

**\*\*\*ATTACHMENTS\*\*\***

**CITY OF SHEBOYGAN**

**REQUEST FOR REDEVELOPMENT AUTHORITY CONSIDERATION**

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**ITEM DESCRIPTION:** Discussion and possible action on proposed third amendment to the Contract for Sale of Land for Private Redevelopment by and between the Redevelopment Authority of the City of Sheboygan, Wisconsin and River Park Place of Sheboygan, LLC.

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**REPORT PREPARED BY:** Chad Pelishek, Director of Planning and Development

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**REPORT DATE:** November 21, 2018

**MEETING DATE:** December 5, 2018

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

In December 2003, the Redevelopment Authority (RDA) entered into a redevelopment agreement with River Park Place of Sheboygan. River Park Place is the condominium development on Wisconsin Avenue between North 10<sup>th</sup> Street and North Water Street. At the time, the RDA agreed to sell in two phases (two parcels) property to construct approximately 27 residential units. Under the original agreement, the RDA agreed to sell the property to the developer for \$80,000 and hold a Note and Mortgage on the property. The redeveloper would be constructing the units and as they sold the units would pay the RDA back \$10,000 to be credited towards the purchase price.

In 2005, the first amendment to the contract was executed. This amendment consolidated the mortgages (two) into one mortgage note for the northern parcel only, and continued the provisions for \$10,000 dollars upon the sale of the unit to be applied towards the purchase price.

In 2007, the second amendment to the contract was executed. This amendment lowered the amount the redeveloper should pay to the RDA to \$1,000 per unit sold and up to fifty percent of the redeveloper's profits, if any, in cash on the individual unit, not to exceed \$10,000 per unit. Since the 2007 amendment, no additional lots were sold.

**STAFF COMMENTS:**

Since the demand for the property has been significantly lowered since the last amendment in 2007, the Redeveloper has approached city staff whether the RDA would consider an amendment eliminating the sale price per lot at \$1,000 and sharing of 50% of the profits sold on the property. The Redeveloper has five building sites left (three single sites and one duplex site). The Redeveloper has a willing buyer of the remaining lots. If the Redeveloper

sold the lots, he would not be building the new buildings. In order to close the sale, the Redeveloper has modifications to the agreement.

Since it has been a number of years since any new buildings were constructed in this development, city staff is in support of the recommended changes. At this point, it would be nice to receive tax value in TID 10 for buildings and land versus just land. City staff would ask that one condition of the amendment would be that the Redeveloper understands that the new buildings need to follow the architectural of the existing buildings.

**ACTION REQUESTED:**

Motion to approve the suggested changes to the agreement and authorize the City Attorney to draft the Third Amendment to the Agreement with said changes.

**ATTACHMENTS:**

- I. None

## LANDLORD ESTOPPEL CERTIFICATE

Reference is made to the Ground Lease by and between the Redevelopment Authority of the City of Sheboygan, Wisconsin (“Landlord”) and South Pier Sheboygan, LLC and HCI Properties WI, Inc. (together, “Tenant”) dated June 22, 2016 (the “Ground Lease”), with respect to the premises located at 511 and 611 South Pier Drive, Sheboygan, Wisconsin (“Premises”). The Premises and the Land surrounding the Premises is hereinafter referred to as the “Property”.

Great Midwest Bank (“Lender”) has or will be making a loan to Tenant and will be the holder of a Note and Leasehold Mortgage on the Property. Landlord hereby certifies, warrants and represents to Lender as follows:

1. The Ground Lease contains all of the understandings and agreements between the Tenant and the Landlord, and is in existence in full force and effect, without modification. The term of the Ground Lease is 99 years from June 22, 2016.

2. A true and complete copy of the Ground Lease and all amendments, supplements and modifications thereto is set forth on Exhibit A. The Lease is in full force and effect, has not been modified, changed, altered or amended in any respect except as indicated on Exhibit A, and represents the entire agreement between the Landlord and Tenant with respect to the Property.

3. Tenant has accepted and is now in possession of the Property and is paying the rental under the Ground Lease pursuant to the provisions of the Ground Lease. To Landlord’s knowledge, Tenant has not assigned, sublet or otherwise transferred its interest under the Ground Lease or entered into any agreement or understanding to do so. The Landlord has not assigned, conveyed, transferred, sold, encumbered, or mortgaged its interest in the Ground Lease or the Property and there are no mortgages, deeds of trust or other security interests encumbering the Landlord’s fee interest in the Property.

4. The fixed minimum monthly rent and all additional rent and other charges required to be paid under the Ground Lease have been paid for the period up to and including the date of this Estoppel Certificate.

5. The Landlord has no knowledge of any claims, defenses, or counterclaims against the Tenant, or of any circumstances that would entitle the Landlord to cancel or terminate the Ground Lease. The Landlord has not commenced any pending action or sent any presently effective notice to the Tenant or received any presently effective notice from the Tenant for the purpose of terminating or cancelling the Ground Lease.

6. The Landlord has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against the Landlord’s interest in the Property.

7. The Landlord agrees, subject to the terms of the Ground Lease, to recognize the Lender and its successors or assigns as the tenant under the Ground Lease upon the Lender’s acquisition of the Tenant’s leasehold estate in the Property.

8. Landlord agrees to give Lender notice: (a) of any breach of the Lease, at the same time as Landlord shall give notice of such breach to Tenant; (b) of any legal action which Landlord may commence to evict Tenant from the Property or to terminate or limit Tenant's right to use, possess or lease the Property, promptly upon the commencement of any such action; (c) of any cancellation or termination of the Lease, at least 30 days before such cancellation, stating the grounds for cancellation or termination; (d) of any change in the ownership of the Property and the name and address of each new owner of the Property, at least 30 days before any such change in ownership; and (e) of the date Landlord acquires possession of the Property from Tenant through cancellation or termination of the Lease, eviction or otherwise. All notices to Lender shall be deemed given when received by Great Midwest Bank at:

Great Midwest Bank  
15900 W. Bluemound Road  
Brookfield, WI 53005  
Attn: James Lange

9. The Landlord acknowledges that this Estoppel Certificate may be relied upon by the Lender and its successors and assigns. The Landlord agrees that the Leasehold Mortgage provisions contained in the Ground Lease are in effect and apply as of the date of the Leasehold Mortgage.

(SIGNATURES FOLLOW)

**REDEVELOPMENT AUTHORITY OF  
THE CITY OF SHEBOYGAN,  
WISCONSIN,**

a public body corporate of the City of  
Sheboygan, Wisconsin

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WISCONSIN     )

) SS

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

On this \_\_\_ day of \_\_\_\_\_, 2018, before me appeared \_\_\_\_\_ and  
\_\_\_\_\_, to me personally known, who, being by me duly sworn, did say  
that they are the \_\_\_\_\_ and \_\_\_\_\_ of Redevelopment  
Authority of the City of Sheboygan, Wisconsin, and that said instrument was signed on behalf of  
said company by its authority, and said persons acknowledged said instrument to be the free act  
and deed of said company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and  
year first above written.

\_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[SEAL]

EXHIBIT A  
GROUND LEASE  
(See attached)

**CITY OF SHEBOYGAN**

**REQUEST FOR REDEVELOPMENT AUTHORITY CONSIDERATION**

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**ITEM DESCRIPTION:** Motion to grant approval of execution by the appropriate RDA officials of a Landlord Estoppel Certificate and a Consent of Lessor regarding a Leasehold Mortgage, Security Agreement, and Financing Statement; both relating to property owned by the Redevelopment Authority and ground leased to South Pier, LLC located at 511 and 611 South Pier Drive, Sheboygan, Wisconsin.

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**REPORT PREPARED BY:** Chad Pelishek, Director of Planning and Development

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**REPORT DATE:** November 29, 2018

**MEETING DATE:** December 5, 2018

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

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**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

The developer of the Portscape Apartments is working to secure permanent financing on the Phase 2 of the project and since the Redevelopment Authority is leasing the property to Portscape Apartments, approval of the following documents needs to occur before the Chairperson and Executive Director can execute the documents.

The lender has requested approval and execution of the Landlord Estoppel Certificate and a Consent of Lessor regarding a Leasehold Mortgage, Security Agreement and Financing Statement.

**STAFF COMMENTS:**

None

**ACTION REQUESTED:**

Motion to grant approval of the execution by the appropriate RDA officials of a Landlord Estoppel Certificate, and a Consent of Lessor regarding a Leasehold Mortgage, Security Agreement and Financing Statement.

**ATTACHMENTS:**

- I. Landlord Estoppel Certificate
- II. Consent of Lessor

DOCUMENT NO.

LEASEHOLD MORTGAGE,  
SECURITY AGREEMENT AND  
FINANCING STATEMENT

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Lichtsinn & Haensel, s.c.  
Michael D. Orgeman  
111 E. Wisconsin Avenue, Ste.  
1800  
Milwaukee, WI 53202

59281322012 and 59281322015

Parcel Identification Number

LEASEHOLD MORTGAGE,  
SECURITY AGREEMENT AND FINANCING STATEMENT

THIS LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by SOUTH PIER SHEBOYGAN, LLC, a Wisconsin limited liability company, and HCI PROPERTIES WI, INC., a Wisconsin corporation (together, "Grantor") in favor of GREAT MIDWEST BANK ("Lender").

W I T N E S S E T H:

Grantor has entered into a Loan Agreement (the "Loan Agreement") with Lender as of the date first written above pursuant to which Lender has made a loan (the "Loan") to Grantor evidenced by a **\$4,660,000.00** Mortgage Note (together with all modifications, renewals and extensions, the "Note") payable to the order of Lender, all on the terms and conditions as are set forth in the Note. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Note or Loan Agreement, as applicable.

This is not homestead property.

NOW, THEREFORE, Grantor, to secure the payment of the Note in accordance with its terms and all increases, additions, extensions, modifications and renewals thereof, and all other sums which may become due from Grantor to Lender by virtue of the Loan Agreement, this Mortgage, the Note, the other security documents, and all other documents executed in connection with this transaction (collectively such documents are hereinafter referred to as the "Loan Documents"), including but not limited to any and all principal, interest (including but not limited to any sums of money held by Lender in an interest reserve established pursuant to the Loan Agreement), late charges, loan commissions, service charges, liquidated damages, expenses, advances due or incurred by Lender in connection with the Loan (regardless of whether any Loan proceeds have been disbursed) and all other obligations, liabilities and indebtedness of Borrower or Grantor to Lender (collectively, the "Indebtedness" or "Debt"), and to secure the performance of all covenants and agreements herein contained and in the Loan Documents by Borrower or Grantor to be performed, and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Lender and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, does hereby grant, bargain, sell, mortgage, convey, transfer, assign and warrant unto Lender, its successors and assigns, forever, all right, title and interest of Grantor ("Lessee's Interest") in that certain Ground Lease dated as of June 22, 2016 (the "Ground Lease") by and between Redevelopment Authority of the City of Sheboygan, Wisconsin, a public body corporate, as lessor ("Lessor"), and Grantor, as lessee, for that tract or parcel of land ("Real Estate") legally described on Exhibit A attached hereto and incorporated herein by reference, together with all rights, interests and properties described as follows, and all rights of estates, powers and privileges appurtenant thereto (all of which are collectively referred to herein as the "Mortgaged Property"):

I. All right, title and interest of Grantor, including any after-acquired title or reversion, now or at any time hereafter existing, in and to all highways, roads, ways, streets, avenues, alleys and other public thoroughfares, bordering on or adjacent to the Real Estate or any part thereof, together with all right, title and interest of Grantor to the land lying within such highways, roads, ways, streets, avenues, alleys and other public thoroughfares, whether heretofore or hereafter vacated, and all strips and gores adjoining or within the Real Estate or any part thereof;

II. All and singular the tenements, hereditaments, licenses, permits, consents, easements, appurtenances, passages, waters, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant), water courses, riparian rights, air rights, oil, gas, minerals, coal or other substances underlying or relating to the Real Estate, all timber to be cut, all as-extracted collateral (as defined in the

Wisconsin Uniform Commercial Code), other rights and privileges thereof or in any way now or at any time hereafter belonging to or in any way appertaining to the Real Estate or any part thereof or to any property or right now or at any time hereafter comprising a part of the property and rights subject to this Mortgage; and all right, title and interest of Grantor, whether now or at any time hereafter existing, in all reversions and remainders to the Real Estate and such other property or right;

III. All present and future oral and written leases, licenses and agreements for the use or occupancy of the whole or any part of the Mortgaged Property, including all amendments of, supplements to, and renewals and extensions thereof at any time made (all such leases, agreements, amendments, supplements, renewals and extensions being hereinafter referred to collectively as the "Leases") together with all rents, earnings, income, issues, profits, royalties, revenues, insurance proceeds (including, but not limited to, any policy of insurance covering loss of income or rents for any cause) whether pursuant to any of the Leases or otherwise, and all other monetary benefits now existing or hereafter arising, derived or accrued from or belonging to the Mortgaged Property or such Leases, including any and all payments in lieu of rent, condemnation proceeds, damages, security deposits, rebates or refunds of impact fees, water or sewer connection fees, utility costs, taxes, assessments or other charges and all other sums due or to become due under and pursuant thereto (collectively, the "Rents");

IV. All buildings and improvements (the "Improvements") of every kind and description now or hereafter located, erected or placed on the Real Estate, or any part thereof, including, but not limited to, those certain Improvements to be constructed on the Real Estate in accordance with the Loan Agreement, all structures, railroad spur tracks and sidings, plants, works and all materials intended for construction, and repairs of such Improvements now or hereafter erected thereon, all of which materials shall be deemed to be subject to this Mortgage immediately upon the delivery thereof to the Real Estate, and all fixtures now or hereafter owned by Grantor, and attached to or contained in and used in connection with the Real Estate, whether or not the same are or shall be attached to any building or buildings in any manner and, without any further act, all extensions, additions, betterments, substitutions and replacements to the foregoing, together with all plans and specifications for the Improvements;

V. All fixtures, furniture, furnishings, appliances, equipment, machinery and other personal property of every kind and description in which Grantor now has or at any time hereafter acquires an interest ("Personal Property"), whether now or at any time hereafter installed or located in, on or about or used in connection with the Real Estate or any part thereof, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, including but not limited to all pumps, pipes, islands, underground storage tanks, computers which operate fueling systems, general intangibles, accounts, contract rights, electrification equipment and power lines, whether owned individually or jointly with others, all water supply, heating, lighting, cooling, refrigerating, humidifying, dehumidifying, plumbing, sprinkler protection, fire extinguishing, incinerating, waste removal, cleaning, air-conditioning, ventilating, communicating, water-heating, television antenna and electrical systems, and the machinery, appliances, fixtures and equipment pertaining thereto, all switchboards, engines, motors, tanks, pumps, conduits, ducts, compressors, elevators, escalators, shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves, ranges, dishwashers, waste disposal units, curtain rods and fixtures, washing machines, clothes dryers, floor coverings, partitions, condensing units, range hoods, fans, lawn equipment, speakers, electrical wiring, pipe, signs, all built-in equipment, whether any of the foregoing are single units or centrally controlled, and all renewals, replacements and substitutions thereof and additions thereto, it being understood that all of the fixtures, furnishings, appliances, equipment, machinery and other Personal Property hereinabove described shall be subject to the lien of this Mortgage as if covered and conveyed hereby by specific and apt descriptions. The term Personal Property shall also include all Personal Property of every nature whatsoever now or hereafter owned by Grantor or used in connection with the Real Estate or the Improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Grantor in and to any such Personal Property together with the benefit of any deposits or payments now or hereafter made on such personal property by Grantor or on its behalf,

including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Wisconsin Uniform Commercial Code located on the Real Estate or in the Improvements which are now or in the future owned by the Grantor and used or obtained for use in connection with the Real Estate or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Real Estate or the Improvements; All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Real Estate or Improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Real Estate or Improvements thereon or proceeds of any sale, option or contract to sell the Real Estate or Improvements thereon or any portion thereof; Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing; and all of the books and records pertaining to the foregoing;

VI. All awards and other compensation, whether heretofore, now or hereafter made, to the Grantor, its respective successors and assigns, for any taking by eminent domain, either permanent or temporary, of all or any part of the Real Estate or any part thereof and all the properties and rights described in subsections I through V above or any part thereof or any easement or appurtenance thereof, including any awards for any changes of grade of streets, which said awards and compensation are hereby assigned to Lender; and

VII. All monies or other funds or sums at any time on deposit with Lender pursuant to the terms hereof or required by the terms of the Loan Agreement to be on deposit with Lender; and all contract rights, general intangibles, actions and rights of action, including without limitation intellectual property (including but not limited to trademarks, trade names, domain names, logos, goodwill, software, computer programs, marketing literature, and materials and symbols) related to the Mortgaged Property or the Improvements or the operation thereof; deposits for the benefit of Borrower (including but not limited to deposits with respect to utility services, and any deposits or reserves hereunder or under any other Loan Documents for taxes, insurance or otherwise); permits, licenses, franchises, certificates, development rights, commitments and rights for utilities and other rights and privileges obtained in connection with the Mortgaged Property or the Improvements; engineering, accounting, title, legal, and other technical or business data concerning the Mortgaged Property and Improvements or the operation thereof which are in the possession of Borrower or in which Borrower can otherwise grant a security interest; all unearned insurance premiums arising from or relating to the Mortgaged Property or any part thereof or the properties and rights described above in subsections I through VI or any part thereof; and all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Real Property or any part thereof or the properties and rights described above in subsections I through VI or any part thereof.

Any reference herein to the "Mortgaged Property" shall be deemed to apply to the Lessee's Interest, the Improvements, and all the properties and rights expressed in the foregoing seven (7) paragraphs, unless the context shall require otherwise. It is understood that the Lessee's Interest, the Improvements, and all the properties and rights hereby granted, bargained, sold, mortgaged, conveyed and warranted are intended to be one unit and are hereby understood, agreed and declared to form a part and parcel of the Mortgaged Property and to be appropriated to the use of the Mortgaged Property, and shall for the purpose of this Mortgage, so far as permitted by law, be deemed to be real estate and covered by the lien of this Mortgage, and as to the balance of the properties and rights as aforesaid, this Mortgage is also deemed to be a Security Agreement for the purpose of creating a security interest in said properties and rights, which security interest Grantor hereby grants Lender as security for the payment of the Note and all other sums secured hereby.

In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statutes of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

In addition to the Note, this Mortgage also secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Grantor, together with all interest thereon.

The obligations and Indebtedness secured hereby shall also include, without limitation, all obligations, indebtedness and liabilities of Borrower or Grantor to Lender arising pursuant to or in connection with any swap, collar, cap, future, forward or derivative transaction, including any involving, or settled by reference to, one or more interest rates, currencies, commodities, equity or debt instruments, any economic, financial or pricing index or basis, or any similar transaction, including any option with respect to any of these transactions and any combination of these transactions.

TO HAVE AND TO HOLD the Mortgaged Property unto the Lender and its successors and assigns forever.

AND GRANTOR COVENANTS, REPRESENTS AND WARRANTS that: (a) Grantor holds a good and indefeasible leasehold interest in the Real Estate, free and clear of all liens and encumbrances other than those set forth in Exhibit B attached hereto and incorporated by reference; and (b) Grantor has the full right, power, and authority, acting alone, to execute and deliver this Mortgage to Lender. Subject to the exception in the preceding sentence, Grantor warrants and will forever defend the title to the Mortgaged Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's leasehold title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice. Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation. Grantor covenants that Lender is subrogated to the lien of any mortgage or any other lien which is discharged, whether in whole or in part, by the proceeds of the Note. Grantor further warrants that the Mortgaged Property and Grantor's use of the Mortgaged Property comply with all existing applicable laws, ordinances, and regulations of all governmental authorities having jurisdiction over the Mortgaged Property and Grantor.

PROVIDED, HOWEVER, that if the principal, interest and all other sums provided in the Note are paid and all other sums hereinafter provided for or secured hereby are paid, and if the Grantor properly performs all of the covenants herein contained, and Lender has no further obligation to make any advance of any Indebtedness to or on behalf of Grantor, then this Mortgage shall be released, at the cost of the Grantor, otherwise this Mortgage will remain in full force and effect.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Payment and Performance. This Mortgage, including the assignment of Rents and the security interest in the Rents and Personal Property, is given to secure: (a) payment of the Indebtedness, as that term is defined in the Note; and (b) performance of any and all obligations under the Note, the Loan Documents, and this Mortgage. Except as otherwise provided in this Mortgage, Grantor shall pay to

Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

2. Payment of Taxes. Grantor shall pay when due (and in all events prior to delinquency) all taxes, ad valorem and non ad valorem real property taxes, payroll taxes, sales and use taxes, personal property taxes, special taxes, assessments, water charges, sewer service charges levied against or on account of the Mortgaged Property or this Mortgage (collectively, "Taxes"), and shall pay when due all claims for work done on or for services rendered or material furnished to the Mortgaged Property. Grantor shall maintain the Mortgaged Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender.

Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the Taxes and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the Taxes against the Mortgaged Property.

Grantor shall notify Lender at least fifteen (15) days before any work (other than minor alterations for which Lender's consent is not required hereunder) is commenced, any services are furnished, or any materials are supplied to the Mortgaged Property, if any construction or mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender deposit with Lender such amounts as deemed necessary by Lender to sufficiently complete the work in a good and workmanlike and lien free manner, which amounts will be disbursed by Lender in accordance with an escrow agreement or disbursing agreement to be entered into by Lender and Grantor prior to the commencement of such work.

3. Escrows and Reserves. Upon an Event of Default, Grantor will without further demand deposit with Lender, in addition to the required installments of principal and/or interest due under the terms of the Note, monthly until the Note is paid in full a sum equal to all Taxes next due on the Mortgaged Property (all as estimated by the Lender), divided by the number of months to elapse before one month prior to the date when such Taxes will become delinquent. Such deposits and escrow or reserve accounts: (1) shall accrue interest at Lender's regular savings rates; (2) shall be used, subject to the provisions of this Section, for the payment of Taxes on the Mortgaged Property next due and payable when they become due; and (3) shall not be commingled with other funds of Lender and Lender shall establish a separate account for such deposits and escrow or reserve accounts. All such deposits and escrow and reserve accounts shall be applied by the Lender, provided no Event of Default has occurred and is continuing, to the payment of Taxes due on the Mortgaged Property, as applicable. Payments shall be made in the fiscal year designated by Grantor, provided sufficient funds are available and such Taxes are not delinquent. If the sums so deposited are insufficient to pay any such amounts for any period when the same shall become due and payable, the Grantor shall on demand deposit such additional funds as may be necessary to pay such amounts in full. If the sums so deposited exceed the amount required to pay such amounts for any year, the excess shall be credited to a subsequent deposit or deposits required hereunder.

Lender may, at its option, without being required to do so, apply: (i) any monies at the time on deposit or in escrow or reserve accounts first pursuant to the foregoing provisions of this Section; and (ii) any deposits or escrow or reserve funds and any payments by Grantor, on any of Grantor's obligations herein contained or obligations under the Note or Loan Agreement, in such order and manner as the Lender may elect. When the Indebtedness secured hereby has been fully paid, any remaining deposits or escrow or reserve funds shall be paid to Grantor or to the then owner or owners of the Mortgaged Property. Such deposits and escrow and reserve accounts are hereby pledged as additional security for the Indebtedness hereunder and shall be irrevocably applied by the Lender for the purposes for which made hereunder and shall not be subject to the direction or control of the Grantor; provided, however, that the Lender shall not be liable for any failure to apply to the payment of such amounts unless Grantor,

provided no Event of Default has occurred and is continuing, shall have requested the Lender in writing to make application of such funds to the payment of the particular amounts for payment of which they were deposited, escrowed or reserved, accompanied by the bills for the same. Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party, and shall be liable only for its gross negligence or willful misconduct.

Lender shall have the right to make any such payment for Taxes or other amounts for which funds are held in escrow or reserve hereunder unless any such amount is then being contested by Grantor in accordance with this Mortgage, in which event, as the case may be, Lender shall make such payment under protest in the manner prescribed by law or shall withhold such payment, provided, however, that the provisions of this Mortgage must be complied with by Grantor, as the case may be. In the event such contest shall or might result in interest penalty or other charges, Grantor shall likewise deposit monthly pro-rata the amount of any such interest, penalty or additional charge.

4. Effect of New Taxation or Changes in Law Regarding Taxation. If, by the laws of the United States of America, or of any state having jurisdiction over Grantor or the Mortgaged Property, any Tax or governmental charge of any character whatever is due or becomes due on account of this Mortgage or the Indebtedness secured hereby, except for income or franchise taxes of Lender, Grantor covenants and agrees to pay any such Tax or governmental charge of any character whatever in the manner required by any such law when the same shall become due. Grantor further covenants to hold harmless and agrees to indemnify the Lender, its successors or assigns, against any liability incurred by reason of the imposition of any such Tax or government charge on account of this Mortgage or the Indebtedness secured hereby. In the event of the enactment after this date of any law of the State in which the Mortgaged Property is located deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Lender the payment of the whole or any part of the Taxes or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Lender's interest in the Mortgaged Property, or the manner of collecting Taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Grantor, upon demand by the Lender, shall pay such Taxes, charges or liens or reimburse the Lender therefor; provided, however, that if in the opinion of counsel for the Lender: (a) it might be unlawful to require Grantor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Lender may elect, by notice in writing given to the Grantor, to declare all of the Indebtedness secured hereby to be and become due and payable thirty (30) days from the giving of such notice.

5. Environmental Warranties and Indemnification.

5.1 For purposes of this Section 5, the following terms shall have the meanings hereafter ascribed to them:

5.1.1 "Environmental Laws" means all federal, state and local laws including statutes, regulations, ordinances and other governmental restrictions and requirements and common law relating to the presence, discharge or remediation of air pollutants, water pollutants or process wastewater or otherwise relating to the protection of human health, the environment, toxic or hazardous substances, pesticides, herbicides, fertilizer, mold, asbestos or radon, including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect.

5.1.2 “Hazardous Materials” shall mean any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “wastes,” “regulated substances,” “industrial solid wastes,” or “pollutants” under the Environmental Laws including, but not limited to, air pollutants, water pollutants, wastewater, pesticides, herbicides, fertilizer, mold, asbestos, radon or other health or environment threatening substances; provided, however, that “Hazardous Materials” shall not include commercially reasonable amounts of cleaning products used in the ordinary course of operation of the Property which are used and stored in accordance with all applicable Environmental Laws.

5.2 In order to induce Lender to make the Loan, Grantor represents and warrants to Lender the following:

5.2.1 To the best of Grantor’s knowledge after due inquiry, the Property is and has been operated and maintained in compliance with all applicable Environmental Laws.

5.2.2 Grantor has conducted or caused to be conducted appropriate inquiry into the current and previous uses of the Property in a manner consistent with good commercial or customary practice for purposes of meeting the standard for minimizing liability under CERCLA and other applicable Environmental Laws. Grantor has disclosed to Lender and provided Lender with true, correct and complete copies of the results of any and all reports, tests, studies and investigations commissioned by or on behalf of Grantor or otherwise within Grantor’s possession or control and relating to Hazardous Materials and the Property.

5.2.3 Grantor is not a party to any litigation or administrative proceeding and has not received written notice of any claim and, so far as is known by Grantor, there is no claim, litigation or administrative proceeding threatened against Grantor relating to the Property, which in either case asserts or alleges: (i) Grantor violated any Environmental Laws; (ii) Grantor is required to clean up or take remedial or other response action due to the disposal, discharge or other release of any Hazardous Materials, (iii) the Property is in violation of any Environmental Laws; or (iv) Grantor or any other person is required to contribute to the cost of any past, present or future cleanup or remedial or other response action which arises out of or is related to the disposal, discharge or other release of any Hazardous Materials.

5.2.4 With respect to the period during which Grantor owns or occupies the Property and, to the Grantor’s knowledge with respect to the time before Grantor owned or occupied the Property, no person or entity has caused or permitted materials to be generated, stored, treated, recycled or disposed of on, under or at the Property which materials, if known to be present, would require cleanup, removal or some other remedial action under Environmental Laws.

5.2.5 To Grantor’s knowledge, there are no conditions existing currently or that are likely to exist during the term of the Loan which would subject Grantor to damages, penalties, fines, injunctive relief or cleanup or other costs or expenses under any Environmental Laws or which would require cleanup, remedial action or other response pursuant to Environmental Laws.

5.2.6 Grantor is not subject to any judgment, decree, order or citation related to or arising out of any Environmental Laws and to Grantor's knowledge, has not been named or listed as a potentially responsible party by any governmental body or agency in a matter arising under any Environmental Laws.

5.2.7 Grantor has timely obtained and is in compliance with all permits, licenses and approvals required under all Environmental Laws; all such permits, licenses, and approvals are in full force and effect and any fees and/or conditions for such permits, licenses and approvals have been paid and/or complied with.

5.2.8 To Grantor's knowledge, no pesticides, herbicides, fertilizers or other materials have been used on, applied to or disposed of on the Property in violation of any Environmental Laws.

5.2.9 The use of the Property for its intended purpose will not result in a violation of any Environmental Laws.

5.3 While any part of the principal of or interest on the Loan remains unpaid, Grantor shall and shall cause all tenants of the Mortgaged Property:

5.3.1 Timely comply with all applicable Environmental Laws and all permits, licenses and approvals required under any Environmental Laws with respect to the Mortgaged Property; provided, however, that such compliance shall not be required so long as Grantor shall: (a) cause the validity or applicability thereof to be contested in good faith and with due diligence at no expense to Lender, by appropriate legal proceedings which shall have the effect of preventing the immediate enforcement of the same against Grantor, tenants of the Mortgaged Property, or the Mortgaged Property; and (b) pending the outcome of such legal proceedings, cause Lender to receive such reasonable security as may be requested by Lender to ensure compliance with all Environmental Laws and all potential interest and maximum penalties.

5.3.2 Provide Lender, immediately upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree or other document from any source asserting or alleging violation of any Environmental Law applicable to the Property by Grantor or any other person, or asserting or alleging a circumstance or condition which may require a financial contribution by Grantor or any tenant, lessee, licensee or occupant of the Property or a cleanup, remedial action or other response by or on the part of Grantor under Environmental Laws.

5.3.3 Advise Lender in writing as soon as Grantor becomes aware of any condition or circumstance which makes any of the representations or warranties contained herein incomplete or inaccurate.

5.3.4 Include in all Leases (other than residential leases) or other agreements for the use of all or any part of the Mortgaged Property a covenant from the tenant, lessee, licensee or occupant of the Mortgaged Property: (a) to not violate any Environmental Laws or permit the storage, disposal or discharge of any Hazardous Materials on the premises; and (b) to indemnify and hold the lessor and Lender harmless for, from and against all losses, costs, expenses (including reasonable attorneys' fees) or damages of any kind arising from a breach of such covenant.

5.3.5 Promptly undertake and diligently pursue to completion any legally required remedial containment or cleanup action in the event of any release or discharge

or threatened release or discharge of any Hazardous Materials on, upon, into or from the Mortgaged Property.

5.3.6 At all times while holding the Lessee's Interest, and at all times while owning or operating the Mortgaged Property, Grantor agrees to, or cause its tenants to, maintain and retain complete and accurate records of all releases, discharges or other use, handling, storage, disposal or transport of any Hazardous Materials on, onto, into or from the Mortgaged Property, including without limitation, records of the quantity and type of any such substance disposed of on or off of the Mortgaged Property, as required by Environmental Laws, and to allow Lender and its representatives to examine and copy all such books and records.

5.3.7 Allow Lender and its representatives to enter the Mortgaged Property and perform an environmental assessment (including inspection and sampling) as Lender, in the exercise of its reasonable discretion and upon reasonable advance notice to Grantor, deems necessary to assess the condition of the Mortgaged Property and Grantor and tenants' compliance with the provisions of this Mortgage. Grantor shall promptly reimburse Lender for its out-of-pocket expenses, including, e.g. consultant fees and expenses, incurred in connection with the performance of the environmental assessment.

5.3.8 If Grantor or any other person on behalf of or at the direction of Grantor undertakes any investigation or corrective action with respect to the Property including, without limitation, any response, removal, or other remedial action pursuant to any requirement of any Environmental Laws, Grantor shall obtain and deliver to Lender a written report, in form and substance acceptable to Lender, from a consultant acceptable to Lender, certifying that all required action has been properly taken and that, upon completion of said action, the Property is in compliance with all Environmental Laws.

5.4 Grantor hereby agrees to indemnify, defend and hold harmless Lender and each of its officers, directors, employees, agents, consultants, attorneys, invitees, contractors and their respective successors and assigns (individually, an "Indemnified Party", and collectively, the "Indemnified Parties") for, from and against any and all losses, liabilities, damages, fines, penalties, costs and expenses of every kind and character, including reasonable attorneys' fees and court costs, incurred and expended by an Indemnified Party, and occasioned by or associated with any claims, demands, causes of action, suits and/or enforcement actions including, without limitation, any administrative or judicial proceedings and any remedial, removal or response actions ever asserted, threatened, instituted or requested by any person whatsoever arising out of or related to: (a) the breach of any representation, warranty or covenant of Grantor set forth in this Section; or (b) the failure of Grantor or any tenant, lessee, licensee or occupant of the Mortgaged Property or any employee, agent, consultant or contractor that provides services to or at the Mortgaged Property to perform any material covenant or obligation hereunder; or (c) the ownership, construction, occupancy, operation or use of the Property; unless caused by the bad faith or gross negligence of the Indemnified Party. The foregoing representations, warranties, covenants and agreements of this Section 5 shall be continuing covenants, representations and warranties for the benefit of the Indemnified Parties including, but not limited to, any purchaser of the Mortgaged Property at a foreclosure sale or trustee's sale under this Mortgage, or any transferee of the interest of Lender. The provisions of this Section 5 shall be in addition to and not in limitation of the provisions of the remainder of this Mortgage, the Guaranty or the other Loan Documents, and any other obligations and liabilities which Grantor or Guarantor may have to Lender under applicable statutes or at common law and shall survive the satisfaction or release of this Mortgage, any foreclosure of this Mortgage, any acquisition of title to the Mortgaged Property by Lender or any party claiming by, through or under Lender by deed in lieu of

foreclosure or otherwise, the term of the Mortgage and the Loan Documents, and the payment of the Note in full, and shall continue thereafter in full force and effect.

6. Grantor's Covenants. The Grantor will not do or permit to be done to, in, upon or about any portion of the Mortgaged Property, anything that may in any manner impair the value thereof, or weaken, diminish or impair the security of this Mortgage. In furtherance of the foregoing:

6.1 Until the occurrence of an Event of Default, Grantor may: (a) remain in possession and control of the Mortgaged Property; (b) use, operate or manage the Mortgaged Property; and (c) collect the Rents from the Mortgaged Property.

6.2 Grantor shall maintain the Mortgaged Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

6.3 Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Mortgaged Property or any portion of the Mortgaged Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

6.4 Grantor shall not demolish or remove any Improvements from the Real Estate without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

6.5 Grantor shall permit Lender to enter the Real Estate and Improvements at any time upon reasonable advance notice (except in the event of an emergency in which case no notice shall be required), during normal business hours (except in the event of an emergency in which case Lender may enter at any time), and in a manner that does not unreasonably interrupt Grantor's use and enjoyment of the same for the purpose of inspecting Grantor's compliance with the terms and provisions of this Mortgage.

6.6 Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Mortgaged Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interest in the Mortgaged Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

6.7 Grantor shall not to abandon or leave unattended the Mortgaged Property. Grantor shall do all other acts, in addition to those acts set forth above in this Section, which from the character and use of the Mortgaged Property are reasonably necessary to protect and preserve the Mortgaged Property.

6.8 Grantor shall promptly repair, restore or rebuild any buildings or other Improvements now or hereafter on the Real Estate which may become damaged or be destroyed by any cause whatsoever (excluding minor inconsequential damage costing less than Ten Thousand Dollars (\$10,000.00) to repair which does not materially impair the value or utility of the Improvements), so that upon completion of the repair, restoration and rebuilding of said buildings and Improvements there will not be any liens of any nature arising out of said repair,

restoration and rebuilding, and the Mortgaged Property will have a commercial value at least as great as the commercial value of the Mortgaged Property prior to such damage or destruction.

6.9 Grantor shall not directly or indirectly, without Lender's prior written consent, create, incur, permit to exist or assume any mortgage, pledge or other lien or claim for lien or encumbrance upon the Property or any part thereto other than: (a) the lien and security interest of Lender as created by this Mortgage and any other documents evidencing, securing or referring to the Note; and (b) the permitted liens, charges or encumbrances set forth in Exhibit B attached hereto (the "Permitted Encumbrances"). In the event of the creation, incurrence or existence of any such lien, claim for lien or encumbrance, Grantor shall cause the same to be satisfied or removed, or shall bond over the same to Lender's satisfaction within thirty (30) days of the creation, incurrence or attachment thereof to the Mortgaged Property.

6.10 Grantor shall not make any alterations to any part of the Mortgaged Property without the prior written consent of Lender.

6.11 Grantor shall promptly notify Lender in writing of: (a) any loss or damage to any part of the Mortgaged Property that exceeds Fifty Thousand Dollars (\$50,000.00) in any single instance; (b) any material change, whether contemplated, pending or final, in the assessment of any part of the Mortgaged Property by taxing authorities or in the zoning classification; (c) the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting any part of the Mortgaged Property, including those proceedings relating to severance and consequential damage and change in grade of streets, copies of any and all papers served in connection with any such proceedings to be delivered to Lender upon such service; and (d) any other action, whether contemplated (when known to Grantor), pending or final, by any public authority or otherwise, that could affect the value of any part of the Mortgaged Property.

6.12 Grantor shall not suffer or permit any change in the general nature of the occupancy of the Mortgaged Property, without the prior written consent of Lender.

6.13 Grantor shall not grant any easement or dedication, file or record any plat, condominium declaration or restriction, or initiate or acquiesce in any zoning reclassification or similar changes in applicable laws, rules and ordinances, without the prior written consent of Lender.

6.14 Grantor shall not make or permit any use of the Mortgaged Property that could with the passage of time result in the creation of any right of user, or any claim of adverse possession or easement on, to or against any part of the Mortgaged Property in favor of any person or the public.

6.15 Grantor shall maintain all operating, deposit and similar accounts relating to the Mortgaged Property and all escrow and reserve accounts required hereunder with Lender.

6.16 Other than residential leases in the ordinary course of Grantor's business, Grantor shall not enter into any Lease (or any binding letter of intent or binding term sheet with respect thereto) without obtaining the prior written consent of Lender, including, but not limited to, Lender's approval of the proposed tenant, the proposed guarantor, if any, rental rate, tenant improvement allowance (if applicable), term, the form of the proposed Lease, and the financial statements of the proposed tenant and the proposed guarantor, if required by Lender.

6.17 Grantor shall comply with all terms, conditions, obligations and provisions of the Ground Lease.

7. Insurance. Grantor shall procure and maintain policies of the insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Estate in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, and a standard Lender Loss Payee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request, but in any event in an amount of at least Two Million Dollars (\$2,000,000.00) per occurrence, with Lender being named as additional insured in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender, that there will be no cancellation due to non-payment of premiums without a minimum of ten (10) days' prior written notice to Lender, and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Estate be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the Loan and any prior liens on the Mortgaged Property securing the Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the Loan.

Upon request of Lender, however, not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Improvements.

Unless Grantor provides Lender with evidence of the insurance coverage required hereunder at least thirty (30) days before the expiration of any existing policy or policies, with evidence of premium paid, Lender may purchase insurance at Grantor's expense to protect Lender's interests in the collateral. The insurance may, but need not, protect Grantor's interests. The coverage that Lender purchases may not pay any claim that Grantor makes or any claim that is made against Grantor in connection with the collateral. Grantor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Grantor has obtained insurance as required by their agreement. If Lender purchases insurance for the collateral, Grantor shall be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Grantor's total outstanding balance or obligation. The costs of the insurance purchased by Lender may be more than the cost of the insurance Grantor may be able to obtain on Grantor's own.

8. Application of Proceeds of Insurance. Grantor shall promptly notify Lender of any loss or damage to the Mortgaged Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Mortgaged Property, or the restoration and repair of the Improvements. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not

been disbursed within one hundred eighty (180) days after their receipt and which Lender has not committed to the repair or restoration of the Improvements shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

9. Condemnation. If any proceeding in condemnation is commenced, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice. Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be required by Lender from time to time to permit such participation. If all or any part of the Real Estate and Improvements is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, or if all or any part of the Real Estate and Improvements is sold in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award or sale be applied to the Indebtedness or the repair or restoration of the Real Estate and Improvements. If Lender requires that all or any portion of the net proceeds of the award or sale be applied to the repair or restoration, and if the net proceeds of the award or sale are insufficient to cover the cost of rebuilding or restoration, Grantor shall pay such cost in excess of the net proceeds of the award before being entitled to any reimbursement out of such net proceeds. Any surplus which may remain out of such net proceeds after payment of such cost of rebuilding or restoration shall, at the option of Lender, be applied on account of the Indebtedness or be paid to any other party entitled thereto. In any event, so long as any portion of the Indebtedness remains unpaid, Grantor shall commence rebuilding or restoration of any remaining portion of the Real Estate and Improvements promptly after the taking and shall diligently pursue the same to completion. The net proceeds of the award or sale shall mean the award or sale after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation or sale in lieu of condemnation.

10. Disbursement of Insurance or Eminent Domain Proceeds. In addition to the provisions of Sections 8 and 9, the following provisions shall control the disbursement of insurance and condemnation proceeds:

10.1 Before commencing to repair, restore or rebuild following a condemnation action or deed in lieu thereof or damage to, or destruction of, all or a portion of the Mortgaged Property, whether by fire or other casualty or condemnation, Grantor shall obtain from Lender its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

10.2 Prior to each payment or application of any insurance or condemnation proceeds to the repair or restoration of the Improvements upon the Mortgaged Property to the extent permitted in Section 8 or 9 above (which payment or application may be made, at Lender's option, through an escrow with a title insurance company, the terms and conditions of which are satisfactory to Lender and the cost of which is to be borne by Grantor), Lender shall be entitled to be satisfied as to the following:

10.2.1 Either (A) such Improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Encumbrances under this Mortgage, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Mortgaged Property, Grantor has deposited with Lender such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Mortgaged Property; and

10.2.2 Prior to each disbursement of any such proceeds held by Lender in accordance with the terms of this Section for the cost of any repair, restoration or rebuilding, Lender shall be furnished with a statement of Lender's architect (the cost of which shall be borne by Grantor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Lender and all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property and all private restrictions binding on the Mortgaged Property; and Lender shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

10.3 Prior to the payment or application of insurance proceeds to the repair, restoration or rebuilding of the Improvements upon the Mortgaged Property to the extent permitted in Section 8 above, there shall have been delivered to Lender the following:

10.3.1 A waiver of subrogation from any insurer with respect to Grantor or the then owner or other insured under the policy of insurance in question; and

10.3.2 Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Lender.

10.4 In the event Grantor shall fail to restore, repair or rebuild the Improvements upon the Mortgaged Property within a time deemed satisfactory by Lender, then Lender, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Grantor. In the event insurance proceeds or condemnation proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements upon the Mortgaged Property, such excess shall be applied on account of the Grantor's obligation of unpaid principal balance of the Note irrespective of whether such balance is then due and payable.

10.5 In the event Grantor commences the repair or rebuilding of the Improvements located on the Mortgaged Property, but fails to comply with the conditions precedent to the payment or application of proceeds set forth in this Section 10, or Grantor shall fail to restore, repair or rebuild the Improvements upon the Mortgaged Property after receipt of insurance proceeds from Lender within a time reasonably deemed satisfactory by Lender, and if Lender does not restore, repair or rebuild the said Improvements as provided above, then such failure of Grantor shall constitute an Event of Default.

10.6 Grantor agrees to pay all costs and expenses incurred by Lender pursuant to the provisions of this Section, including, but not limited to legal fees and title insurance costs.

10.7 The maturity date of the Note shall not be deemed to be extended as the result of the application of the insurance or condemnation proceeds.

11. Imposition of Taxes, Fees and Charges by Governmental Authorities. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take such other actions as requested by Lender to perfect and continue Lender's lien on the Mortgaged Property or any other Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage. The following shall constitute taxes to which this Section applies: (1) a specific tax upon this type of Mortgage or upon all or

any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor. If any tax to which this Section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either: (i) pays the tax before it becomes delinquent; or (ii) contests the tax as provided above in the Taxes and Liens Section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

12. Hold Harmless. Grantor shall save the Lender harmless from and indemnify Lender for and against all loss, liability, damages, costs and expenses, including reasonable attorney's fees, incurred by reason of any action, suit, proceeding, hearing, motion or application before any Court or administrative body in and to which Lender may be or become a party by reason hereof, including but not limited to condemnation, bankruptcy, probate and administrative proceedings, as well as any other of the foregoing wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms of and the lien created by this Mortgage, unless caused by the malicious act or omission or gross negligence of Lender, and all money paid or expended by Lender in that regard, together with interest thereon from date of such payment at the Note Rate including the Default Rate Margin (as such terms are defined in the Note) shall be so much additional Indebtedness secured hereby and shall be immediately and without notice due and payable to Lender.

13. Lender's Performance and Expenditures. If any action or proceeding is commenced that would materially affect Lender's interest in the Mortgaged Property or if Grantor fails to comply with any provision of this Mortgage or any Loan Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Loan Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all Taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Mortgaged Property and paying all costs for insuring, maintaining and preserving the Mortgaged Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will: (a) be payable on demand; (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either: (i) the term of any applicable insurance policy; or (ii) the remaining term of the Note; or (c) be treated as a balloon payment which will be due and payable upon the maturity of the Note. This Mortgage also secures payments of such amounts. Such rights shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of an Event of Default.

14. Lender's Reliance in Making Payments. Lender, in making any payment herein and as hereby authorized: (a) relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the validity or accuracy thereof; and (b) relating to any prior lien or title or claim thereof, may do so without inquiry as to the validity or amount of any such prior lien or title or claim which may be asserted; and (c) may do so whenever, in its sole judgment, such payment or payments shall seem necessary or desirable to protect the security created by this Mortgage; provided, however, that in connection with any such payment as aforesaid, Lender, at its option, may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the expense of which shall be repayable by the Grantor upon demand and shall be secured hereby.

15. Acknowledgment by Grantor. Grantor, within fifteen (15) days after Lender's request, shall furnish a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness secured by this Mortgage.

16. Assignment of Rents and Leases. All right, title and interest of the Grantor in and to all present Leases affecting the Mortgaged Property, and including and together with: (a) any and all future Leases upon all or any part of the Mortgaged Property; (b) all of the Rents from or due or arising out of the Mortgaged Property; and (c) all deposits given as security for the faithful performance of each of such Leases and all guaranties of any or all of such Leases, are hereby assigned simultaneously herewith to the Lender as security for the payment of the Note. All Leases affecting the Mortgaged Property shall be submitted by the Grantor to the Lender for its approval prior to the execution thereof. All approved and executed Leases shall, at Lender's option, be specifically assigned to Lender by instrument in form satisfactory to Lender. All or any such Leases shall be subordinate to this Mortgage. Grantor, as lessor under such Leases, shall comply with all material provisions in such Leases with which the lessor is required to comply, and shall faithfully and fully enforce all material terms and conditions of such Leases. If Grantor shall not comply with or enforce each such Lease, Lender may (without being required to), after ten (10) days prior written notice to Grantor, perform and enforce such Leases, and all amounts expended by Lender in connection therewith shall be immediately due Lender and shall be secured by the lien hereof. Grantor has on the date hereof executed and delivered to Lender an Assignment of Leases and Rents ("Assignment of Leases and Rents"), which Assignment is a document separate and distinct from this Mortgage, and is not secondary to, but is on a parity and of equal dignity with this Mortgage and the provisions herein are intended to, and shall be interpreted to, supplement the terms and provisions set forth in the Assignment of Leases and Rents. The foregoing assignment and all related provisions set forth in this Mortgage shall in no way limit the related provisions set forth in the Assignment of Leases and Rents.

17. Change in Ownership or Other Transfers. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale, assignment or transfer, without Lender's prior written consent (which may be withheld or conditioned in Lender's sole and absolute discretion), of all or any part of the Mortgaged Property or Lessee's Interest. A "sale, assignment or transfer" means the assignment or conveyance of Lessee's Interest, or the Improvements, or any right, title or interest in the Real Estate by Grantor (but not including any assignment or conveyance of Lessor's fee simple interest in the Real Estate); whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, subleasehold interest (other than as approved in accordance with Section 6.16 hereof), lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to Lessee's Interest or the Improvements, or by any other method of conveyance of an interest in Lessee's Interest or the Improvements; provided, however, that any lease or sublease approved by Lender in accordance with Section 6.16 hereof shall not constitute a "sale, assignment or transfer" for purposes of this Section. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by applicable State law. In the event Lender's consent is required for a sale, assignment or transfer hereunder and Grantor requests Lender to consent to a proposed sale, assignment or transfer, Grantor shall: (a) reimburse Lender, promptly upon request, for Lender's reasonable attorneys' fees incurred in reviewing the proposed request; and (b) pay to Lender, upon request, a reasonable processing fee determined by Lender at the time such request is made to compensate Lender for its time and consideration of reviewing the proposed transfer.

18. Grantor Delivery Obligations. On a semi-annual basis as set forth in the Loan Agreement, and at any time upon Lender's request, Grantor agrees to furnish to Lender a current rent roll (including each tenant's accurate name, notice/delivery address, and all relevant lease payment amounts) detailing the tenant and rental information effective as of the last day of the immediately preceding month, in form and detail reasonably acceptable to Lender. All rent rolls shall be certified as true and correct by Grantor and shall be prepared at Grantor's expense. Notwithstanding the foregoing, Grantor shall not be required to deliver rent rolls in accordance with this Section for any period of time in which

the Real Estate and Improvements are occupied solely by Grantor and no tenants occupy or have the right to occupy any portion of the Improvements or the Real Estate for any portion of the then-current year or succeeding year(s).

19. Acceleration of Indebtedness Upon Default. Upon the occurrence of an Event of Default under any Loan Document, the whole Indebtedness secured hereby shall, at the option of the Lender, and without notice, become immediately due and payable with reasonable attorneys' fees, and thereupon, or at any time during the existence of any such default, Lender may proceed to foreclose this Mortgage as provided by law, anything hereinbefore or in the Note contained to the contrary notwithstanding and/or exercise any other right or remedy available to it under this Mortgage or the Note or any other document securing or evidencing the Indebtedness secured hereby.

20. Appointment of Receiver. Upon the occurrence of an Event of Default under any of the Loan Documents, Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Grantor at the time of application for such receiver, without the requirement of posting of any bond or security and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not. The Lender hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have (i) power to collect the Rents from the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Grantor, except for the intervention of such receiver, would be entitled to collect such Rents, and (ii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any Tax or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) after any such foreclosure sale, to the balance due of any amounts secured hereby or by such decree after application of any proceeds obtained by such foreclosure sale.

21. Other Remedies. Upon the occurrence of an Event of Default under any of the Loan Documents and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies in addition to any other rights or remedies set forth in this Mortgage or otherwise provided by law:

21.1 With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

21.2 Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Mortgaged Property.

21.3 If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or Lessee's Interest and Improvements by non-judicial sale.

21.4 If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Section.

21.5 If Grantor remains in possession of the Mortgaged Property after the Mortgaged Property is sold as provided above or Lender otherwise becomes entitled to possession of the Mortgaged Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Mortgaged Property and shall, at Lender's option, either: (a) pay a

reasonable rental for the use of the Mortgaged Property; or (2) vacate the Property immediately upon the demand of Lender.

21.6 To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Mortgaged Property marshaled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Mortgaged Property together or separately, in one sale or by separate sales, and to execute and deliver to the purchasers of the Mortgaged Property assignments and deeds of conveyance pursuant to law. Lender shall be entitled to bid at any public sale on all of any portion of the Mortgaged Property.

21.7 Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of Lessee's Interest and the Improvements.

21.8 Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare an Event of Default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

21.9 Grantor agrees that, to the extent permitted by law, this Mortgage may be foreclosed by Lender, at Lender's option, pursuant to the provisions of Sections 846.101, 846.102 and/or Section 846.103 of the Wisconsin Statutes, as applicable, as the same may be renumbered from time to time, or any successor provision thereof.

22. Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this Section include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

23. Maintenance of Property During Foreclosure. Upon and after the occurrence of an Event of Default, Grantor hereby authorizes and empowers Lender, its successors and assigns: (a) to pay all Taxes, that may have been or that thereafter during the period of redemption from the sale under such foreclosure may be levied or assessed upon any portion of the Mortgaged Property; (b) to keep the Improvements then existing upon the Mortgaged Property insured and to pay the premiums therefor as required hereunder during the period of redemption (if any) from the sale under such foreclosure; (c) to keep the Mortgaged Property in thorough repair as required hereunder during the period of redemption, if any, of the sale from such foreclosure; and (d) to enter the Mortgaged Property and allow its

representatives to enter the Mortgaged Property and perform an environmental and/or property condition assessment (including inspections and sampling) to assess the condition of the Mortgaged Property and at Lender's sole option, correct any conditions that Lender, in the exercise of its reasonable discretion deems necessary to comply with Environmental Laws and to keep the Mortgaged Property in thorough repair. Grantor assigns to Lender the right from time to time in the name of the owner of the Property to file and prosecute an appeal or other protest of valuation of the Property or the Taxes imposed upon the Property. Grantor hereby agrees to, ratifies and confirms any and all actions of Lender with respect to the Property taken under this Section.

24. Security Agreement and Financing Statement. This Mortgage is, pursuant to the Uniform Commercial Code in effect in the State of Wisconsin, a security agreement and financing statement with respect to that portion of the Mortgaged Property constituting fixtures and Personal Property. Grantor hereby authorizes Lender to execute and file financing statements and continuation statements without the signature of Grantor if Lender shall determine that such are necessary or advisable in order to perfect Lender's security interest in such fixtures and Personal Property and hereby authorizes Lender to execute financing statements to further evidence and secure Lender's interest in such fixtures and Personal Property and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of such statements and any continuation statements that may be filed by Lender. Upon the occurrence of any Event of Default, Lender may, at its option, sell or otherwise dispose of such fixtures and Personal Property by public or private proceedings, separate from or together with the sale of the Mortgaged Property, in accordance with the provisions of the Wisconsin Uniform Commercial Code, and Lender may with respect to such fixtures and Personal Property, exercise any other rights or remedies of a secured party under the Wisconsin Uniform Commercial Code. Unless such fixtures and Personal Property are perishable or threaten to decline speedily in value or are of a type customarily sold on a recognized market, Lender shall give Grantor at least ten (10) days prior written notice of the time and place of any public sale of such fixtures or other intended disposition thereof. Upon occurrence of any Event of Default, the Lender reserves the option, pursuant to the appropriate provisions of the Wisconsin Uniform Commercial Code to proceed with respect to such fixtures and Personal Property as part of the Mortgaged Property in accordance with its rights and remedies with respect to the Mortgaged Property, in which event the default provisions of the Wisconsin Uniform Commercial Code shall not apply.

This instrument shall be deemed to be a Fixture Filing within the meaning of the Uniform Commercial Code as adopted in the State of Wisconsin, and for such purpose, the following information is given:

- |  |  |
|--|--|
| (a) Name and address of Debtor:  | South Pier Sheboygan, LLC, and HCI Properties<br>WI, Inc.<br><br>8636 Talamasca Drive<br><br>Franksville, WI 53126 |
| (b) Name and address of Secured Party:   | Great Midwest Bank<br><br>15900 W. Bluemound Road<br><br>Brookfield, WI 53005                                      |
| (c) Description of the types or items of<br>property covered by this Fixture Filing: | Any fixtures described or referred to herein and   |

included as the Mortgaged Property.

- (d) Description of real estate to which the Collateral is attached or upon which it is or will be located:

See Exhibit A attached hereto

Some of the above-described collateral is or is to become fixtures upon the above-described real estate, and this Fixture Filing is to be filed for record in the public real estate records.

25. Full Performance; Satisfaction. If Grantor pays all the Indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

26. No Waiver. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender. The failure of the Lender to exercise its option for acceleration of maturity and/or foreclosure following an Event of Default or to exercise any other option granted to the Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments hereunder shall not constitute a waiver of any such default, nor extend or affect the grace period, if any, but such option shall remain continuously in force. Acceleration of maturity once claimed hereunder by Lender may, at the option of Lender, be rescinded by written acknowledgment to that effect by the Lender, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

27. Cumulative Rights and Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

28. Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

29. No Effect on Liability. In the event the Lender: (a) releases any part of the security described herein or any person liable for any Indebtedness secured hereby; (b) grants one or more renewals, modifications or extensions of the Note for any period or periods of time; (c) takes other or additional security for the payment thereof; or (d) waives or fails to exercise any right granted herein or in the Note, said act or omission shall not release the Grantor, subsequent purchasers of the Mortgage

Property or any part thereof, or makers, Guarantors or sureties of this Mortgage or of the Note, under any covenant of this Mortgage or of the Note or Loan Documents, nor preclude the Lender from exercising any rights, powers or privileges herein granted or intended to be granted in the event of any default then made or any subsequent default.

30. No Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Mortgaged Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

31. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or when deposited in the mail, postage prepaid, or with Federal Express or a similar nationally known overnight delivery service, addressed as follows or to such address or other address as may be hereafter notified by the respective parties hereto:

Grantor: South Pier Sheboygan, LLC, and HCI Properties WI, Inc.  
8636 Talamasca Drive  
Franksville, WI 53126  
Attn: Joseph T. Grasch and David W. Griffith

With a copy to:

Lender: Great Midwest Bank  
15900 W. Bluemound Road  
Brookfield, WI 53005  
Attn: James Lange

With a copy to: Lichtsinn & Haensel, s.c.  
111 E. Wisconsin Avenue, Suite 1800  
Milwaukee, WI 53202  
Attention: Michael D. Orgeman

32. Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Wisconsin without regard to its conflicts of law provisions This Mortgage has been accepted by Lender in the State of Wisconsin.

33. Covenants Run with the Land. All the covenants hereof shall run with the land.

34. Time is of the Essence. Time is of the essence in the performance of this Mortgage specifically including, but not limited to, all of Grantor's obligations to pay the Indebtedness and other monetary sums hereunder and pursuant to the Note.

35. Binding on Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors, assigns, heirs, administrators and executors. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

36. Captions. The captions of various Sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions thereof.

37. Amendments. This Mortgage may not be amended or altered in any manner other than by a writing signed by the party sought to be charged or bound thereby.

38. Further Assurances – Recording and Filing. At any time, and from time to time, upon request of Lender, Grantor will make, executed and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurances, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve: (a) Grantor's obligations under the Note, this Mortgage, and the Loan Documents; and (b) the liens and security interests created by this Mortgage as first and prior liens on the Mortgaged Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this Section.

If Grantor fails to do any of the things referred to in this Section, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purposes of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in this Section.

39. Lender's Lien for Service Charges and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all Loan commissions, service charges, liquidated damages, expenses, and advances due to or incurred by the Lender in connection with the Loan to be secured hereby.

40. Invalidity. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

41. Business Purposes. Grantor covenants and agrees that the Indebtedness secured by this Mortgage, and the proceeds of such Indebtedness, are for business purposes only.

42. Grantor's Receipt. Grantor hereby acknowledges receipt of a true and correct copy of this instrument.

43. Books and Records to be Kept by Grantor. Grantor will keep accurate books and records in accordance with generally accepted accounting practices consistently applied in which full, true and correct entries shall be promptly made as to all operations on or relative to the Mortgaged Property, and will permit all such books or records to be inspected by the Lender and/or its duly authorized representatives at all times during reasonable business hours and if, and as often as, reasonably requested by the Lender, Grantor will make reports of operations in such form as the Lender prescribes, setting out full data as to the net revenues of the Mortgaged Property.

44. Leasehold Mortgage. During the term of this Mortgage, Grantor covenants:

44.1 The Ground Lease shall not be terminated, modified, amended, supplemented or surrendered in any manner without the prior written consent of Lender.

44.2 So long as this Mortgage is in effect, the fee title to the Real Estate and the leasehold estate created by the Ground Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates either in the Grantor, or in a third party, by purchase or otherwise, unless Lender shall consent to such merger.

44.3 Grantor shall promptly pay, when due and payable, the rents, any additional rents, Taxes and all other sums and charges to be paid by Grantor under the Ground Lease.

44.4 Grantor shall promptly perform and observe all of the terms, covenants, and conditions required to be performed and observed by Grantor under the Ground Lease, within the periods provided in the Ground Lease, and will do all things necessary to preserve and to keep unimpaired its rights under the Ground Lease. For purposes of clarity, Grantor hereby acknowledges and agrees that the occurrence of an event of default under the Ground Lease shall constitute an Event of Default hereunder and under the other Loan Documents.

44.5 Grantor shall promptly notify Lender in writing of the receipt by Grantor of any notice from Lessor under the Ground Lease claiming any default by Grantor in the performance or observance of any of the terms, covenants or conditions on the part of Grantor to be performed or observed under the Ground Lease, and promptly cause a copy of each such notice received by Grantor under the Ground Lease to be delivered to Lender.

44.6 Grantor shall promptly furnish to Lender, upon demand, proof of payment of all items which are required to be paid by Grantor pursuant to the Ground Lease.

44.7 Grantor shall execute and deliver, on request of Lender, such instruments as Lender may deem useful or required to permit Lender to cure any default under the Ground Lease or permit Lender to take such other action as Lender considers desirable to cure any such default and preserve the interest of Lender in the Mortgaged Property.

44.8 The proceeds from any insurance policies or arising from a casualty may be held by Lender and Lender reserves the right to apply to the Indebtedness Grantor's share of such proceeds pursuant to the provisions of this Mortgage or to make the proceeds available to Grantor for rebuilding in a manner determined by Lender.

44.9 The proceeds from any insurance policies or arising from a condemnation may be held by Lender and Lender reserves the right to apply to the Indebtedness Grantor's share of such proceeds pursuant to the provisions of this Mortgage or to make the proceeds available to Grantor for rebuilding in a manner determined by Lender.

[SIGNATURES NEXT PAGE FOLLOWING]







EXHIBIT A

Legal Description

EXHIBIT B

Permitted Encumbrances