

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

---

## ASSIGNMENT AND ASSUMPTION OF INTEREST IN GROUND LEASE

THIS ASSIGNMENT AND ASSUMPTION OF INTEREST IN GROUND LEASE by and between Moeller Development Co. LLC, a Wisconsin limited liability company, (“Assignor”), Grateful Properties, LLC, a Wisconsin limited liability company, (“Assignee”), and the Redevelopment Authority of Sheboygan, Wisconsin (“Landlord”).

### RECITALS

A. A Ground Lease for the premises described in attached **Exhibit A** (“Premises”) was entered into by and between Landlord and Assignor, as Tenant, for a term commencing on August 21, 2007, and amended by Amendment to Ground Lease dated April 23, 2010 and terminating at 12:00 midnight on the date which is eighty-five (85) lease years thereafter (the “Lease”).

B. Assignor desires to assign all its right, title and interest in the Lease and the Premises to the Assignee, and the Assignee desires to accept the assignment of the Lease.

C. Assignor and Assignee desire to obtain Landlord’s consent to the Assignment and the Landlord’s release of the Assignor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and the agreement of the parties hereinafter set forth:

### AGREEMENT

1. Assignment. The Assignor hereby assigns and transfers to the Assignee all of the Assignor’s right, title and interest, as Tenant, in and to the Lease effective as of December 16, 2020 (the “Effective Date”).

2. Assignee’s Assumption. As of the Effective Date, the Assignee hereby agrees to and does accept the assignment and in addition expressly assumes and agrees to keep, perform, and fulfill all the terms, covenants, conditions, and obligations required to be kept on the part of Tenant including the making of all payments due or payable on behalf of the Tenant under the Lease when due and payable.

3. Assignee’s Indemnification of Assignor. Assignee will protect, indemnify, save harmless and defend Assignor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) imposed upon or incurred by or asserted against Assignor by reason of: (a) the terms, covenants, conditions, and obligations of Tenant under the Lease, including the obligation to pay rent, (b) after the Effective Date, any accident, injury to or death of persons, loss of or damage to property occurring or repair of the building or improvements on the Premises; (c) any failure on the part of Assignee to perform or comply with any of the terms of this Assignment.

4. Notices. The portion of the Lease referring to Tenant's notice address is hereby revised as follows:

Grateful Properties, LLC  
Attention: Jason J. LaBouve  
201 Wahgouly Road  
Sheboygan, WI 53081

5. Consent of Landlord and Release. The Landlord hereby consents to this Assignment of Interest in Ground Lease, and as of the Effective Date releases Assignor from all obligations and liability under the Lease and from the performance of the Tenant of any and all terms, covenants and conditions of the Lease, including the payment of rent and other charges accruing under the Lease. No further assignment of the Lease or subletting of the Premises shall be made except in accordance with the provisions of the Lease.

6. Binding on Successors. This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors-in-interest, and assigns.

EXECUTED as of the \_\_\_\_\_ day of December, 2020.

**ASSIGNOR:**

MOELLER DEVELOPMENT CO. LLC

By: \_\_\_\_\_  
Robert L. Moeller, Member

**ASSIGNEE:**

GRATEFUL PROPERTIES, LLC

By: \_\_\_\_\_  
Jason J. LaBouve, Member

**LANDLORD:**

REDEVELOPMENT AUTHORITY OF THE  
CITY OF SHEBOYGAN, WISCONSIN

By: \_\_\_\_\_  
Roberta Filicky-Peneski, Chairperson

Attest:

\_\_\_\_\_  
Chad Pelishek, Economic Development Manager

EXHIBIT A  
LEGAL DESCRIPTION

The East 93 feet of the West 270 feet of Lot 5, South Pier, according to the recorded Plat thereof, in the City of Sheboygan, Sheboygan County, Wisconsin.

Tax Parcel Identification No.: 59281322033

MEMORANDUM OF GROUND LEASE

Document Number

Document Name

Memorandum of Ground Lease made and entered into as of this \_\_\_ day of December, 2020, by and between the Redevelopment Authority of the City of Sheboygan, Wisconsin, a public body corporate of the State of Wisconsin ("Landlord") and Moeller Development Company, LLC, a Wisconsin limited liability company ("Tenant").

WITNESSETH:

That Landlord and Tenant entered into a Ground Lease dated August 21, 2007 and amended by an Amendment to Ground Lease dated April 23, 2010 (together the "Ground Lease") for and in consideration of the covenants and agreements to be kept and performed by the Landlord and Tenant, the premises hereinafter described, for the period and upon the terms and conditions hereinafter specifically set forth:

- 1. Description of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the entire premises located at 342 South Pier Drive, Sheboygan, WI 53081 and legally described as follows:

The East 93 feet of the West 270 feet of Lot 5, South Pier, according to the recorded Plat thereof, in the City of Sheboygan, Sheboygan County, Wisconsin.

- 2. Term of Ground Lease. The initial term of the Ground Lease shall be for Eighty-five (85) years, commencing on August 21, 2007.
3. Other Terms and Conditions. The terms, covenants, and other provisions of the Ground Lease are set forth in the Ground Lease between the parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Ground Lease as of the date and year first above written.

LANDLORD: Redevelopment Authority of the City of Sheboygan, WI

TENANT: Moeller Development Co. LLC

By: Roberta Filicky-Peneski, Chairperson

By: Robert L. Moeller, Member

ACKNOWLEDGEMENTS

STATE OF WISCONSIN )
) ss.
SHEBOYGAN COUNTY )

STATE OF WISCONSIN )
) ss.
SHEBOYGAN COUNTY )

Personally came before me this \_\_\_ day of December, 2020, the above-named Roberta Filicky-Peneski, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Personally came before me this \_\_\_ day of December, 2020, the above-named Robert L. Moeller, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\*
Notary Public, Sheboygan County, Wisconsin
My Commission is permanent/expires:

\*
Notary Public, Sheboygan County, Wisconsin
My Commission is permanent/expires:

This instrument drafted by:
Ryan J. Zinkel of Rohde Dales LLP

Recording Area

Name and Return Address
Ryan J. Zinkel
Rohde Dales LLP
909 N. 8th Street, Ste. 100
Sheboygan, WI 53081

59281322033

Parcel Identification Number (PIN)



\*0575\*

# LANDLORD'S RELEASE AND CONSENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
	12-17-2020	12-17-2025	512187685	150 / 0622		12079	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** GRATEFUL PROPERTIES, LLC  
201 WAHGOULY ROAD  
SHEBOYGAN, WI 53081

**Lender:** WISCONSIN BANK & TRUST  
SHEBOYGAN FALLS  
1160 FOND DU LAC AVENUE  
SHEBOYGAN FALLS, WI 53085-1002

THIS LANDLORD'S RELEASE AND CONSENT is entered into among GRATEFUL PROPERTIES, LLC ("Borrower"), whose address is 201 WAHGOULY ROAD, SHEBOYGAN, WI 53081; WISCONSIN BANK & TRUST ("Lender"), whose address is SHEBOYGAN FALLS, 1160 FOND DU LAC AVENUE, SHEBOYGAN FALLS, WI 53085-1002; and REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN ("Landlord"), whose address is 807 CENTER AVENUE, SHEBOYGAN, WI 53081. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows.

**COLLATERAL DESCRIPTION.** The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

**THE EAST 93 FEET OF THE WEST 270 FEET OF LOT 5, SOUTH PIER, ACCORDING TO THE RECORDED PLAT THEREOF, IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.**

**BORROWER'S ASSIGNMENT OF LEASE.** Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

**CONSENT OF LANDLORD.** Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld or delayed. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If Lender later reassigns the Lease or vacates the Premises, Lender will have no further obligation to Landlord.

**LEASE DEFAULTS.** Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge, there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises, or so long as Lender reassigns the Lease to a new lessee reasonably satisfactory to Landlord.

**DISCLAIMER OF INTEREST.** Landlord hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Agreement.

**ENTRY ONTO PREMISES.** Landlord and Borrower grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Agreement will continue until a reasonable time after Lender receives notice in writing from Landlord that Borrower no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any Collateral for the Loan; including without limitation extending, renewing, rearranging, or accelerating any of the Loan indebtedness.

**AMENDMENTS.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**NO WAIVER BY LENDER.** Lender shall not be deemed to have waived any rights under this Agreement 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 Agreement 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 Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, 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.

**SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Agreement 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 Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code.

**Agreement.** The word "Agreement" means this Landlord's Release and Consent, as this Landlord's Release and Consent may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Release and Consent from time to time.

**Borrower.** The word "Borrower" means GRATEFUL PROPERTIES, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

LANDLORD'S RELEASE AND CONSENT  
(Continued)

Loan No: 512187685

Page 2

**Landlord.** The word "Landlord" means REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN, and is used for convenience purposes only. Landlord's interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

**Lease.** The word "Lease" means that certain lease of the Premises, dated April 21, 2007, between Landlord and Borrower..

**Lender.** The word "Lender" means WISCONSIN BANK & TRUST, its successors and assigns.

**Loan.** The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced.

**Note.** The word "Note" means the Note dated December 17, 2020 and executed by GRATEFUL PROPERTIES, LLC in the principal amount of \$540,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Premises.** The word "Premises" means the real property located in SHEBOYGAN County, State of Wisconsin, commonly known as 342 SOUTH PIER DRIVE, SHEBOYGAN, WI 53081.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S RELEASE AND CONSENT, AND BORROWER AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED DECEMBER 17, 2020.

BORROWER:

GRATEFUL PROPERTIES, LLC

By: JASON J LABOUBE, Member of GRATEFUL PROPERTIES, LLC

LANDLORD:

REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN

By: Authorized Signer for REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN

By: Authorized Signer for REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN

LENDER:

WISCONSIN BANK & TRUST

X Authorized Officer

This Landlord's Release and Consent was drafted by: \_\_\_\_\_

Complete either Authentication Section or Acknowledgment Section

**AUTHENTICATION**

Signature(s) of REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN authenticated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Title: Member State Bar of Wisconsin or  
authorized under Section 706.06, Wis. Stats.