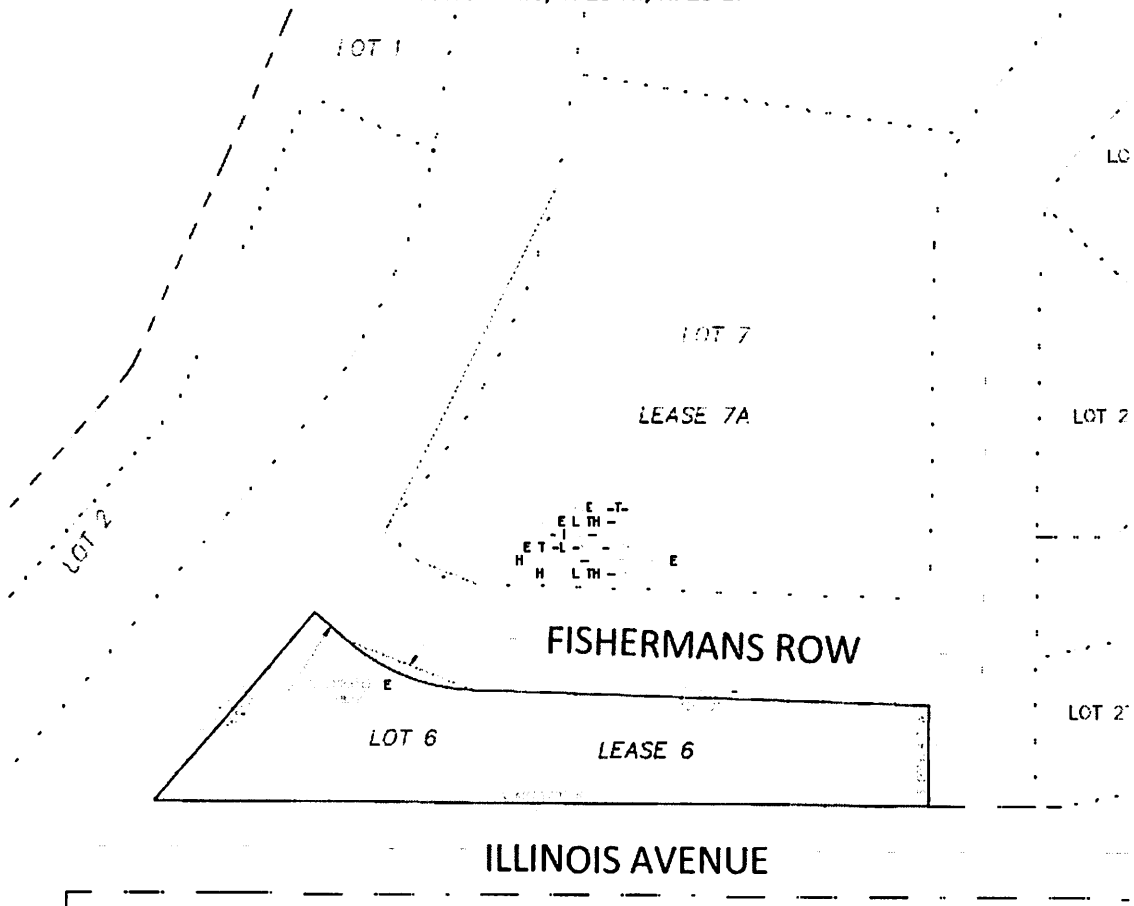
This instrument drafted by:
Thomas O. Gartner
Michael Best & Friedrich
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202

EXHIBIT A

Description of Project Site

(See attached)

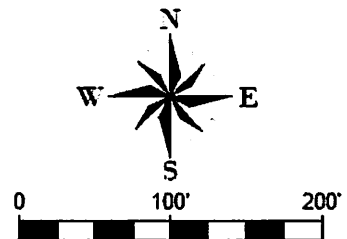
**GROUND LEASE DESCRIPTION
 LOT 6, PLAT OF SOUTH PIER
 SECTIONS 26, T. 15 N., R. 23 E.**



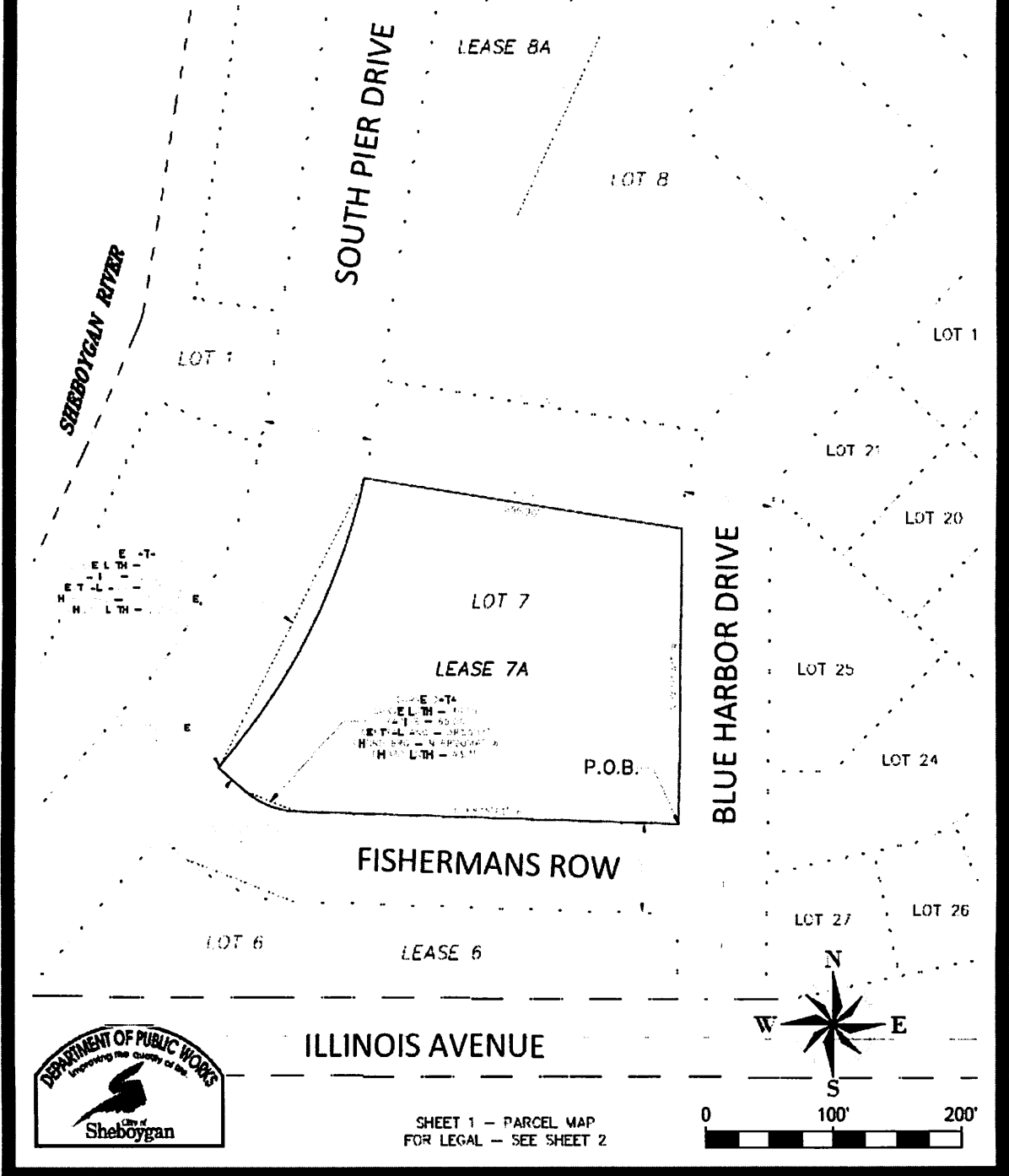
BEING LOT 6 OF THE PLAT OF SOUTH PIER, LOCATED IN THE NORTH $\frac{1}{2}$ OF SECTION 26, T. 15 N., R. 23 E. IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, STATE OF WISCONSIN. SAID LOT CONTAINS $37,974$ SQ. FT. OR 0.87 ACRES.



LEGAL & PARCEL MAP

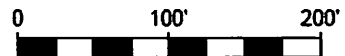


**GROUND LEASE DESCRIPTION
PART OF LOT 7, PLAT OF SOUTH PIER
SECTIONS 26, T. 15 N., R. 23 E.**



ILLINOIS AVENUE

SHEET 1 - PARCEL MAP
FOR LEGAL - SEE SHEET 2



**GROUND LEASE DESCRIPTION
PART OF LOT 7, PLAT OF SOUTH PIER
SECTIONS 26, T. 15 N., R. 23 E.**

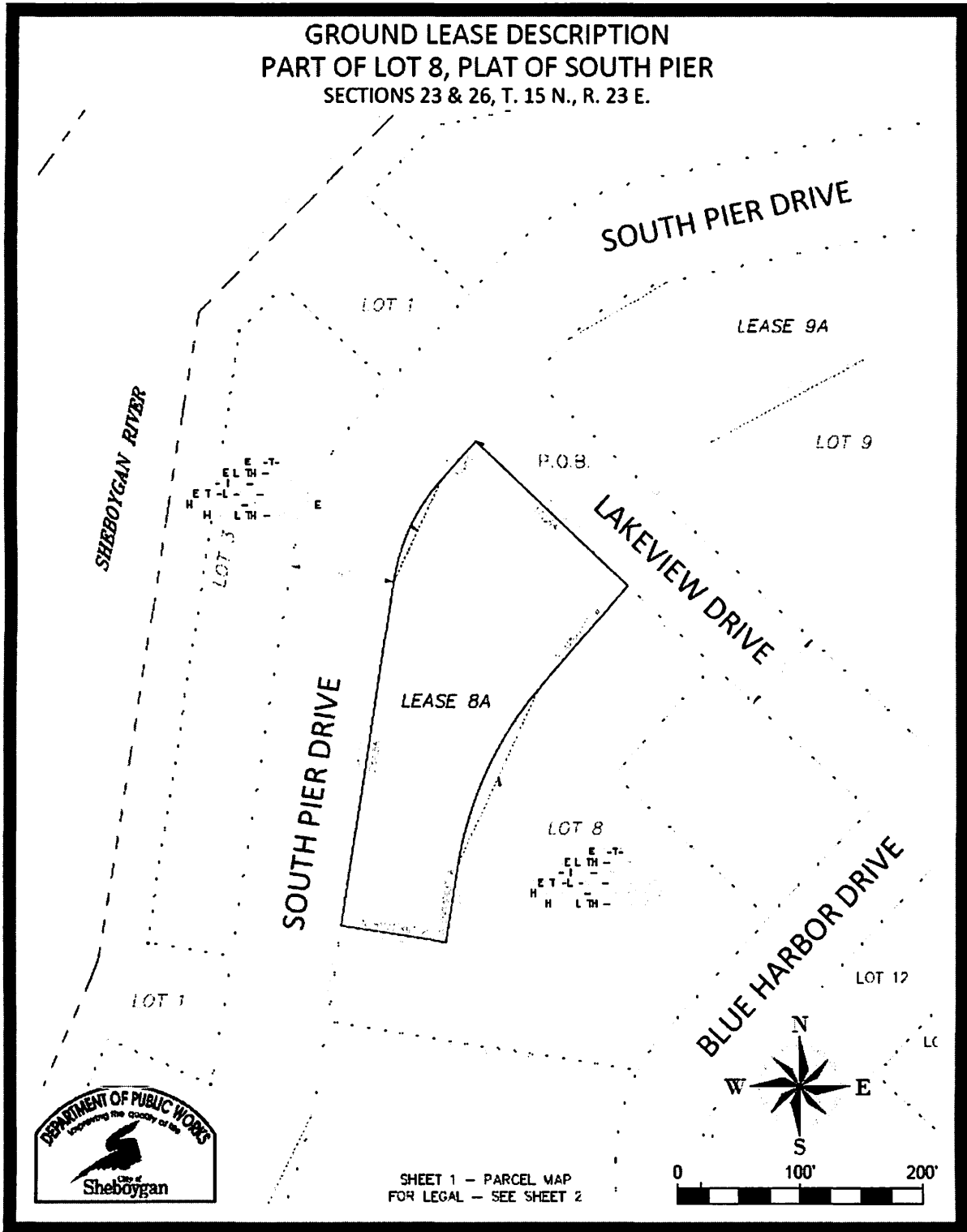
BEING PART OF LOT 7 OF THE PLAT OF SOUTH PIER, LOCATED IN THE NORTH $\frac{1}{2}$ OF SECTION 26, T. 15 N., R. 23 E. IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, STATE OF WISCONSIN, BEING MORE PARTICULARLY DESCRIBED AS

COMMENCING AT THE SE CORNER OF LOT 7 OF THE PLAT OF SOUTH PIER, SAID CORNER BEING THE INTERSECTION OF THE WEST R/W LINE OF BLUE HARBOR DRIVE WITH THE NORTH R/W LINE OF FISHERMANS ROW, SAID CORNER ALSO BEING THE POINT OF BEGINNING. THENCE N 88°18'23" W ALONG SAID NORTH R/W LINE 305.30', THENCE CONTINUING ALONG SAID NORTH R/W LINE, NORTHWESTERLY 44.15' ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 65.00' AND A CHORD BEARING OF N 68°50'46" W 43.31', THENCE CONTINUING ALONG SAID NORTH R/W LINE N 49°23'09" W 28.21' TO ITS INTERSECTION WITH THE EAST R/W LINE OF SOUTH PIER DRIVE, THENCE N 40°35'24" E ALONG SAID EAST R/W LINE 2.95', THENCE CONTINUING ALONG SAID EAST R/W LINE, NORTHEASTERLY 254.27' ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 525.00' AND A CHORD BEARING OF N 26°42'54" E 251.80', THENCE S 81°22'46" E 256.90' TO A POINT ON THE WEST R/W LINE OF BLUE HARBOR DRIVE, THENCE S 00°31'41" W ALONG SAID WEST R/W LINE 231.68' TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 76,169.56 SQ. FT. OR 1.75 ACRES.



SHEET 2 - LEGAL DESCRIPTION
FOR PARCEL MAP - SEE SHEET 1

GROUND LEASE DESCRIPTION
PART OF LOT 8, PLAT OF SOUTH PIER
SECTIONS 23 & 26, T. 15 N., R. 23 E.



SHEET 1 - PARCEL MAP
FOR LEGAL - SEE SHEET 2

**GROUND LEASE DESCRIPTION
PART OF LOT 8, PLAT OF SOUTH PIER
SECTIONS 23 & 26, T. 15 N., R. 23 E.**

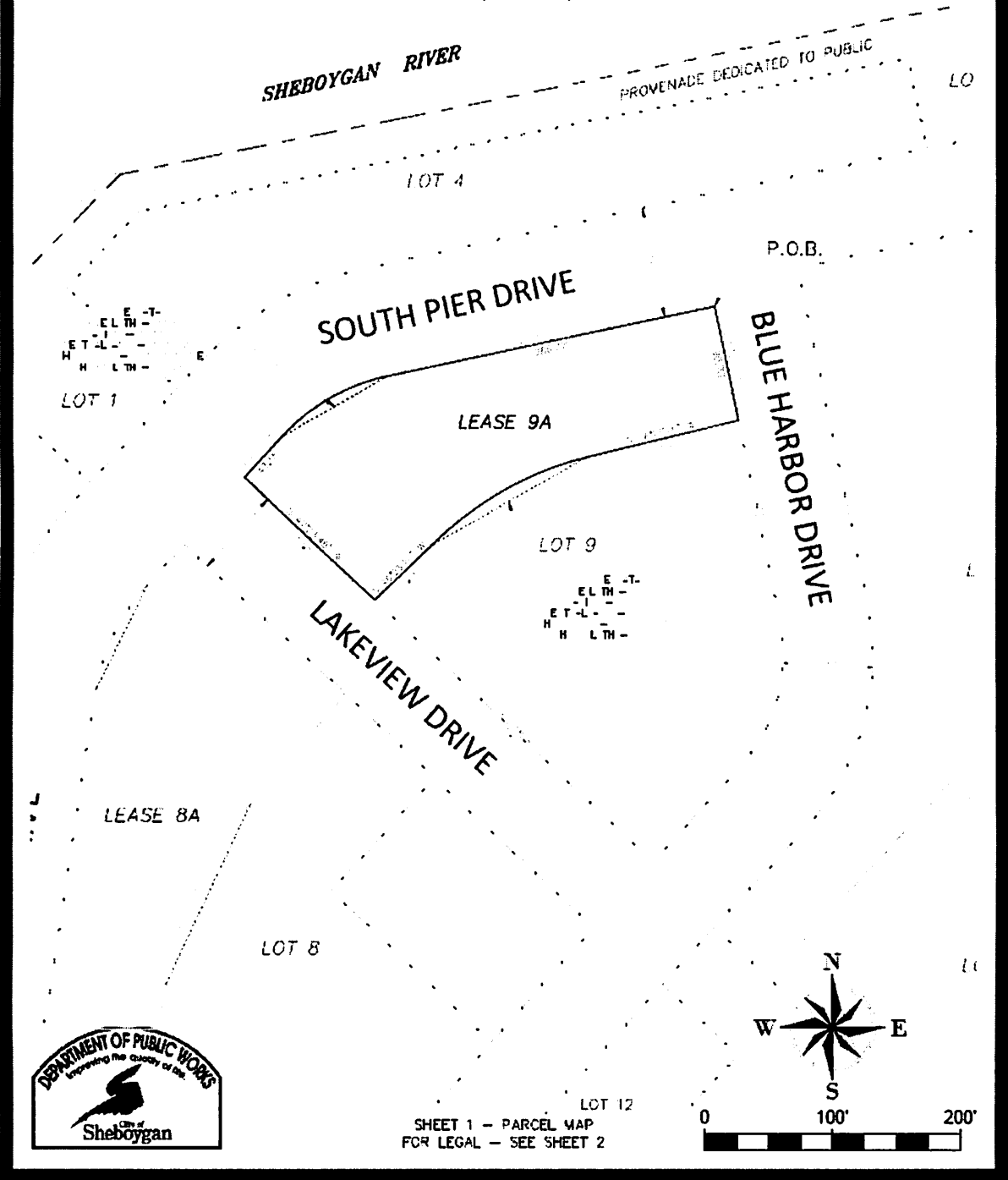
BEING PART OF LOT 8 OF THE PLAT OF SOUTH PIER, LOCATED IN THE SW $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF SECTION 23 AND THE NW $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SECTION 26, T. 15 N., R. 23 E. IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, STATE OF WISCONSIN. BEING MORE PARTICULARLY DESCRIBED AS

COMMENCING AT THE NW CORNER OF LOT 8 OF THE PLAT OF SOUTH PIER, SAID CORNER BEING THE INTERSECTION OF THE SOUTHEAST R/W LINE OF SOUTH PIER DRIVE WITH THE SOUTHWEST R/W LINE OF LAKEVIEW DRIVE, SAID CORNER ALSO BEING THE POINT OF BEGINNING, THENCE S 47°23'48" E ALONG SAID SOUTH R/W LINE 172.64', THENCE S 41°00'11" W 1'3.78', THENCE SOUTHWESTERLY 158.05' ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 285.00' AND A CHORD BEARING OF S 25°06'57" W 156.04', THENCE S 09°13'43" W 65.66', THENCE N 81°22'46" W 87.98' TO A POINT ON THE EAST R/W LINE OF SOUTH PIER DRIVE, THENCE N 08°37'14" E ALONG SAID EAST R/W LINE 284.58', THENCE CONTINUING ALONG SAID EAST R/W LINE NORTHWESTERLY 93.12' ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 157.00' AND A CHORD BEARING OF N 25°36'43" E 91.76', THENCE CONTINUING ALONG SAID EAST R/W LINE N 42°36'12" E 42.85' TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 46,621.86 SQ. FT. OR 1.07 ACRES.



SHEET 2 - LEGAL DESCRIPTION
FOR PARCEL MAP - SEE SHEET 1

**GROUND LEASE DESCRIPTION
PART OF LOT 9, PLAT OF SOUTH PIER
SECTIONS 23, T. 15 N., R. 23 E.**



LOT 12
SHEET 1 - PARCEL MAP
FOR LEGAL - SEE SHEET 2

**GROUND LEASE DESCRIPTION
PART OF LOT 9, PLAT OF SOUTH PIER
SECTIONS 23, T. 15 N., R. 23 E.**

BEING PART OF LOT 9 OF THE PLAT OF SOUTH PIER, LOCATED IN THE SW $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF SECTION 23, T. 15 N., R. 23 E. IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, STATE OF WISCONSIN. BEING MORE PARTICULARLY DESCRIBED AS

COMMENCING AT THE NE CORNER OF LOT 9 OF THE PLAT OF SOUTH PIER, SAID CORNER BEING THE INTERSECTION OF THE SOUTH R/W LINE OF SOUTH PIER DRIVE WITH THE WEST R/W LINE OF BLUE HARBOR DRIVE, SAID CORNER ALSO BEING THE POINT OF BEGINNING, THENCE S 11°53'59" E ALONG SAID WEST R/W LINE 90.73', THENCE S 76°17'28" W 123.40', THENCE SOUTHWESTERLY 143.37' ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 275.00' AND A CHORD BEARING OF S 61°21'20" W 141.75', THENCE S 45°25'12" W 62.06' TO A POINT ON THE NORTHEAST R/W LINE OF LAKEVIEW DRIVE, THENCE N 47°23'48" W ALONG SAID NORTHEAST R/W LINE 139.80' TO ITS INTERSECTION WITH THE SOUTH R/W LINE OF SOUTH PIER DRIVE, THENCE N 42°36'12" E ALONG SAID SOUTH R/W LINE 43.16', THENCE CONTINUING ALONG SAID SOUTH R/W LINE NORTHEASTERLY 97.27' ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 157.00' AND A CHORD BEARING OF N 63°21'07" E 95.72', THENCE CONTINUING ALONG SAID SOUTH R/W LINE N 78°06'01" E 266.77' TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 40,887.70 SQ. FT. OR 0.94 ACRES.



SHEET 2 - LEGAL DESCRIPTION
FOR PARCEL MAP - SEE SHEET 1

EXHIBIT B

Description of Parking Lots

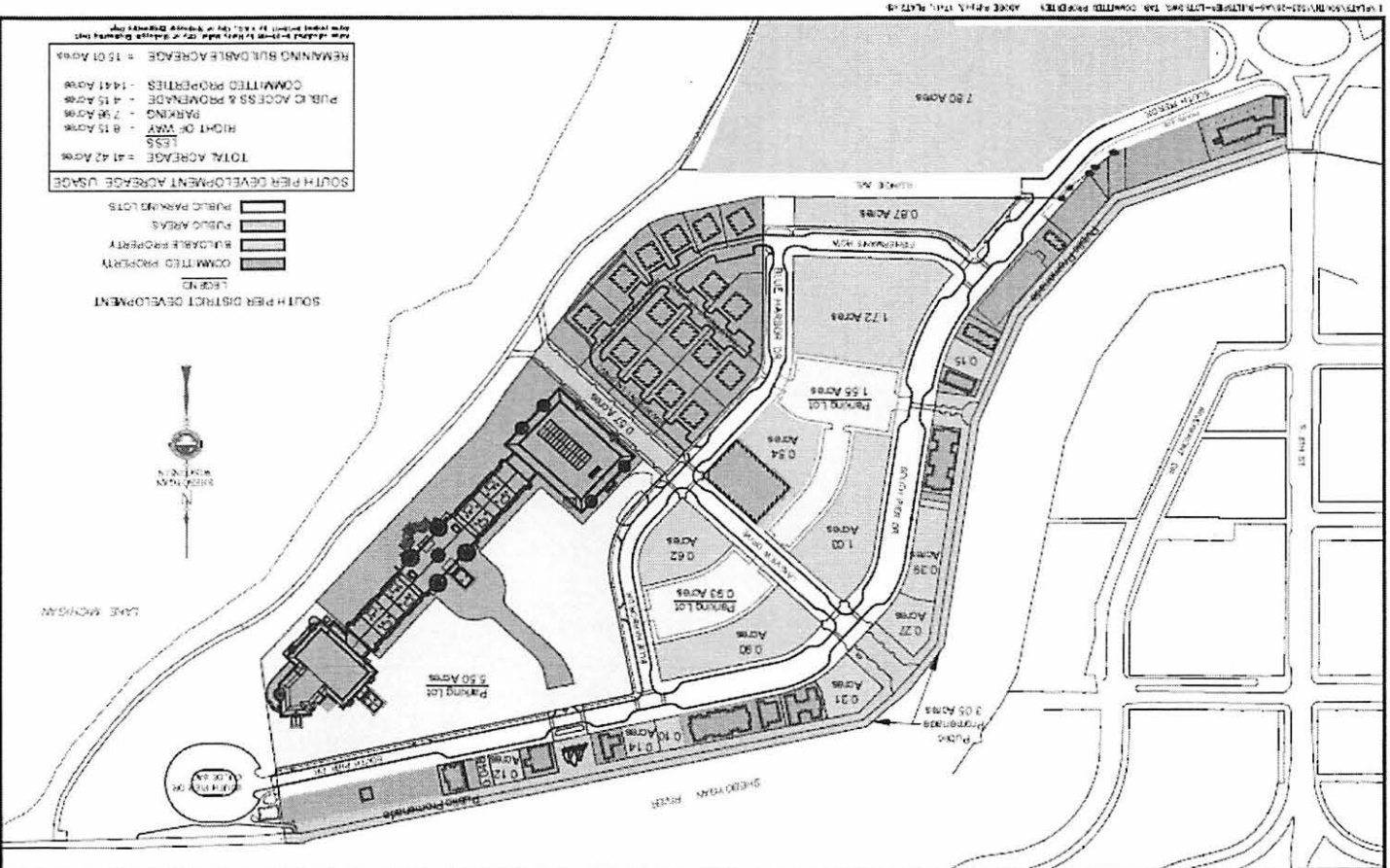


Exhibit C
Form of Ground Lease

Exhibit D

Form of Parking Lot Easement

This instrument prepared by, and return to:
Danielle M. Bergner, Esq.
Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Suite 3300
Milwaukee, Wisconsin 53202

Tax Key Numbers: See Exhibit A

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is made as of the day of, 2016, by and between the Redevelopment Authority of the City of Sheboygan, a public body corporate and public organized and existing under the laws of the State of Wisconsin ("Grantor") and South Pier Sheboygan, LLC, a Wisconsin limited liability company ("Grantee"). Grantor and Grantee are sometimes referred to herein as "Party" or collectively as the "Parties."

RECITALS:

WHEREAS, Grantor is the owner of the real property described as the "Burdened Property" on the attached Exhibit A;

WHEREAS, Grantee is the ground lessee of the real property described as the "Benefited Property" on the attached Exhibit A; and

WHEREAS, Grantor wishes to convey an easement to Grantee across the Burdened Property for the purpose of allowing Grantee ingress and egress access to the Benefited Property from Lakeview Drive, Blue Harbor Drive, and South Pier Drive (the "Adjacent Roads").

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals and Exhibits. The introductory provisions set forth above and the exhibits attached hereto are incorporated herein as if set forth at length.

2. Access Easement. Subject to the terms and conditions set forth in this Agreement, Grantor grants to Grantee, for the benefit of the Benefited Property, a non-exclusive easement and right to use the "Access Easement Area" depicted and described on the attached Exhibit B, for pedestrian and vehicular ingress and egress from the Benefited Property to and from the Adjacent Roads.

3. Use of the Easement. The Access Easement Area shall be used in common by Grantee and Grantor and their respective agents, owners, tenants, occupants, vendors, visitors, guests and invitees for the purposes described herein. Grantor and its respective agents, owners, tenants, occupants, vendors, visitors, guests and invitees shall use the Access Easement Area as a public parking lot. Grantee and its respective agents, owners, tenants, occupants, vendors, visitors, guests and invitees shall use the Access Easement Area for pedestrian and vehicular ingress and egress to and from the Benefited Property and the Adjacent Roads. The Access Easement Area shall be available for access and use by Grantee, Grantor and their respective agents, owners, tenants, occupants, vendors, visitors, guests and invitees at all times, except for such times as the Access Easement Area must be closed, in whole or in part, for construction, maintenance or repair activities for either the Access Easement Area itself or the Burdened Property. In the event of the need for such closure, the party requiring the closure shall provide not less than seven (7) days prior written notice to the other party of any periods during which the Access Easement Area will be closed, in whole or in part, for ___ hours or more.

4. Maintenance of Access Easement Area.

(a) Grantor shall be responsible for maintaining the Access Easement Area in good condition and repair and in accordance with maintenance standards generally applied to public parking lots in the city of Sheboygan, including, without limitation, keeping the Access Easement Area reasonably free of snow, ice, holes and breaks in pavement and related matters (any such work being the "Access Easement Maintenance Work"). All Access Easement Maintenance Work shall be done in a good and workmanlike manner. Grantor shall bear all costs and expenses of the Access Easement Maintenance Work necessary for the uses described herein.

(b) In the event Grantor fails to perform any Access Easement Maintenance Work pursuant to subparagraph (a) above, which failure continues for more than ten (10) days after Grantor's receipt of written notice thereof from Grantee (or for more than three (3) hours after verbal or written notice to Grantor that the Access Easement Area is impassable as a result of snow or ice accumulation or in the event of an emergency) Grantee shall have the right, but not the obligation, to: (i) perform such actions as are necessary to restore the Access Easement Area to good condition and repair; (ii) perform any Access Easement Maintenance Work; (iii) expend such funds as are reasonably necessary for any Access Easement Maintenance Work; and (iv) submit an itemized invoice to Grantor for the cost of the reasonably expended funds in connection with any such Access Easement Maintenance Work performed by Grantee. Grantor shall pay such amounts to Grantee within thirty (30) days of receipt of such invoice by Grantor. Grantee and its agents shall have the right to enter and use the Parking Lot and Grantor's land

adjacent to the Access Easement Area on a temporary basis for the purpose of improving, maintaining, repairing or replacing the Access Easement Area pursuant to this subparagraph (b) in the event Grantor fails to perform any Access Easement Maintenance Work pursuant to subparagraph (a) above.

5. Alterations and Improvements. Grantor and Grantee shall make no alterations to the location or configuration of the Access Easement Area without the prior written approval of the parties hereto, which approval shall not be unreasonably withheld.

6. Insurance. From the date of this Agreement and thereafter for as long as this Agreement shall remain in effect, Grantor shall carry commercial general liability insurance covering loss of life, bodily injury and property damage, with limits of no less than \$1,000,000 per occurrence and \$1,000,000 aggregate, covering Grantor and its respective agents, owners, tenants, occupants, vendors, visitors, guests and invitees use of the Access Easement Area. From the date of this Agreement and thereafter for as long as this Agreement shall remain in effect, Grantee shall carry commercial general liability insurance covering loss of life, bodily injury and property damage, with limits of no less than \$1,000,000 per occurrence and \$1,000,000 aggregate, covering Grantee and its respective owners, tenants, occupants, vendors, visitors, guests and invitees use of the Access Easement Area. Grantee and Grantor shall each include the other as an additional insured on its respective general liability insurance policy. Upon request of a Party, the other Party shall provide the requesting Party with a certificate of insurance evidencing the insurance required by this Section.

7. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

8. Covenants Running with Land. All the terms, conditions, covenants and other provisions contained in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of and be enforceable by Grantor and Grantee, and their respective heirs, successors and assigns. The easement granted under this Agreement is appurtenant to the Benefited Property and may not be assigned, transferred or conveyed separately from, or several from, the title to the Benefited Property.

9. Entire Agreement. This Agreement sets forth the entire understanding of the parties regarding the easement and other matters contained in this Agreement. This Agreement may not be changed or amended except by a written amendment executed and acknowledged by all parties to this Agreement and duly recorded in Register of Deeds Office for Sheboygan County, Wisconsin.

10. Severability. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

11. Notices. All notices to be given by one party to the other under this Agreement shall be in writing and given either by personal delivery, reputable overnight delivery service, electronic transmission, facsimile transmission with confirmed receipt, or certified mail, postage prepaid, to the addresses set forth in this paragraph, provided that any notice given by electronic transmission of facsimile shall, within one business day thereafter, also be given by one of the other three methods herein provided. A notice given hereunder shall be deemed delivered either upon actual receipt or upon refusal by a party to accept delivery. Either party may change its address for purposes of receiving notice by delivering written notice thereof in accordance with the requirements of this paragraph.

To Grantor:

To Grantee:

12. Enforcement. This Agreement may be enforced either at law or in equity, with the nonbreaching party entitled to injunctive relief and/or monetary damages. If any section for enforcement of this Agreement is brought, the nonprevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees incurred in such action.

13. Amendment. This Agreement may be amended only by a written instrument executed by both Grantee and Grantor.

14. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

15. No Joint Venture. No provision herein shall be deemed to constitute the parties hereto as partners of one another or joint ventures of one another or in any way obligate any party hereto for the performance of any obligation of the other party hereto.

16. Approvals. Whenever in this Agreement the consent or approval of any party is required or the discretion of any party may be exercised, such consent or approval shall not be

unreasonably withheld, conditioned or delayed, and any such discretion shall be exercised in good faith and in a commercially reasonable manner.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have executed this Access Easement Agreement as of the date first written above.

REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN

BY: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF SHEBOYGAN)

On this ____ day of _____, 2016, before me personally appeared as the _____ of the Redevelopment Authority of the City of Sheboygan to me known to be the person who executed the foregoing instrument in such capacity and acknowledged the same.

In witness whereof, I have hereunto set my hand and seal this ____ day of, 2016.

Print Name: _____
Notary Public, State of Wisconsin
My Commission: _____

DEVELOPER

BY: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF SHEBOYGAN)

On this ____ day of _____, 2016, before me personally appeared as the _____ of the [Developer] to me known to be the person who executed the foregoing instrument in such capacity and acknowledged the same.

In witness whereof, I have hereunto set my hand and seal this ____ day of, 2016.

Print Name: _____
Notary Public, State of Wisconsin
My Commission: _____

EXHIBIT A

Description of Burdened Property

EXHIBIT B

Access Easement Area

(Exhibit to depict the Access Easement over the Parking Lots and the ingress and egress points to and from the Adjacent Roads to be inserted).

Exhibit E
Form of Disbursing Agreement
(See Attached)

ESCROW DISBURSEMENT AGREEMENT
South Pier Townhomes Project
(TID 6)

This Escrow Disbursement Agreement (“Escrow Agreement”) is made and entered into as of the _____ day of _____, 2016 by and among _____, (“ESCROWEE”); South Pier Sheboygan, LLC, a Wisconsin limited liability company (“SPS”) and _____ [an “S” corporation and affiliate of SPS] (“S”), (collectively, SPS and S are referred to herein as “Developer”), (“DEVELOPER”); and the City of Sheboygan, a municipal corporation (“CITY”).

RECITALS

A. DEVELOPER, CITY and the Redevelopment Authority of the City of Sheboygan entered into a Cooperation Agreement for the Conveyance and Private Development of Land (South Pier Townhomes Project) dated as of the _____ day of _____, 2016 (the “Development Agreement”).

B. The Development Agreement addresses the implementation and funding of the South Pier Townhomes Project utilizing contributions from CITY’s Tax Increment Financing District No. 6 in the amount of \$1,710,000 to be provided by the CITY for construction of the Project in accordance with the Development Agreement, which funds shall be deposited with ESCROWEE by CITY (the “TID 6 Contribution”).

C. The parties desire to enter into this Escrow Agreement in order to provide for disbursement of the TID 6 Contribution by the ESCROWEE to DEVELOPER.

D. This Escrow Agreement shall not constitute a promise by ESCROWEE to protect any party against construction lien claims on any title insurance policy issued by ESCROWEE and the parties acknowledge that the only responsibility of ESCROWEE created by this Escrow Agreement shall be the faithful performance of the express obligations assumed hereunder.

E. Any capitalized terms not defined in this Escrow Agreement shall be defined as they are in the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Deposit of Funds.** Promptly following execution of this Escrow Agreement, CITY shall deposit to the custody of the ESCROWEE the TID 6 Contribution in a total amount of \$1,710,000, to be used for making disbursements under this Escrow Agreement. The TID 6 Contribution shall be held by ESCROWEE in an interest-bearing money market account. Any interest earned thereon shall be

retained in the escrow account and be added to the TID 6 Contribution (collectively, the “Escrow Funds”) to increase the funds available for disbursement to CITY. ESCROWEE shall no later than January 31 of each year provide CITY and DEVELOPER an annual calendar year statement showing the amount and date of any interest earned, investment liquidation, investment purchase and disbursement and remaining balance.

2. **Disbursements for Work by DEVELOPER’s Contractors.**

- A. The Escrow Funds shall be disbursed pursuant to the terms of the Development Agreement for the actual costs of constructing the Project and in accordance with the requirements of this Escrow Agreement.
- B. ESCROWEE shall not disburse any of the Escrow Funds until CITY has confirmed to ESCROWEE in writing that all preconditions to disbursement in the Development Agreement have been met.
- C. Prior to the first disbursement of any portion of the Escrow Funds, CITY and ESCROWEE shall be furnished a sworn statement from DEVELOPER, which will be supplemented in connection with subsequent draws, setting forth in detail the contractors and material suppliers with whom DEVELOPER has contracted, their address, work or materials to be furnished, amounts of the contracts, amount paid to date, amounts of current payments and balances due.

3. **Disbursements.** Prior to each disbursement of the Escrow Funds hereunder, the following steps shall be taken:

- A. DEVELOPER shall provide to CITY and ESCROWEE a sworn statement from DEVELOPER's general contractor setting forth all contractors and materialmen with whom DEVELOPER or its general contractor has contracted, amounts of contracts, amounts paid to date, amounts of current payments and balance due (with supporting documentation), copies of all change orders, (the “Contractor’s Statement”);
- B. DEVELOPER shall provide to CITY and ESCROWEE signed lien waivers, or conditional lien waivers subject to payment of the current disbursement request, from all entities who provided work or materials as named on the Contractor’s Statement submitted for the currently requested disbursement;
- C. DEVELOPER shall provide to CITY and ESCROWEE a report or a certification by _____ (the “Architect”) certifying that work has been completed and materials are in place as indicated by the request for payment of the DEVELOPER;

- D. DEVELOPER shall provide to CITY and ESCROWEE, a report or certification, confirmed by the Architect and DEVELOPER's general contractor, upon which CITY can rely, stating that the work completed so far is consistent with the final Project Plans, the percentage of construction that has been completed on the Project and the estimated outstanding balance of costs for work done, or that remains to be done in order to complete construction of the Project, that has not yet submitted for disbursement.
- E. CITY shall, as expeditiously as reasonably possible after receipt of the items in subsections A through D, above, approve or reject DEVELOPER's request for disbursement of funds, but under no circumstances shall such approval or rejection take more than 30 days. Such approval or rejection shall be provided in writing to both DEVELOPER and ESCROWEE. If DEVELOPER's request for disbursement is rejected, CITY shall provide to DEVELOPER written explanation of the portions of the request objected to and the specific reason(s) for the rejection. Non-compliance with the requirements of this Disbursement Agreement, the Development Agreement, or alleged discrepancies, inaccuracies, misstatements or misrepresentations in the Contractor's Statement shall be the only basis upon which CITY shall object to all or any portion of disbursement request; and
- F. Upon receipt of approval by CITY of the requested disbursement, ESCROWEE shall, within one business day transmit sufficient funds to cover the requested disbursement. All disbursements by ESCROWEE will be made as directed by DEVELOPER for payment by DEVELOPER to the contractors, materialmen or other third parties rendering such work, materials and services except that upon request of DEVELOPER, disbursements may be paid by ESCROWEE directly to the contractors, materialmen or other third parties rendering such work, materials and services, rather than to DEVELOPER.

It is the intention of the parties named herein that no person which is not a signatory to this Escrow Agreement shall be a third party beneficiary of this Escrow Agreement, and ESCROWEE owes no duty of care to any such party.

If either CITY or ESCROWEE discovers a misstatement or deficiency in any of the documents provided by DEVELOPER, either may stop disbursement until the misstatement or deficiency has been corrected.

- 4. **Limits of ESCROWEE's Duties.** The functions and duties assumed by ESCROWEE include only those described in the Escrow Agreement, and the ESCROWEE is not obligated to act except in accordance with the terms and conditions of this Escrow Agreement. ESCROWEE does not certify or insure that (a) the Project will be completed; (b) that the Project, when completed, will

be in accordance with the final Project Plans or the Development Agreement; (c) that sufficient funds will be available for completion of the Project; or (d) that the certifications of the Architect are correct. ESCROWEE shall not be responsible for any loss of documents or funds while such documents or funds are not yet in its custody. Documents or funds deposited in the United States mail by DEVELOPER or CITY shall not be construed as being in custody of ESCROWEE until actually received by ESCROWEE. **This Escrow Agreement is not a promise by ESCROWEE to protect any party against construction lien claims on any title insurance policy issued by ESCROWEE.**

5. **Inspections.** DEVELOPER shall be responsible for making inspections of the Project during the course of construction, and shall determine to its own satisfaction that the work done or materials supplied by its general contractor and all subcontractors and suppliers have been properly made or supplied in accordance with applicable contracts and the Development Agreement. ESCROWEE shall not be required to conduct any inspections of the Project.
6. **Notice to ESCROWEE.** The DEVELOPER and CITY agree to advise the ESCROWEE promptly in the event that they receive any lien notice or intention to claim a lien from any contractor, subcontractor, or material suppliers in connection with the construction of the Project.
7. **Escrow Fee.** An escrow fee of \$_____ per draw is to be paid by DEVELOPER, which fee must be paid at the time each draw is disbursed or which fee will be deducted from the draw disbursement.
8. **Escrow Termination.** This Escrow Agreement shall terminate and ESCROWEE shall have no further liability hereunder upon any of the following occurring:
 - A. All Escrow Funds are disbursed pursuant to Section 3 of this Escrow Agreement.
 - B. In the event that all of the preconditions to disbursement in the Development Agreement are not met, CITY shall notify ESCROWEE in writing and ESCROWEE shall return all of the TID 6 Contribution to CITY. Any interest earned on the TID 6 Contribution shall also be returned to CITY along with the TID 6 Contribution.
 - C. ESCROWEE resigns as ESCROWEE by providing 30 days written notice to DEVELOPER and CITY. Upon resignation by the ESCROWEE, ESCROWEE shall forward all undisbursed funds to a new escrowee chosen by CITY and DEVELOPER.
9. **Collateral Assignment by DEVELOPER.** The parties acknowledge that DEVELOPER may collaterally assign its rights and interests in the Development Agreement and the Escrow Agreement to a permitted Mortgagee, as specified in the Development Agreement. If a permitted Mortgagee (or its assignee or successor) succeeds to the role of DEVELOPER under the Development

Agreement, then such permitted Mortgagee (or its assignee or successor) shall similarly succeed to the role of DEVELOPER under this Escrow Agreement

Executed as of this _____ day of _____ 2016.

CITY OF SHEBOYGAN,
WISCONSIN

DEVELOPER

BY: _____
Michael J. Vandersteen, Mayor

BY: _____

ATTEST:

Susan Richards, City Clerk

ESCROWEE
[NAME]

By: _____
[Name, Title]

Exhibit F
Form of Completion Certificate
(See attached)

Certificate of Completion

Document Title

Document Number

CERTIFICATE OF COMPLETION

South Pier Townhomes Project
(Phase __)

Recording Area

Property Address:	
Developer:	
Development Agreement:	Cooperation Agreement for the Private Development of Land (South Pier Townhomes Project dated as of _____, 2016.
Legal Description:	See attached Exhibit A

Name and Return Address

See Exhibits, attached

Tax Key Numbers

THIS IS TO CERTIFY that the undersigned, on behalf of the City of Sheboygan ("City"), caused the inspection of the above-described real estate and physical improvements constructed thereon, and that construction of said physical improvements had been substantially completed in accordance with construction plans submitted pursuant to the Development Agreement.

Construction was deemed by City to be completed on _____, 201_.

THIS CERTIFICATE when signed and bearing the seal of City shall constitute a conclusive determination of satisfaction and termination of the covenants in the Development Agreement with respect to the Developer's obligation to construct improvements on the above-described real estate and the date for completion thereof.

Upon recording this Certificate, the real estate described above shall specifically be "released" of record from the Development Agreement and the restrictions against the real estate set forth therein.

This Certificate relates only to the real estate described above and does not apply to any other parcel in the South Pier Townhomes Project.

Dated at Sheboygan, Wisconsin this _____ day of _____, 201_.

CITY OF SHEBOYGAN

By: _____
Name Printed: _____

Attest: _____
Name Printed: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF SHEBOYGAN)

Personally came before me this ____ day of _____, 201_, _____ and _____, the _____ and _____, respectively of the above-named City of Sheboygan, to me known to be the persons and officers who executed the foregoing instrument, and acknowledged that they executed the foregoing instrument as such officers as the deed of City by its authority.

NOTARY Public
Sheboygan County, State of Wisconsin
My commission _____.

This document was drafted by:
Thomas O. Gartner
Michael Best & Friedrich
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202-4106

Exhibit A

**Legal Description to
Certificate of Completion**

Exhibit G

List of Project Documents

Exhibit H
Project Site Plan
(See Attached)

III

DIRECT REFERRAL

Res. No. - 15 - 16 . By Alderperson Hammond.

April 18, 2016

A RESOLUTION approving the terms and conditions of the Ground Lease Agreement between the Redevelopment Authority and South Pier Sheboygan, LLC.

RESOLVED: That the City of Sheboygan hereby approves the terms and Conditions of the Developers Agreement between South Pier Sheboygan, LLC and the Redevelopment Authority, in form substantially similar to the documents attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED: That the Chairperson and Executive Director of the Redevelopment Authority are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

*Inance
+
Redevlopment Auth*

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

GROUND LEASE

This Ground Lease ("Lease") is made, executed and delivered as of the _____ day of _____, 2016, by and between the Redevelopment Authority of the City of Sheboygan, Wisconsin, a public body corporate of the State of Wisconsin, with its principal place of business located at 828 Center Avenue, Suite 104, Sheboygan, Wisconsin 53081 ("Landlord"), and South Pier Sheboygan LLC, 10060 W. Loomis Road, Franklin, WI 53132, ("Tenant").

RECITALS

WHEREAS, contemporaneous with the execution of this Lease, Landlord and Tenant are entering into a certain Cooperation Agreement for the Conveyance and Private Development of Land - South Pier Townhomes Project ("Cooperation Agreement"), which provides for the development of the South Pier Townhomes Project ("Project") in two phases; and

WHEREAS, the Cooperation Agreement provides for development of the Project on certain real property owned by the Landlord, which includes four parcels with an aggregate area of approximately 4.52 acres, which are depicted as Lots 6, 7, 8 and 9 on EXHIBIT A (the "Premises"); and

WHEREAS, the Cooperation Agreement provides for development of Phase I of the Project on Lots 6 and 7 of the Premises ("Phase I Land") and for development of Phase II of the Project on Lots 8 and 9 of the Premises ("Phase II Land"); and

WHEREAS, pursuant to the terms of the Cooperation Agreement, Landlord will convey the Premises to Tenant pursuant to the terms of this Lease.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, including without limitation Tenant's commitment to redevelop the Premises pursuant to the terms of the Cooperation Agreement, Landlord and Tenant do hereby covenant and agree as follows:

ARTICLE I
GRANT AND TERM

Section 1.01. Premises. In consideration of rents, terms, covenants and agreements to be performed and observed by Tenant, as hereinafter set forth, Landlord leases to Tenant, and Tenant leases from Landlord, certain real estate located in the City of Sheboygan, Sheboygan County, Wisconsin, described in Exhibit A, attached hereto, together with all rights and appurtenances belonging or appertaining thereto, and all improvements now or hereafter located thereon ("Premises"). Pursuant to the terms of

the Cooperation Agreement, the parties will cooperate in the finalization of one or more certified survey maps to be approved in conjunction with the finalization of plans and specifications for the Project. Upon recording of said certified survey map(s), the parties agree to execute and record such documents as may be necessary to substitute, for this Lease, new legal descriptions for the Premises, Phase I Land and Phase II Land.

Section 1.02. Term. Subject to Landlord's termination rights in Section 3.02, the term of this Lease shall be for ninety-nine (99) years. The term shall commence on the date hereof ("Commencement Date") and shall expire at 12:00 midnight on the day preceding the 99th anniversary of the Commencement Date ("Expiration Date") unless otherwise terminated earlier hereunder.

Section 1.03. Lease Year. Each lease year shall be from January 1 to December 31 ("Lease Year"). However, the first Lease Year shall commence on the Commencement Date and end December 31 of that year. The last Lease Year shall begin January 1 and end the day preceding the 99th anniversary of the Commencement Date.

Section 1.04. Surrender of Premises. At the expiration or any termination of this Lease, Tenant shall surrender the Premises and all improvements located thereon to Landlord in a well maintained, decent, safe and sanitary condition, or in the alternative, at Landlord's election, surrender the Premises with all Tenant's improvements removed or demolished and cleared, including all rubble and property filled to facilitate redevelopment by Landlord, provided that, if Tenant has given Landlord prior written notice of the name and address of Tenant's mortgagee, Landlord shall have provided written notice of such election to the Tenant's mortgagee, and provided that Tenant's mortgagee or its successors and assigns shall have consented to such election by Landlord or its affiliates to have all Tenant's improvements removed or demolished and cleared. Such prior consent of Tenant's mortgagee shall not be unreasonably withheld.

The costs of demolition and removal shall be paid by Tenant. At any time during the last three (3) Lease Years, Landlord may require Tenant to post reasonable security to ensure performance of this provision. Failure to post such security shall be a default under the Lease.

Subject to the provisions of Section 3.03, all alterations, additions and improvements constructed by or on behalf of Tenant on the Premises and all permanent fixtures shall, upon the expiration or termination of this Lease, become the property of Landlord.

Section 1.05. Mooring Facilities Excluded. It is expressly understood and agreed that this Lease does not grant any right, interest or privilege, express or implied, to utilize any dock

space or mooring facilities adjacent to the Premises.

ARTICLE II
RENT

Section 2.01. Rent. For the period beginning on the Commencement Date and ending on the tenth (10th) anniversary of the Commencement Date ("Rent Adjustment Date"), Tenant shall pay as rent for the Premises one dollar (\$1.00) per year, due and payable in advance upon execution of the Lease. If Tenant does not exercise its Option to Purchase pursuant to Section 11.01, Tenant shall thereafter pay as rent for the Premises five dollars (\$5.00) per square foot of leased Premises, per year, due and payable in advance one-half (1/2) on January 31 and one-half (1/2) on June 30 of each Lease Year. The first installment payment of such rent shall be prorated from the Rent Adjustment Date, and due and payable within thirty (30) days following the Rent Adjustment Date. On the anniversary date of each five year period (i.e. first day of each five year period), the Landlord may adjust this yearly rental to an amount which is equivalent to 1/20th of the then market value of said land area. Tenant shall have the right to appeal the "market value determination of such through such appeal where an appeal to the assessment of such property, which appeal shall be to the Board of Review of the City of Sheboygan, following their normal appeals procedure. In the event the Board of Review declines jurisdiction, Wisconsin Arbitration Law shall be utilized or such other arbitration as may be agreeable to the parties.

Section 2.02. Past Due Rent. If Tenant fails to pay rent or any other charge due under this Lease when the same is due, the unpaid amount shall, at Landlord's option and without waiving any other right of Landlord, bear interest from the due date to the date of payment at a rate of twelve percent (12%) per annum.

Section 2.03. Lien Rights. All rent due and to become due and all other obligations of Tenant to Landlord shall be a first lien on the Premises, and all those holding under Tenant shall be subordinate to Landlord's lien except as hereinafter stated. Landlord shall subordinate its first lien rights of the rent payment to the lien of a first mortgage of Tenant's interest executed for construction of improvements on the premises, provided that the mortgage does not unreasonably jeopardize Landlord's rights hereunder under Section 1.04, and that in the case of a construction mortgage, Tenant provides adequate proof that the proceeds will in fact be utilized for payment of construction expenses upon request by Landlord.

ARTICLE III
CONSTRUCTION, ALTERATIONS, FIXTURES, EQUIPMENT, AND LIENS

Section 3.01. Plans and Specifications. Pursuant to the Cooperation Agreement, Tenant shall submit to the City of Sheboygan ("City"), for City's approval, plans and specifications for Phase I of the Project. The terms and provisions of the Cooperation Agreement shall control the process and requirements applicable to such approval. The plans and specifications shall comply with the architectural design guidelines for the "Riverfront Zone-Shanty" as set forth in the South Pier Design Guidelines approved by the Landlord, a copy of which is on file with the Redevelopment Authority of the City of Sheboygan, except as modified with the consent of the Landlord, attached hereto as Exhibit B. Either party shall have the option to terminate this Lease if resubmitted plans and specifications for Phase I have not been approved by the City within one hundred eighty (180) days following the Commencement Date. Plans and specifications for future improvements or removal of improvements shall be subject to written approval of the Landlord prior to commencement of construction.

Section 3.02. Construction, Alterations, Improvements and Changes. Tenant, at its own expense, and pursuant to the terms, provisions, and conditions of the Cooperation Agreement, shall construct or provide for construction of the Project for the use set forth in Section 6.01 hereof. After the completion of such initial construction, in compliance with Section 3.01 hereof, Tenant shall have the right, without Landlord's prior approval, to make alterations and changes to such buildings and/or other improvements as Tenant may deem necessary, provided such alterations and changes do not result in a material deviation from the plans approved by the City pursuant to Section 3.01, and further provided that Tenant shall not remove or demolish such buildings or other improvements without Landlord's prior consent. Prior to undertaking any subsequent structural alterations, improvements or changes after the initial construction, Tenant shall obtain Landlord's prior approval of plans and specifications. Any building and/or other improvements (including initial construction) shall be constructed in full compliance with any and all laws, ordinances, rules and regulations which may govern the same and shall be constructed in accordance with plans and specifications approved by Landlord. Tenant shall be solely liable for obtaining and paying the costs of all governmental permits, licenses and/or approvals necessary to construct the improvements and/or to operate Tenant's business therein. Tenant shall promptly pay all contractors and materialmen for work and supplies and shall not permit any lien to be attached to the Premises. Should any lien be made, Tenant shall bond against or discharge the same within thirty (30) days and hold Landlord harmless against the lien. Tenant shall additionally hold Landlord harmless against any loss or damage by reason of Tenant's

construction of any building or improvements on the Premises. Tenant shall not suffer any unauthorized encumbrance to be placed upon the Premises.

All land disturbing construction activities and excavations on the Premises shall be conducted in accordance with the Wisconsin DNR Approved Material Handling & Engineered Barrier Plan for the former C. Reiss Coal Company Property, Harbor Centre South Pier Remediation and Redevelopment Project, dated May 19, 2003, a copy of which is attached hereto as Exhibit C.

Subject to the provisions of Section 12.04 and to the provisions of the Cooperation Agreement, Tenant shall commence and substantially complete each Phase of the Project in accordance with the Project Timetable set forth in the Cooperation Agreement. In the event Phase II of the Project is not commenced in accordance with said Project Timetable, Landlord shall have the option to terminate this Lease as to the Phase II Land on sixty(60) days' written notice to Tenant. Said option shall be in addition to any other rights of Landlord hereunder.

Section 3.03. Fixtures and Equipment. Tenant may, at its own expense, furnish and install such business and trade fixtures and equipment in and on the Premises as may be necessary or desirable for Tenant's business. Such fixtures and equipment shall remain the personal property of Tenant and shall be removed by Tenant at the expiration or termination of this Lease. Upon removal of such fixtures and equipment, Tenant shall restore the Premises to its condition at the time of their installation, reasonable wear and tear excepted. Tenant's obligation hereunder shall survive the expiration or termination of this Lease.

Business and trade fixtures are generally considered moveable personal property. Fixtures which become part of the real estate and are in the nature of real estate improvements are not considered business and trade fixtures under this section and shall not be removed by Tenant.

Any and all alterations, additions and improvements constructed by or on behalf of Tenant on the Premises and all fixtures shall remain subject to Tenant's mortgagee's mortgage and/or security interest, if applicable.

Section 3.04. Leasehold Mortgages. Tenant shall have the right to mortgage, pledge, encumber, hypothecate or assign as security the leasehold estate created hereunder and the buildings and improvements constructed upon the Premises without obtaining Landlord's consent.

ARTICLE IV
MAINTENANCE, REPAIR, LANDSCAPING AND DESTRUCTION

Section 4.01. Maintenance and Repair by Tenant. Tenant shall, at its own cost and expense, keep and maintain and repair the Premises, including all buildings and improvements of every kind which may be a part thereof (whether interior or exterior, structural or nonstructural); all heating, electrical, air conditioning, ventilating and plumbing equipment therein; and all appurtenances thereto, including sidewalks and parking areas adjacent thereto, in good condition and repair. Tenant shall comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises and improvements thereon, or any activity or condition on or in the Premises. Tenant shall, at its own expense, keep the Premises in sanitary, clean and neat order, and keep the sidewalks and parking area on the Premises free of snow and trash.

Section 4.02. Landscaping. Within one hundred twenty (120) days following Tenant's substantial completion of construction of improvements for each Phase pursuant to Section 3.02, Tenant shall, at Tenant's sole cost and expense complete landscaping of such Phase in accordance with the approved Precise Implementation Plan (PIP), which shall be part of Tenant's plan approval process pursuant to the terms of the Cooperation Agreement. Tenant shall at all times during the term of this Lease, keep and maintain landscaping on the Premises in accordance with the approved PIP and in accordance with such further and/or additional standards and criteria which may be reasonably established by Landlord.

Section 4.03. Damage or Destruction.

(a) Unless this Lease is terminated by Tenant as provided in this Section 4.03, the damage, destruction or partial destruction of any building or other improvement on the Premises shall not release Tenant from any obligation under this Lease. In the event of such damage or destruction, Tenant shall, at its own cost and expense, promptly repair and restore the same to a condition as good or better than that which existed prior to the damage or destruction.

(b) Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease if (i) such damage or destruction occurs after the twenty-seventh (27th) Lease Year, or (ii) substantially all of the improvements are damaged or destroyed at any time during the Term in any single casualty, or (iii) full restoration is prohibited by Applicable Laws. If any of the conditions described in the immediately preceding sentence are applicable, then Tenant shall have the right to terminate this Lease by written notice to Landlord within sixty (60) days after the insurance adjustment. If Tenant fails to timely provide such notice of termination,

this Lease shall remain in full force and effect and the other provisions of this Section 4.03 shall be applicable to such casualty. If, however, Tenant does timely provide such notice, then this Lease shall terminate on the date specified by Tenant, which shall not be less than thirty (30) days after the date on which the Tenant delivers such notice. In the event Tenant elects to terminate this Lease as provided for in this Section 4.03, Tenant shall be responsible for and shall pay for all cleanup or demolition of the improvements necessary to make restore the Premises to a green field condition.

ARTICLE V
UTILITIES AND TAXES

Section 5.01. Utilities and Expenses. Tenant shall, during the term of this Lease, fully and promptly pay for all water, sewer, gas, heat, light, power, telephone services and other public utilities of every kind furnished to the Premises and used by Tenant. Tenant shall also pay for hookup and/or lateral charges, if any, required to bring utilities from public streets and access ways. Landlord shall not be liable to Tenant for any interruption in the aforesaid utility service.

Section 5.02. Real Property Taxes. Landlord and Tenant acknowledge and agree that irrespective of ownership, the real property and improvements thereon which form the Premises and Property shall be subject to real estate taxation by the City of Sheboygan and that the lien of such real estate taxes shall be in all respects prior to the lien of any mortgage thereon. Tenant agrees that the Premises shall be subject to real property taxes and assessments in the same manner as if Tenant held fee ownership of the Premises.

Tenant shall, during the term of this Lease, pay and discharge, as they become due, promptly and before delinquency, all real estate and personal property taxes and outstanding assessments, both general and special, and special charges, levied or assessed by any lawful authority, and/or payable during or with respect to each calendar year during the term hereof, against the land, buildings and/or all other improvements on the Premises or against any improvements which may be added thereto. Tenant shall only be obligated to pay installments of special assessments (using the longest amortization schedule available) coming due during the term of this Lease. All such taxes and charges (with the exception of personal property taxes on Tenant's personal property), shall be prorated, if necessary, at the commencement and expiration of the Lease term.

Tenant shall have the right, at its own cost and expense, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the

validity or amount of taxes assessed to or levied upon the Premises and required to be paid against Landlord's estate and, if required by law, Tenant may take such action in the name of Landlord who shall cooperate with Tenant to such extent as Tenant may reasonably require, provided, however, that Tenant shall fully indemnify and save Landlord harmless from all loss, cost, damage and expense incurred by or to be incurred by Landlord as a result thereof, and further provided that Tenant shall, at Landlord's request, escrow or post a bond for the full amount of the tax claim pending such proceedings.

ARTICLE VI
CONDUCT OF BUSINESS

Section 6.01. Condition and Use. Tenant shall use the Premises for multi-family residential purposes, and for no other use, except with Landlord's prior written approval. No use shall be permitted, or acts done, which will cause a cancellation of any insurance policy covering the Premises. Tenant shall not sell, permit to be kept, used or sold in or about the Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant shall, at its own expense, comply with all requirements of any insurance company necessary for the maintenance of insurance required in this Lease.

Section 6.02. Waste and Nuisance. Tenant shall comply with all applicable laws, ordinances, regulations and/or deed and plat restrictions affecting the use and occupancy of the Premises. Tenant shall not commit, or permit to be committed, any waste or nuisance on the Premises.

Section 6.03. Right of Entry. Tenant shall permit Landlord and its agents and employees, upon prior notice, to enter upon the exterior areas of the Premises at all reasonable times for the purpose of inspecting the same.

Section 6.04. Notification of Position Openings. In accordance with sec. 66.1105(6c)(b), Wis. Stats., Tenant shall notify the Wisconsin Department of Workforce Development and the local workforce development board established under 29 USC §2832, of any position to be filled by Tenant in Sheboygan County within one year after the commencement of this Lease. Tenant shall provide this notice at least two (2) weeks prior to advertising the position.

ARTICLE VII
INSURANCE AND INDEMNITIES

Section 7.01. Casualty Insurance. Tenant shall at all times during the term of this Lease, at Tenant's sole expense, keep all buildings or other improvements which are now or hereafter a part of the Premises insured against loss or damage by fire and

extended coverage hazards or all-risk coverage at full insurable value based on a replacement cost basis without deduction for depreciation or obsolescence; with a deductible not greater than fifty thousand and 00/100 (\$50,000.00) dollars; and with loss payable to Tenant, Landlord and Tenant's mortgagee as their interests may appear. Tenant shall pay the premiums when due and shall comply with the co-insurance provisions thereof, if any.

Section 7.02. Public Liability Insurance. Tenant shall at all times during the term of this Lease, at Tenant's sole expense, keep in full force and effect a policy of public liability and property damage insurance with respect to the Premises and all business operated thereon, with limits of public liability not less than one million and 00/100 (\$1,000,000.00) dollars for injury or death in any one occurrence, and property damage liability insurance in the amount of one hundred thousand and 00/100 (\$100,000.00) dollars. The policies shall name Tenant, Landlord and Tenant's mortgagee as co-insureds as their interests may appear, and shall require the insurer to endeavor to provide notice to Landlord at least thirty (30) days prior to cancellation, material change or nonrenewal of the policy. Landlord may from time to time during the term of this Lease, but not more than every five (5) years, require increases in the above-stated coverage limits consistent with standards of the insurance industry in the geographical area where the Premises is located.

Section 7.03. Certificates of Insurance. Tenant shall, with respect to any insurance coverage required in this Lease, furnish Landlord with certificates evidencing such insurance. All such insurance shall be provided by responsible insurance companies licensed to do business in the State of Wisconsin which have been approved by Landlord. Landlord shall approve all insurers rated A Class XV or higher by A.M. Bests.

In the event that Tenant fails to provide such insurance coverage, Landlord, in addition to its other rights under this Lease, shall have the option to procure such insurance for and on behalf of Tenant. In such event Tenant shall be required to reimburse Landlord for Landlord's costs at the time of payment of the next Rent payment due.

Section 7.04. Loss and Damage. Tenant shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Premises. Landlord shall not be liable for any damage to or loss of property of Tenant or others located on the Premises.

Section 7.05. Hold Harmless. Landlord shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Tenant or by any person whosoever may at any time be using or occupying or visiting

the Premises or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of Tenant or of any occupant, sub-tenant, visitor or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Tenant shall indemnify Landlord against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. Tenant hereby waives all claims against Landlord for damages to the building and improvements that are now on or hereafter placed or built on the Premises and to the property of Tenant in, on or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time. The two preceding sentences shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of Landlord, its agents or employees.

Section 7.06. Environmental Indemnifications. Landlord hereby indemnifies, defends and holds the Tenant harmless from and against any and all losses, liabilities, liens, obligations, settlement payments, penalties, claims, judgments, suits, damages and expenses of any kind or nature whatsoever (including consultants' and attorneys' fees) (collectively, "Costs"), suffered or incurred by, demanded or imposed upon, or asserted against Tenant in connection with any of the following: (a) the failure of Landlord and/or its contractors, subcontractors, agents or employees to comply with the requirements of the Wisconsin Department of Natural Resources approved Remedial Action Plan for the Premises; (b) the failure of Landlord and/or its contractors, subcontractors, agents or employees to comply with any federal, state or local law, rule, regulation, statute or ordinance, or any order of any governmental, regulatory or administrative authority pertaining to health, industrial hygiene or the environmental condition on, under or about the Premises (collectively, "Environmental Laws") as such failure affects the environmental condition of the Premises; (c) any release by the Landlord and/or its contractors, subcontractors, agents or employees of any petroleum product or hazardous material or Hazardous Substance on, upon, or into the Premises, which products or materials or substances were not present at, on, under or within the Premises on the Commencement Date; (d) any and all damage to natural resources or real property or harm or injury to persons resulting or alleged to have resulted from any failure by the Landlord and/or its contractors, subcontractors or agents to comply with any Environmental Law or any release of petroleum product or hazardous material or Hazardous Substance as described in clauses (a), (b) and (c) above; (e) the presence of any petroleum product or hazardous material or Hazardous Substance on, in, or within the soil, groundwater or surface water at, on, under or within the Premises, which products or materials or Substances were on, in,

or within such soil, groundwater or surface water on the Commencement Date; and (f) any response, enforcement, or remedial action required by any governmental authority which is necessary to comply with any Environmental Law or any requirement of any regulatory or administrative authority with respect thereto arising out of, as a result of or related in any way to any petroleum product or hazardous material or Hazardous Substance on, under or within the Premises, which products or materials or Substances were on, under or within the Premises as of the Commencement Date. Notwithstanding the foregoing, Landlord shall not be liable for any Costs arising from any acts or omissions on the part of the Tenant or any of its members, or any of its contractors, subcontractors, agents, employees, licensees or invitees occurring on or after the Commencement Date.

Tenant hereby indemnifies, defends and holds the Landlord harmless from and against any and all Costs suffered or incurred by, demanded or imposed upon, or asserted against the Landlord in connection with any of the following: (a) the failure of Tenant, and/or its contractors, subcontractors, agents, employees, licensees or invitees to comply with the requirements of the Wisconsin Department of Natural Resources' approved Material Handling and Engineered Barrier Plan; (b) the failure of Tenant, and/or its contractors, subcontractors, agents, employees, licensees or invitees to comply with any Environmental Law as such failure affects the environmental condition of the Premises; (c) any release by Tenant and/or its contractors, subcontractors, agents, employees, licensees or invitees of any petroleum product or hazardous material or Hazardous Substance on, upon or into the Premises, which products or materials or substances were not present at, on, under or within the Premises on the Commencement Date; (d) any and all damage to natural resources or real property or harm or injury to persons resulting or alleged to have resulted from any failure by the Tenant, and/or its contractors, subcontractors, agents, employees, licensees or invitees to comply with any Environmental Law or any release of any petroleum product or hazardous material or Hazardous Substance as described in clauses (a), (b) and (c) above; and (e) any wrongful or intentional or negligent act or omission on the part of Tenant or its contractors, subcontractors, agents, employees, licensees or invitees, which would cause the Landlord or the City of Sheboygan not to be in compliance with the restrictive covenants applicable to the Premises set forth in that certain Wisconsin Department of Natural Resources Certificate of Completion issued February 2010. Notwithstanding the foregoing, Tenant and its members, directors, officers and employees shall not be liable for any Costs arising from any acts or omissions on the part of the Landlord and/or its contractors, subcontractors, agents, or employees. In addition, the Tenant, its members, officers, directors, employees and their contractors, subcontractors and agents shall not be liable for any release, during the course of construction of any building and/or improvements on the Premises, of any petroleum product, hazardous

material or Hazardous Substance located on, under or within the Premises on the Commencement Date, as long as the Tenant and its contractors, subcontractors and agents were using due care during the course of construction.

The term "Hazardous Substances" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" under any applicable Environmental Law.

The Landlord and/or the City of Sheboygan shall have the right, at its cost, to inspect the Premises not less than once each year in order to assure that the Premises are in compliance with the restrictive covenants applicable to the Premises set forth in that certain Wisconsin Department of Natural Resources Certificate of Completion issued February 2010. In making these inspections, the Landlord and/or the City will use its best efforts not to unreasonably interfere with the operation of the businesses located on the Premises. The Tenant, at its cost and expense, shall be responsible for all maintenance and repair of the engineered barrier within the Premises.

ARTICLE VIII EFFECT OF CONDEMNATION

Section 8.01. Total Condemnation. In the event that the entire Premises, or such part of the Premises as will render the remainder untenable, shall be appropriated or taken for any public or quasi-public use under any statute or by right of eminent domain or by purchase in lieu thereof, this Lease shall terminate and expire as of the date of taking. In such event, the parties agree to cooperate in applying for and prosecuting any claim for such taking and further agree, that the aggregate net award shall be paid to Tenant (or if required, to any mortgagee of Tenant). In the event of such condemnation by Landlord or the City of Sheboygan, Landlord shall provide Tenant's mortgagee with prior written notice of its intention to condemn (in part or in whole) the Premises. In addition, Landlord and Tenant acknowledge and agree that Tenant's mortgagee's mortgage/security interest shall attach to and continue in Tenant's respective interests in any such award.

Section 8.02. Partial Condemnation. In the event of a partial taking (or purchase) of the Premises which make restoration of the buildings and improvements impracticable or the operation of such buildings and improvements after restoration economically unfeasible, then Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord on or prior to the date one

hundred eighty (180) days after the date of such taking (or purchase), and upon the giving of such notice of termination the term of this Lease shall expire and come to an end on the last day of the calendar month in which such notice shall be given, with the same force and effect as if said day had been originally fixed herein as the expiration date of the term of this Lease. In the event of such partial condemnation by Landlord or the City of Sheboygan, Landlord shall provide Tenant's mortgagee with prior written notice of its intention to condemn (in part or in whole) the Premises. In addition, Landlord and Tenant acknowledge and agree that Tenant's mortgagee's mortgage/security interest shall attach to and continue in Tenant's respective interests in any such award.

ARTICLE IX DEFAULT

Section 9.01. Tenant's Default Prior to Completion of Improvements. Any default of Tenant which occurs under this Lease prior to the issuance of the final Certificate of Completion to be issued shall be deemed a default under this agreement if such failure continues for more than sixty (60) days after written notice of such failure is delivered to Tenant, or in the event of a default which cannot with due diligence be cured within such sixty (60) day period, Tenant fails to commence the curing of such default with due diligence during such sixty (60) day period and to diligently prosecute to completion the curing of said default within a reasonable time thereafter. The remedies available to the Landlord under this Lease shall be cumulative, and the exercise by it of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach by the Tenant.

Section 9.02. Tenant's Default After Completion of Improvements. After the issuance of the final Certificate of Completion to be issued, and default of Tenant not cured within: (a) thirty (30) days of written notice of default in the payment of rent or in the payment of other charges as required herein; or (b) sixty (60) days after written notice of such failure is delivered to Tenant, or in the event of a default which cannot with due diligence be cured within such sixty (60) day period, Tenant fails to commence the curing of such default with due diligence during such sixty (60) day period and to diligently prosecute to completion the curing of said default within a reasonable time thereafter, Landlord shall, in addition to any other rights or remedies provided by law including, but not limited to appointment of a receiver, have the immediate right of re-entry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Tenant. Should Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or

pursuant to any notice provided for by law, Landlord may either terminate this Lease or it may from time to time, without terminating this Lease, re-let the Premises, or any part thereof, for such term or terms and at such rental or rentals and on such other terms and conditions as Landlord, in its sole discretion, may deem advisable, with the right to make alterations and repairs to the Premises. On each such re-letting:

(a) Tenant shall be immediately liable to pay to Landlord, in addition to any indebtedness other than rent due hereunder, the expenses of such re-letting and of such alterations and repairs incurred by Landlord, and the amount, if any, by which the rent reserved in this Lease for the period of such re-letting (up to, but not beyond, the term of this Lease) exceeds the amount agreed to be paid as rent for the Premises for such period on such re-letting; or

(b) At the option of Landlord, rents received by Landlord from such re-letting shall be applied first, to the payment of any indebtedness, other than rent due hereunder from Tenant to Landlord; second, to the payment of any expenses of such re-letting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder.

If Tenant has been credited with any rent to be received by such re-letting under option (a) hereof, and such rent shall not be promptly paid to Landlord by the new tenant, or if such rentals received from such re-letting under option (b) hereof, is less than that to be paid by Tenant hereunder, Tenant shall pay any such deficiency to Landlord.

No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Landlord may, at any time thereafter, elect to terminate this Lease for such previous default. Should Landlord at any time terminate this Lease for any default, in addition to any other remedy it may have, Landlord may recover from Tenant all damages incurred by reason of such default, including the cost of recovering the Premises and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Landlord.

Landlord agrees to give Tenant's mortgagee concurrent notice of default and a concurrent right to cure in accordance with the foregoing provided that Tenant gives Landlord written notice of the name and address of any such mortgagee. The name and address of Tenant's initial mortgagee, if any, is set forth in Section 12.06.

Section 9.03. Notice of Landlord's Default. Landlord shall not be deemed to be in default hereunder with respect to any of the terms, covenants or conditions of this Lease unless Tenant shall first give to Landlord sixty (60) days written notice of such failure, or in the event of a default which cannot with due diligence be cured within such sixty (60) day period, Landlord fails to commence the curing of such default with due diligence during such sixty (60) day period and to diligently prosecute to completion the curing of said default within a reasonable time thereafter.

Section 9.04. Parties May Remedy Defaults. In the event of any breach hereunder by either party (and in lieu of Landlord's terminating this Lease as hereinbefore provided), Landlord or Tenant, respectively, may immediately or at any time thereafter, after having given the other party the requisite notice to cure the same and the time for such correction having elapsed, cure such breach for the account and at the expense of the other party. If Landlord or Tenant at any time, by reason of such breach, are compelled to pay, or elect to pay, any sum of money, or incur any expense, including reasonable attorneys' fees, in instituting or prosecuting an action or proceeding to enforce such party's rights hereunder or curing such breach, the sum or sums so paid or incurred by such party, if paid or incurred by Landlord shall be deemed to be rent hereunder and shall be due from Tenant to Landlord on the next rent payment date, and, if paid or incurred by Tenant shall be deductible, without interest, to the extent thereof from subsequent payments of rent. This option given to the parties is intended for their protection and its existence shall not release the parties from the obligation to perform the terms and covenants herein provided or deprive Landlord or Tenant of any legal rights which they may have by reason of the other party's default.

ARTICLE X

ASSIGNMENT AND SUBLETTING AND ESTOPPEL CERTIFICATES

Section 10.01. Tenant's Assignment and Transfer.

- (a) Prior to substantial completion of each Phase of the Project as certified by City in the form of a final Completion Certificate for such Phase of the Project and without the prior written approval of City, as further described in the Cooperation Agreement:

- (i) there shall be no transfer of ownership interests in Tenant (including any of its constituent organizations or Affiliates, as defined in the Cooperation Agreement) by any party owning ten percent (10%) or more of the ownership interests in Tenant (which term shall be deemed for the purposes of this and related provisions to include successors in interest);
 - (ii) nor shall any such owner suffer any such transfer to be made;
 - (iii) nor shall there be or be suffered to be by Tenant, or by any owner of ten percent (10%) or more of the ownership interests therein, any other similarly significant change in the ownership of such company, or with respect to the identity of the parties in control of Tenant or the degree thereof, by any other method or means.
- (b) Prior to issuance of the Completion Certificate for Phase I of the Project, Tenant shall not assign or transfer this Lease without Landlord's prior written consent. Following issuance of the Certificate of Completion for Phase I of the Project, Tenant shall have the right to assign this Lease or sublet all or any portion of the Premises and all or any portion of the buildings and improvements; provided, that no such assignment or subletting shall relieve Tenant of any obligation set forth herein. Notwithstanding the foregoing, Tenant's mortgagee shall have the unqualified right to assign the Tenant's rights under the Lease upon default under the Tenant's mortgagee's mortgage/security interest, except as otherwise prohibited or restricted by applicable law. Tenant's mortgagee shall provide Landlord with prior written notice of such assignment.

Section 10.02. Tenant's Subleasing. Tenant shall have the right to sublease portions of the Premises without Landlord's prior approval provided that such subleasing meets the following requirements:

- (a) The term of the sublease shall not exceed the original term of this Lease; and
- (b) The subtenant's use of the Premises shall be limited to use in conformance with Sections 6.01 and 6.02 hereof; and
- (c) The subleasee shall execute and deliver to Landlord a document in form and content acceptable to Landlord,

acknowledging this Lease and agreeing that a termination or expiration of this Lease shall at Landlord's sole option constitute a termination or expiration of the sublease.

Any sublease which does not meet all of the above-stated requirements shall be subject to Landlord's prior written approval, which approval shall not unreasonably be withheld.

Tenant shall promptly provide Landlord with copies of all executed subleases affecting the Premises. No sublease shall operate to relieve Tenant of any obligation under this Lease. Notwithstanding the foregoing, the provisions of this Section 10.02 shall apply only to an express sublease of this Lease, and not to leases of residential units in Tenant's ordinary course of business.

Section 10.03. Landlord's Assignment. Landlord shall have the right to assign or transfer its interests in this Lease at any time, provided that the assignee or transferee assumes and agrees to be bound by the terms of this Lease, and further provided that Landlord notifies Tenant of such assignment and provides Tenant with an executed copy of the agreement whereby the assignee or transferee agrees to be bound by the terms hereof.

Section 10.04. Estoppel Certificates. Landlord shall, within ten (10) days after request by Tenant, certify by written instrument, duly executed, acknowledged, and delivered to the requesting party, that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications), the dates to which the rent and any other charges have been paid, the date of expiration of the current term, the rent then payable under this Lease, and whether or not, to the actual knowledge of the officer executing such certificate on behalf of Landlord, whether Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the person executing such certificate may have knowledge, confirming the rights of a mortgagee hereunder and such other matters reasonably requested by Tenant. Upon request by Tenant, Landlord shall execute subordination agreements, subordinating Landlord's interest herein to creditors' security interests in and to personal property owned by Tenant and such other commercially reasonable interests as may from time to time be requested.

ARTICLE XI
RIGHT OF FIRST OFFER AND OPTION TO PURCHASE

Section 11.01. Tenant's Option to Purchase. Tenant shall have a one-time option to purchase the Premises ("Option to Purchase") exercisable at any time from the Commencement Date

through and including the date which is the tenth (10th) anniversary of the Commencement Date ("Option Deadline"). Tenant may exercise the Option to Purchase by delivering written notice to Landlord ("Exercise Notice") on or before the Option Deadline. The purchase price at which Tenant exercises its Option to Purchase under this Section 11.01 shall be \$250,000 (the "Option Purchase Price"). If Tenant elects to proceed, the closing of the purchase transaction contemplated hereunder shall be held on a date agreed to by Landlord and Tenant or on or before the sixtieth (60th) day after the date of the Exercise Notice. If Tenant fails to exercise the Option to Purchase, the Option to Purchase shall automatically terminate and be of no further force or effect.

ARTICLE XII
MISCELLANEOUS

Section 12.01. Accord and Satisfaction. No payment received by Landlord of a lesser amount than the rent or other charges due hereunder shall be deemed to be other than on account of the earliest stipulated rent or other charges nor shall any statement on a check or any letter accompanying a payment of rent or other charges be deemed an accord and satisfaction. Landlord may accept payment without prejudice to Landlord's right to recover the balance of rent or other charges or pursue any remedy in this Lease.

Section 12.02. Entire Agreement. This Lease and Exhibits attached hereto set forth all covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises provided, however, that prior to issuance of the Certificate of Completion called for in the Redevelopment Agreement, this Lease shall also be subject to the terms and conditions set forth in the Redevelopment Agreement. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties hereto other than as herein set forth. No subsequent change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

Section 12.03. No Partnership. Landlord does not in any way become a partner, joint venturer or member of a joint enterprise with Tenant.

Section 12.04 Force Majeure. If either party is delayed from the performance of any act required hereunder (except the payment of money) by reason of labor troubles, inability to procure materials, failure of power, restrictive governmental regulations, riots, insurrection, war or like reasons not the fault of the party delayed, then the period for performance of the act shall be extended for a period equivalent to the period of the delay.

Section 12.05. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant or condition herein shall not be deemed a waiver of the term, covenant or condition. The acceptance of rent by Landlord shall not be deemed a waiver of any preceding breach by Tenant of any covenant herein, other than the failure of Tenant to pay the rent so accepted. No covenant, term or condition of this Lease shall be waived by Landlord or Tenant unless the waiver be in writing.

Section 12.06. Notices. Any notices given or required to be given to Landlord shall be sent or personally delivered as follows:

Redevelopment Authority of the
City of Sheboygan, Wisconsin
828 Center Avenue, Suite 104
Sheboygan, WI 53081
Attention: Executive Director

Any notices given or required to be given to Tenant shall be sent or personally delivered as follows:

Any notices given or required to be given to Tenant's mortgagee shall be sent or personally delivered as follows:

Notices shall be deemed given when deposited with the U.S. Postal Service, postage prepaid and correctly addressed, registered or certified mail, return receipt requested, to the respective parties or when personally delivered. Any party may change its respective above-stated address by written notice to the other parties.

Section 12.07. Partial Invalidity. If any provision of this Lease or any specific application shall be invalid or unenforceable, the remainder of this Lease or the application of the provision in other circumstances shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 12.08. Memorandum of Lease. On the Commencement Date, Landlord and Tenant, upon the request of either party, shall execute a Memorandum of Lease in a form approved for recording by the laws of the State of Wisconsin. Either party, at its cost, shall be entitled to record the Memorandum of Lease in the Office

Attest:

Chad D. Pelishek
Executive Director

ACKNOWLEDGMENT OF LANDLORD

STATE OF WISCONSIN)
) ss.
COUNTY OF SHEBOYGAN)

On this ____ day of _____, 2016, before me personally appeared Roberta Filicky-Peneski and Chad D. Pelishek, to me personally known, who being by me duly sworn, did each for themselves say that they are respectively, the Chairperson and Executive Director of the Redevelopment Authority of the City of Sheboygan, Wisconsin, a public body corporate named in and which executed the foregoing Ground Lease, and that the seal affixed to the Ground Lease is the corporate seal of said corporation, and that the Ground Lease was signed and sealed on behalf of said corporation by authority of its board of directors; and said Roberta Filicky-Peneski and Chad D. Pelishek acknowledged before me the Ground Lease to be the free act and deed of said corporation.

Notary Public
Sheboygan County, Wisconsin
My commission expires: _____

ACKNOWLEDGMENT OF TENANT

STATE OF WISCONSIN)
) ss.
COUNTY OF SHEBOYGAN)

On this ____ day of _____, 2016, before me personally appeared _____ who executed the foregoing Ground Lease and acknowledged before me that he executed the same as his free act and deed.

Notary Public
Sheboygan County, Wisconsin
My commission is permanent

This instrument was drafted by

lease/-groundlease033114

Exhibit "A"

Exhibit "B"

[SOUTH PIER DESIGN GUIDELINES]

EXHIBIT "C"

[WISCONSIN DNR APPROVED MATERIAL HANDLING &
ENGINEERED BARRIER PLAN DATED MAY 19, 2003

Res. No. - 15 - 16 . By Alderperson Hammond. April 18, 2016

A RESOLUTION approving the terms and conditions of the Ground Lease Agreement between the Redevelopment Authority and South Pier Sheboygan, LLC.

RESOLVED: That the City of Sheboygan hereby approves the terms and Conditions of the Developers Agreement between South Pier Sheboygan, LLC and the Redevelopment Authority, in form substantially similar to the documents attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED: That the Chairperson and Executive Director of the Redevelopment Authority are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor