

Homeward Bound 2010-2011: Leasing Fundamentals

Cosponsored by the Real Property
Law Section of the State Bar of
Michigan



The Institute of Continuing Legal Education

The State Bar of Michigan
The University of Michigan Law School
Wayne State University Law School
The Thomas M. Cooley Law School
The University of Detroit Mercy School of Law
Michigan State University College of Law

Web Site: <http://www.icle.org/>

About the Institute

The Institute of Continuing Legal Education (ICLE) was founded in 1959 by the University of Michigan Law School, Wayne State University Law School, and the State Bar of Michigan. In 1981, the Thomas M. Cooley Law School and the Detroit College of Law joined as cosponsors. The University of Detroit Mercy School of Law joined as cosponsor in 1997. The Institute is a self-supporting, nonprofit organization serving the continuing education needs of the Michigan bench and bar. The Institute is governed by an executive committee made up of representatives of the six cosponsoring organizations, thus merging the interest and efforts of practicing lawyers and the academic community.

Each year, over 13,000 registrants attend Institute seminars. This enthusiastic response has helped establish the Institute as one of the most effective and respected CLE programs in the nation. This success is due largely to the outstanding practitioners, judges, and law professors who generously contribute their time, talent, and energy to the Institute's seminars and publications.

Most Institute seminars are scheduled three years in advance. However, when major legal developments require that Michigan lawyers achieve competence quickly in specific areas, seminars may be presented on very short notice. Most seminars offered by the Institute consist of lectures or panel discussions which are followed by question-and-answer periods. Other educational techniques are used when appropriate to the subject. For example, the Institute frequently uses demonstrations to teach trial skills and offers workshops to allow learning-by-doing.

At every seminar, registrants receive seminar materials to complement lectures and discussions. These materials generally include speaker outlines, legal forms, citations to or copies of leading cases, statutes and regulations, and pertinent articles from bar journals and law reviews.

In order to serve the continuing education needs of as many members of the bar as possible, the Institute often presents its seminars as video replays. At the majority of these state wide presentations, a commentator is on hand to answer questions. Some seminars are also available on CD.

Through its publications program, the Institute further serves the educational needs of the Michigan bench and bar. Essential legal tools published by ICLE include Michigan Model Civil Jury Instructions, Michigan Criminal Jury Instructions, and the Court Rules of Michigan service. ICLE also publishes textbooks, practice handbooks, form books and legal assistant manuals on a wide range of legal topics. These publications reflect the knowledge, expertise, and invaluable practical experience of many members of the Michigan bar.

ICLE is pleased to have the cooperation and assistance of sections of the State Bar of Michigan as well as local bar associations.

Homeward Bound 2010-2011: Leasing Fundamentals

Date _____

Location _____

We value your comments. Please rate each speaker and the entire seminar.

2011CP7164

Overall Seminar Rating

Please circle the rating for the seminar.

Poor				Excellent			
1	2	3	4	5	6	7	

Overall Seminar Comments:

Please provide suggestions for future topics/speakers:

Presenters

Please circle the rating for each speaker.

	Poor				Excellent			
--	------	--	--	--	-----------	--	--	--

Introduction

Lawrence Shoffner

Presentation	1	2	3	4	5	6	7
--------------	---	---	---	---	---	---	---

Material Content	1	2	3	4	5	6	7
------------------	---	---	---	---	---	---	---

Comments:

What is a Lease?

Emily A. Minns

Presentation	1	2	3	4	5	6	7
--------------	---	---	---	---	---	---	---

Material Content	1	2	3	4	5	6	7
------------------	---	---	---	---	---	---	---

Comments:

Rights and Duties as Between Landlord and Tenant

Jonathan W. Anderson

Presentation	1	2	3	4	5	6	7
--------------	---	---	---	---	---	---	---

Material Content	1	2	3	4	5	6	7
------------------	---	---	---	---	---	---	---

Comments:

Questions Continue on Back

Rights and Duties as to Third Parties

Thomas A. Kabel

Presentation 1 2 3 4 5 6 7

Material Content 1 2 3 4 5 6 7

Comments:

Optional Information:

Name: _____ E-mail address: _____

Address and Phone #: _____

Homeward Bound 2010-2011: Leasing Fundamentals

Seminar Schedule

Moderator

Lawrence Shoffner
Lawrence Shoffner Esq.
Detroit

- 2:00pm - 2:10pm** **Introduction**
* types of commercial leases: industrial, office, retail

Lawrence Shoffner
Lawrence Shoffner Esq.
Detroit
- 2:10pm - 3:00pm** **What is a Lease?**
* leasing theory
* basic elements: parties, premises, term, options, rent, and use

Emily A. Minns
Emily A. Minns PLC
Birmingham
- 3:00pm - 3:45pm** **Rights and Duties as Between Landlord and Tenant**
* delivery of possession
* operating expenses, taxes, and insurance
* maintenance, repair, and replacement
* alterations by tenant
* landlord access rights
* defaults and remedies

Jonathan W. Anderson
Varnum LLP
Grand Rapids
- 3:45pm - 3:55pm** **Break**

3:55pm - 4:45pm

Rights and Duties as to Third Parties

- * insurance
- * indemnity
- * casualty/condemnation
- * transferability: assignment, sublease, leasehold mortgages, transfer of a fee interest
- * subordination to fee mortgage or other superior interest
- * hazardous materials

Thomas A. Kabel

Butzel Long

Bloomfield Hills

4:45pm - 5:00pm

Questions and Answers

Adjourn

Homeward Bound 2010-2011: Leasing Fundamentals

Thursday, May 5, 2011
The Inn at St. John's, Plymouth

Seminar Handbook

Cosponsored by the Real Property Law Section of the State Bar of Michigan

The Institute of Continuing Legal Education
1020 Greene Street
Ann Arbor, Michigan 48109-1444
(877) 229-4350
FAX (877) 229-4351
<http://www.icle.org>

Copyright © 2011
The Institute of Continuing Legal Education

The Institute of Continuing Legal Education offers an educational program for lawyers in practice. Course materials prepared by speakers are published in furtherance of that goal at the time of the live program. These materials are not edited, and case citations are neither checked nor Shepardized. Certain statutes, etc., may be amended or overruled following a course presentation and/or purchase of these materials. Lawyers should use the materials as a starting point for their research; the primary source, i.e., the case, statute, or court rule should be consulted. Course material authors are free to express legal interpretations and opinions; however, accuracy may vary. These interpretations and opinions do not reflect in any way a position of the Institute, its Executive Committee, or its sponsoring organizations – the State Bar of Michigan, the University of Michigan Law School, Wayne State University Law School, the Thomas M. Cooley Law School, The University of Detroit Mercy School of Law, and Michigan State University College of Law.

The Institute of Continuing Legal Education

2010-2011 Executive Committee

Sheila Robertson Deming	Deming & Maurer PLLC, Grand Ledge (Chairperson)
Robert M. Ackerman	Dean, Wayne State University Law School, Detroit
Laura B. Bartell	Professor of Law, Wayne State University Law School, Detroit
William Burnham	Professor of Law, Wayne State University Law School, Ann Arbor
Anne Marie Burr	Director of Legal Writing & Research, Wayne State University Law School, Detroit
Charles Patrick Cercone	Associate Dean of Faculty, Thomas M. Cooley Law School, Lansing
Professor Byron D. Cooper	Director of Law Library, University of Detroit Mercy School of Law, Detroit
Philip M. Frost	Clinical Professor of Law & Director, Legal Practice Program, University of Michigan Law School, Ann Arbor
John W. Reed	Professor Emeritus of Law, University of Michigan Law School, Ann Arbor
Paul D. Reingold	Clinical Professor of Law & Director, Clinical Office, University of Michigan Law School, Ann Arbor
Lawrence Shoffner	Lawrence Shoffner Esq., Detroit
Michael R. Shpiece	Kitch Drutchas Wagner Valitutti & Sherbrook, Detroit
Howard T. Spence	Spence & Associates Consultants, Lansing
Professor Charles Ten Brink	Associate Dean, Library & Tech Services, Michigan State University College of Law, East Lansing
Frank E. Vandervort	Clinical Assistant Professor of Law, The University of Michigan Law School, Ann Arbor
Janet K. Welch	Executive Director, State Bar of Michigan, Lansing

*Lynn P. Chard, Ex Officio
Director*

*The State Bar of Michigan
The University of Michigan Law School
Wayne State University Law School
The Thomas M. Cooley Law School
The University of Detroit Mercy School of Law
Michigan State University College of Law*

Real Property Law Advisory Board

William B. Acker	Kemp Klein Law Firm, Troy
Ruben Acosta	Williams Acosta PLLC, Detroit
Maria Lecho Constant	Ann Arbor
M. Charles Etter	M. Charles Etter Attorney PC, Kalamazoo
Kary C. Frank	Kary C Frank Law Offices, Rockford
Patrick A. Karbowski	Butzel Long, Bloomfield Hills
Mark P. Krysinski	Jaffe Raitt Heuer & Weiss PC, Southfield
Willard G. Moseng	Michigan State Housing Development Authority, Lansing
Gregg A. Nathanson	Couzens Lansky Fealk Ellis Roeder & Lazar PC, Farmington Hills
Gregory K. Need	Adkison Need & Allen PLLC, Bloomfield Hills
David E. Nykanen	Demorest Law Firm PLLC, Royal Oak
Ronald E. Reynolds	Berry Reynolds & Rogowski PC, Farmington Hills
Lawrence Shoffner	Lawrence Shoffner Esq., Detroit
Sandra L. Sorini-Elser	Bodman PLC, Ann Arbor
Ronald P. Strote	May Simpson & Strote PC, Bloomfield Hills

Homeward Bound 2010-2011: Leasing Fundamentals

Thursday, May 05, 2011

The Inn at St. John's, Plymouth

Faculty List

Jonathan W. Anderson

Speaker

Varnum LLP

333 Bridge St NW

Grand Rapids, MI 49501

(616) 336-6709

Fax: (616) 336-7000

jwanderson@varnumlaw.com

Thomas A. Kabel

Speaker

Butzel Long

41000 Woodward Ave Stoneridge West

Bloomfield Hills, MI 48304

(248) 258-2602

Fax: (248) 258-1439

kabel@butzel.com

Emily A. Minns

Speaker

Emily A. Minns PLC

1707 Stanley Blvd

Birmingham, MI 48009

(248) 792-6440

eminns@eminnsllaw.com

Lawrence Shoffner

Moderator

Lawrence Shoffner Esq.

535 Griswold St Ste 1550

Detroit, MI 48226-3601

(313) 806-0076

Fax: (313) 887-6432

law@lawrenceshoffner.com

4/22/2011

Faculty Biographies

Homeward Bound 2010-2011: Leasing Fundamentals



Jonathan W. Anderson

Varnum LLP

Grand Rapids, Michigan

Jonathan W. Anderson focuses his practice on real estate transactions and chairs the firm's Real Estate Practice Group. He has extensive experience dealing with commercial, office, retail, and industrial property owners, developers, investors, and brokers, representing them in transactions involving development, leasing, purchases and sales, financings, exchanges, real estate investments, and business and residential condominium developments. Mr. Anderson is active in the International Council of Shopping Centers, the Building Owners and Managers Association, the Commercial Alliance of Realtors, and the Special Committee on Commercial Leasing of the State Bar of Michigan's Real Property Law Section. A fellow in the Michigan State Bar Foundation, he has been included in "Michigan Super Lawyers" since 2006 and "The Best Lawyers in America" since 2007. Mr. Anderson is, and has been, active in community organizations, including Legal Aid of Western Michigan, Dwelling Place of Grand Rapids, and Habitat for Humanity. He graduated from the University of Notre Dame Law School in 1982, where he served as an editor on the Law Review.



Thomas A. Kabel

Butzel Long

Bloomfield Hills, Michigan

Thomas A. Kabel concentrates his practice in the area of commercial real estate, leasing, and real estate-related finance. He is a member of the International Council of Shopping Centers (ICSC) and of the Real Property, Trust, and Estate Law Section of the American Bar Association. An active member of the State Bar of Michigan's Real Property Law Section (RPLS), Mr. Kabel is currently cochairperson of its special committee on commercial leasing and an active member of the pro bono committee. He was a panelist on the 2007 seminar on complex commercial leasing issues jointly presented by RPLS and ICSC and led a round-table discussion at the 2009 Michigan Continuing Education Program for Real Estate Professionals. Mr. Kabel has also authored an article published in "Michigan Real Property Review." He was an integral part of the teams representing the developers renovating the Book Cadillac Hotel in Detroit and the Jeffries Housing project through the use of federal HOPE VI loans. Mr. Kabel has also been certified by the National Association of Development Companies to close Small Business Administration loans under the SBA 504 Loan Program.



Emily A. Minns

Emily A. Minns PLC

Birmingham, Michigan

For over two decades, Emily A. Minns has practiced in all areas of real estate law, specializing in shopping center leasing and other retail property matters. Since 2007, she has been cochairperson of the Special Committee on Commercial Leasing of the State Bar of Michigan's Real Property Law Section. She is also a member of the International Council of Shopping Centers (ICSC) and its Michigan Government Relations Committee. A regular speaker at the annual ICSC Law Conference, she has served for several years on the program planning committee for the ICSC continuing education program for Michigan real estate professionals. A graduate of Wayne State University Law School, she is a member of the board of CARE House of Oakland County, a child advocacy agency.



Lawrence Shoffner

Lawrence Shoffner Esq.

Detroit, Michigan

Lawrence Shoffner practices in the areas of commercial leasing and real estate-related litigation. He is a past chairperson of the Real Property Law Section of the State Bar of Michigan (SBM); a member of the section's council since 2000; a past chairperson of the section's Special Committee on Commercial Leasing; and a current member of SBM's Publications and Website Advisory Committee. Mr. Shoffner is coauthor of ICLE's "Michigan Lease Drafting and Landlord-Tenant Law" and the author of numerous articles on commercial leasing and real estate-related litigation for "Michigan Real Property Review" and "Michigan Bar Journal." A frequent speaker for ICLE and other organizations, including the American Bar Association and the International Council of Shopping Centers, he is a member of ICLE's Executive Committee and Real Property Law Advisory Board and a long-time contributor to ICLE's online Formbank.

Leasing Fundamentals

by

Jonathan W. Anderson
Varnum LLP
Grand Rapids

Thomas A. Kabel
Butzel Long
Bloomfield Hills

Emily A. Minns
Emily A. Minns PLC
Birmingham

Lawrence Shoffner
Lawrence Shoffner Esq.
Detroit

Leasing Fundamentals

Jonathan W. Anderson
Varnum LLP
Grand Rapids

Thomas A. Kabel
Butzel Long
Bloomfield Hills

Emily A. Minns
Emily A. Minns PLC
Birmingham

Lawrence Shoffner
Lawrence Shoffner Esq.
Detroit

I. Leasing Fundamentals: Analysis & Discussion.	1-1
Exhibits	
Exhibit A Gross Lease, Single-Tenant Building.	1-39
Exhibit B Net Lease, Single-Tenant Building.	1-53
Exhibit C Expense Escalation Lease, Multitenant Building.	1-69
Exhibit D Percentage Rent Lease, Multitenant Building	1-87
Exhibit E Alternative Clauses.	1-107
Exhibit F Leasing Fundamentals Checklist	1-135

I. Leasing Fundamentals: Analysis & Discussion

A. Basic Elements of a Lease (Emily A. Minns)

1. Parties

A lease conveys an interest in real property. Unlike a simple deed of conveyance, the lease contains a body of obligations and rights that continue to bind, and inure to the benefit of, each party throughout the course of the tenancy. These rights and obligations give what is otherwise a transfer of real property the character of a contract. The lease requires the agreement of two parties. The parties are typically the landlord (or lessor), who is the owner of the real estate and the tenant (or lessee), who is the party taking and holding the leasehold interest for the term and, in exchange, paying the rent and performing other specified obligations.

a. History of Landlord/Tenant Relationship

The landlord-tenant relationship developed during the Middle Ages. At that time, feudalism formed the basis of the political and social systems of Western Europe. The seminal concept of feudalism was that all land was owned by the king. In exchange for a debt of service, the king would allow portions of his land to be used by various individuals selected by him for defined periods of time, with the land reverting to the king (or his heirs) at the end of that period. Each of those individuals was free, during his term on that land, to convey portions of his parcel to others, for the same sort of consideration. Sometimes the duty owed was military service; other times, it might be the cultivation of the land for crops. The superior land holder was referred to as the “lord” (eventually, “landlord”). The interest conveyed was called a “tenement”, from the Latin verb, *tenere*, meaning “to hold” (as the interest was to be distinguished from the concept of ownership), and, from that same Latin verb is derived the word “tenant”.

b. Authority

The issues that often arise around the question of parties to the lease are not unlike those arising in any contract situation. One of the primary goals, in general, is to make sure the contract is enforceable against the parties in accordance with its terms. When the parties are other than individuals (e.g., trusts, partnerships, limited liability companies or corporations), a fundamental question is whether the individual acting (and executing) on behalf of that party has the legal authority to bind the party to the terms of the lease. This is often addressed in a lease through a statement or representation by the party that the individual executing the agreement has been duly authorized to execute the lease, and that the individual’s execution will effectively bind the party to perform in accordance with the terms of the lease.

c. Statute of Frauds and Execution

The effect of the statute of frauds and other related statutes must be also considered. Applicable Michigan law requires a lease for a term in excess of a year be in writing and signed by the party granting the interest, the landlord. If the landlord seeks to charge the tenant with performance, the lease must also be signed by the tenant. However, if the tenant wishes to enforce the lease against the landlord, it need only produce a lease that is signed by the landlord. The tenant’s signature, for this purpose, is not required.

d. Marital Status

If an individual is a party, the other party should be aware of the individual’s marital status and the possible ramifications that marital status may have with respect to the lease. Should the spouse, if any, should join in the execution. If the landlord is married, is the property jointly held? What about the dower rights of the landlord’s wife? Is the execution of a lease by a married landlord, without his wife’s execution, an effective conveyance? If the tenant is married, should the landlord require the spouse to sign, so that jointly held assets can be reached in the event of a default by the tenant?

e. Title to the Premises

In addition to issues of authority and effective execution, to effectively convey the leasehold interest, the landlord must own an interest in the property that is sufficient to allow the grant. Without valid title, the conveyance fails and the tenant will be a trespasser. One of the covenants made by the landlord in granting a leasehold interest is the covenant of quiet enjoyment. Under this covenant, the landlord promises that the landlord

will defend the tenant's right to quiet enjoyment of the premises, conditioned on the tenant's performance of all of its obligations under the lease, including the payment of rent. The defense by the landlord may be limited to actions asserted by those claiming by or through the landlord or it may extend to the act of any third party that might interfere with the tenant's quiet enjoyment. But the covenant of quiet enjoyment protects the tenant's right to possession, and not the tenant's title to the leasehold interest. So it is only a partial fix to the problem and if the landlord does not have title, the covenant of quiet enjoyment is a hollow promise. Often in a lease of commercial property, the landlord will represent and warrant that it owns fee title to the premises, or that it owns whatever title is required to enable it to effectively grant the tenant the leasehold. A title search can help address the question, as can title insurance.

f. Transfer by a Party

In addition to these issues, questions concerning the parties arise in other areas of the lease agreement. As one example, the lease will often provide that, during the term, each party has certain more or less limited rights to transfer all or a portion of its interest in the premises and/or in the lease. If such a transfer occurs, the question is who is party to the lease after the transfer? Who does the tenant look to for performance by the landlord under the lease if the original landlord sells the property? If the tenant transfers its interest in the premises, is the original tenant released from the lease? The transferring landlord is typically released once it sells the property, and the new owner becomes the landlord, assuming the obligations of the landlord under the lease. Whether the tenant is released, with its transferee assuming the tenant's obligations, varies from case to case, usually having been the subject of intense negotiation between the parties. The issue of release after a transfer, and how the parties are often treated differently in this regard, is a good illustration of the dual nature of a lease as both real estate conveyance and contract. Our discussion of assignment, sublease and other transfers, including involuntary transfers such as during bankruptcy or foreclosure, will explore in greater depth the issue of alienation and how it affects the concept of "parties".

2. Term

One of the defining characteristics of a leasehold interest is its lifespan. It doesn't matter whether the actual duration of the term is known at the time of the grant, or whether its end date is to be determined upon the occurrence of a future event. The key is that there must be a term, the length of which is either defined or capable of being defined.

a. Commencement

The lease term may commence on a date certain, or as of the execution of the lease by both parties, or when possession of the premises is delivered, or a stated period of time after signing, possession or any other event described in the lease. Unless the lease commences with execution by the parties or on some other date certain, the lease must provide that if, for any reason, the term has not commenced within a certain period of time after execution, or by a date certain, either party has the right to terminate the lease, or else it terminates automatically. This prevents the grant from sitting, unvested, for an indeterminate period of time. If there is no commencement, then there will be no expiration and the interest would remain in suspension, clouding the landlord's title and of no value to the tenant. Often, the date of commencement will be extended by force majeure (particularly when the construction to the premises is required prior to turnover), or the lease is signed prior to the landlord closing on its purchase of the property, and is made contingent on that

closing or on the landlord recapturing the premises from an existing occupant, or closing financing. The term cannot be forever contingent, or delayed due to force majeure. At some point, the lease must terminate, regardless of the reason the term has not commenced. How the risk of contingencies is allocated is often the subject of intense negotiation between the parties.

b. Duration

The duration of the term may be defined as a specific period of time or it might be described by stating its commencement date and expiration date. It may end on a date certain, or on the occurrence of a future event, or it may renew automatically until terminated by the act of the parties (or either one of them) or another event. When expressed as a specified period of time, it may be described as a period of months or years or, under certain circumstances, as “lease years”. The lease year concept is used to make the years of the lease (at which point adjustments in rent and other economics occur) coincide with other relevant periods of twelve months. For administrative convenience, a landlord of a multi-tenant property may want the rents under all leases adjusting on the same day, or may want the terms of all leases ending on the same day of the year. In a retail setting, it often makes sense to time things based around the holiday sales season, so it is typical in this situation to see a lease year timed to begin on February 1 and end on the next following January 31.

c. Expiration

The expiration date may be stated as a specified period of time after the occurrence of the commencement date or may be a date certain. Expiration is usually effected automatically without the need for any notice or additional agreement, unless otherwise required under local law.

d. Early Termination

The term may end when it expires, or it may be terminated prior to the intended expiration date for various reasons. The end of the term may be conditional on the occurrence of an event, such as the death of a party or the commencement of a new lease term in another location. In a retail lease situation where the tenant’s sales levels matter, sometimes one or both parties will have the right to terminate if a minimum amount of sales is not being generated. Sometime, the parties will have rights to terminate the lease due to casualty or condemnation of the premises. Other times, where a retail tenant has no obligation to operate for business, the consideration for the absence of this type of obligation might be to allow the landlord the right to recapture the premises and end the term, if the tenant, in fact, closes down its operation. The termination of any interest that is superior to that of the tenant’s lease may cause the termination of the lease. As an example, if the landlord’s interest is subject to a mortgage, a foreclosure of that mortgage may well end the term of any lease that is subordinate to the mortgage. A variety of events, specifically provided for or otherwise anticipated, might give rise to early termination rights.

e. Holding Over

Sometimes, for many reasons, a tenant fails to vacate the premises at the end of the term. This may happen with or without the landlord’s consent. If it is without the landlord’s consent, the landlord has the option of going to court to evict the tenant. But, often, a landlord would just as soon allow a tenant, who is willing to continue to pay rent, to remain in the space while a new tenant is located. Because this is a common occurrence,

the lease will often address the so-called “holdover” period. A typical provision will set a rental rate for that period that is somewhat higher than the last effective rate of rent (usually 1 1/2 or two times higher) and will identify the holdover tenancy as month-to-month, terminable by either party on 30 days’ notice to the other. In addition, an indemnity might be included, providing that the tenant will make the landlord whole against any losses suffered by the landlord due to the holding over. This is intended to cover the situation where the landlord may lose a new tenant because of the holdover. Tenants often argue that the incremental increase in holdover rent is meant as compensation to the landlord for that type of loss, but the landlord’s view is that the incremental increase is a reflection of what may well be increased market rent rates in effect at the time and the loss to the landlord of a new lease is a much greater loss that holdover rent could never cover.

f. Rule Against Perpetuities Issues

The Rule Against Perpetuities, as it applies to a lease, requires that the interest granted under the lease vest within a certain period of time after execution of the grant. The consideration is critical in the area of term commencement and, to a certain extent, when it comes time to exercise options to extend the term. The effect of the rule against perpetuities on options to extend will be addressed in the discussion on renewal options.

g. Survival of Obligations

Often, there are obligations in the lease of either party that, by their nature, may not be able to be performed during the term of the lease. An agreement to indemnify may extend to claims that arise out of a loss occurring during the term, but the claim itself may not be brought until after term expiration. If there is an overpayment of rent by the tenant, the tenant will want to make sure that the landlord refunds the overpayment. But, sometimes, the overpayment isn’t discovered until the term is over and accounts are being reconciled. Therefore, it is important to take note of the potential for these types of obligations to crop up post-expiration and expressly state that they survive expiration. In addition, if the lease is terminated prior to the stated expiration, it is important to state that such termination is to have the same effect on the parties and their respective obligations and liabilities as if the lease term had expired in its normal course. That way, the survival of those obligations, which are said to survive expiration, will remain intact even if the end of the term is effected by way of termination instead of expiration.

3. Premises

a. Description

The heart of the lease is the premises. It is critical to define and describe the premises with as much detail and specificity as possible. The degree to which this is possible often depends on the timing of the lease vis-à-vis the timing of the completion of construction of the premises. Where the premises are, at the time, in actual physical existence, the ease with which the premises can be properly described is greatly enhanced. Where the premises are under construction, or still on the drawing board, the description will have to allow for some evolution. Although the specifications for premises to be built can, themselves, be precise, field conditions affecting the finished product often account for variations from such specifications. So it is important in this situation to incorporate as much flexibility in the description as possible, without the lease failing due to vagueness in the description of this critical element.

Premises are often identified in a lease using a depiction, to be attached to the lease as an exhibit, of the outline of the premises or cross-hatching the location of the premises on a site plan of the larger development. While this is easy and convenient way to describe the premises, care should be taken by the landlord using this method of illustration. It has, at times, been argued by tenants (with varying degrees of success) that such depictions should be deemed to be the landlord's representation and warranty as to all matters shown thereon. So the greater the amount of detail on the exhibit, the more trouble this can cause for the landlord. While less risky in an residential or office situation, with a lease of shopping center premises, where the success of a tenant often depends on the presence of specific co-tenants, any identification of a co-tenant displayed on a site plan attached to the lease, even if the particular site plan was originally prepared for purposes of marketing shopping center space to prospective tenants (i.e., the drawing was simply conceptual and not meant to indicate that leases had been signed with any particular tenant shown on the plan) may be interpreted as the landlord's guaranty that the co-tenant will always be an occupant of the center in that very location. Should that co-tenant not be an occupant, or relocate its premises in the shopping center, the tenant may argue that the premises are no longer what the landlord guaranteed they would be. When using depictions in this way, the landlord should include on the exhibit appropriate language disclaiming that the exhibit can be used for anything other than to show an approximate location of the premises.

If the premises are located in a single-tenant building, the street address may suffice as a description. When dealing with a lease of space in a multi-tenant residential or office property, a unit number can be used along with the street address. In a lease of multi-tenant commercial property, whether office, retail or industrial, not only might a unit number be used, but the size of the premises, described as the number of square feet (more or less) in the premises, is nearly always included in the description. Size is important as rent is often expressed in terms of an amount per square foot, but for a lease of yet-to-be-constructed property, a common provision allows re-measurement and confirmation of the size of the space, once construction is complete.

In many leases, as with any instrument of transfer of an interest in real estate, a legal description may be the "gold standard". But unless the premises have their own legal description (which is rare in where a building is occupied by multiple tenants), this is far less useful or common. There are exceptions, however, if the tenant is obtaining title insurance for its leasehold or wishes to record a notice of its interest; in cases such as those, the legal description of the larger building or development will usually suffice and a separate legal description is not necessary for those purposes. Because a legal description will enable a tenant to record the lease as an interest against the property, the landlord may refuse to include such a description or, if it is included, prohibit recording of the lease. As a compromise, the landlord may agree to allow the tenant to record a memorandum of the leasehold interest, which will contain only the most basic information about the interest (e.g., the parties, the length of term, any options to extend, the commencement date, the expiration date, etc.). The landlord may, at the same time, require the tenant to execute an instrument discharging the interest of record, which the landlord will agree to hold in escrow, to be recorded once the leasehold interest has expired.

b. Measurement

How premises space is measured can vary depending on type of real estate and method of measurement used. Typically, leasable area is measured from the face of any

exterior wall and from the center line of any common wall. Sometimes, the tenant will pay rent for area that isn't actually included within the four walls of the premises. Sometimes the square footage taken up by columns and other building elements that run through the premises is excluded from the measurement. It is customary in an office situation to differentiate between rentable and usable space: rentable space, which is the number of square feet on which the rent is calculated, is typically greater than what is actually contained in the premises, as it may incorporate a portion of the common area of the office building determined by the landlord to be allocable to that particular premises.

In a multi-tenant retail setting, frontage is often a critical measurement of the premises. In the 1980's, when the design of regional shopping centers as we know it today was evolving, landlords commonly would construct individual tenant spaces in long, bowling alley-like configurations, with the minimum amount of frontage. This type of arrangement maximizes the landlord's investment in the building. The tenant's interest, however, is in having as much public exposure and frontage on the common areas as possible. The configuration most highly prized by such a tenant is a wide, but shallow space, giving the tenant the most bang for its rental buck. The issue of configuration is less important in an office setting.

c. Easements, Appurtenances and Ancillary Areas

Often, what is demised to the tenant under a given lease is more than just the space within the four walls that we've defined or described above. The grant under the lease should be accompanied by a grant of easements for use of the common areas, parking fields, utilities installations, etc. The customary language is usually something like "...together with any and all rights, benefits, privileges and easements, now or hereafter appurtenant thereto, arising out of any public or private grant or authority, including, without limitation, the non-exclusive right and easement to use the common areas in common with other tenants and occupants of the development, as more particularly provided herein..." Without language to this effect, either in the granting clause of the lease or elsewhere in the lease, that the tenant has a right to use the common areas that is any greater than that of any other person entering the property is questionable.

The right of the tenant to use, on an exclusive (as opposed to common) basis, other areas of the development or building might also be included in the lease, though these areas are typically not a part of the premises. Usually, the landlord allows the tenant a license to use these ancillary areas, such as storage space for a tenant whose actual premises is not large enough to allow for on-site storage, or a patio seating area for a restaurant tenant. The lease will provide that the tenant's rights and obligations, with the exception of rent, will extend to its use of such ancillary areas.

4. Options to Extend

An option to extend the term of a lease is a right granted to the tenant to renew the term for what is a specified period of time at a rent which is either determined at the time of the grant or to be determined at the time of exercise by applying a stated formula or guideline. A tenant can be granted any number of options to extend the term, depending on the negotiation of the business deal. The rent for the initial term should reflect the fact that the option conditionally ties up the property until such time as it is waived or exercised. The landlord's goal is an uninterrupted rental stream but, by granting an option right, the landlord diminishes its ability to market the space until the option is waived. On

the other hand, if all goes well and the tenant exercises the option, the landlord will have the space leased for the option term, without having to have stopped to negotiate a new lease with a new tenant. As long as the option rent is an amount that is favorable to the landlord, the ease and convenience of avoiding marketing and negotiating might ultimately offset the cost to the landlord of granting the option in the first place.

a. Option Rent

Setting an option rent can be tricky, as this rent is not intended to be effective until a future date. The market can change, and each party takes a risk that the agreed upon option rent will not reflect actual future market conditions. This can work for or against either party. But, courts are in agreement that the rental rate must be set, or a specific mechanism to determine the rental rate must be included in the option, if the option is to be enforceable. An agreement to agree in the future, at the time of exercise, is generally not enforceable. If the parties elect to set a specific rent for the option period at the time of the grant, it is often by simply adjusting the rate of rent last in effect during the initial term by a set percentage that, it is hoped, reflects market value of the premises at the time the option term begins. In lieu of setting a specific percentage, the parties may agree to use the change in an appropriate Consumer Price Index, from the time the rent was last set under the initial (or current) term until the time the option is exercised, as an indicator of where market rent should be set. As a third alternative, the parties might agree that the rent for the option term will be set at a “fair market” rate, whatever that might be at the time the option begins. Determining what fair market rent can be tricky. Depending on the strength of the bargaining position of each party, it may be left in the landlord’s discretion to name the fair market rent at the time of exercise or an appraisal process may be used. Each party will select a real estate broker or other consultant to set a market rent, based on comparable nearby properties and, if the consultants cannot agree on a figure, they will be charged with the responsibility to select a third consultant as an arbiter. Provisions that tie option rent to what is market rent at the time are frequent causes of litigation, when the parties are unable to reach agreement.

b. Option Exercise

The typical option provision requires the tenant to provide the landlord with written notice at no later than six months prior to the expiration of the initial (or then current) term of the lease. The landlord must make sure that the lease language clearly states the option is deemed to be waived and the right extinguished if it is not exercised by the deadline, so that there is no question about the right to extend remaining effective indefinitely. The landlord’s goal is to clear title of this interest, one way or another (i.e., either by having it exercised or having it waived). If the option rent is a “to be determined at the time” market rent amount, the tenant will want the right to revoke any exercise of option, pending the outcome of a market rent determination.

Often, a larger tenant will require that the landlord provide the tenant with a notice reminding the tenant that it will lose the right to extend unless it exercises such right within the next number of days or months, so that inadvertent forfeiture does not occur. Provisions addressing this issue must also state that the initial (or then current) term will continue, uninterrupted, until such time as the notice is given and the specified number of days has elapsed. If the term is allowed to expire, but the option is said to remain, unforfeited, until the reminder notice and its applicable notice period elapses, the rule against perpetuities may be violated (depending on how far in advance the option was originally

granted). If the option remains “connected” to an effective term, there is no perpetuities problem. But if the lease allows the initial (or current) term to expire, the option, then, is no longer “connected” to a vested term and courts have found this arrangement to violate the rule.

If a reminder notice is a requirement of the tenant, the landlord may, for convenience, want to reserve the right to provide such notice as early in the term as possible, so there is little possibility of extending the initial term beyond its expiration date to allow for the notice period to run. However, tenants requiring a reminder notice often respond to this desire by saying that the landlord’s notice can’t be sent any earlier than a specific date, usually one that is after the date by which the option is to be exercised, in order to maintain the actual reminder effect of the notice.

c. Option Conditions

Typically, effective exercise of the option is conditioned on the absence of any default by the tenant, both at the time of exercise and at the time the option term is to begin. In addition, if a landlord has a strong bargaining position, the landlord may reserve the right to nullify the exercise if the tenant has filed for bankruptcy within a certain period of time before the exercise. In a retail setting, where a tenant’s sales performance is meaningful to the landlord, the tenant’s reaching a minimum sales level during the year prior to the exercise might be required. Sometimes an option is made personal to the original tenant and, once the lease is assigned, the option is rendered ineffective.

5. Rent

The rent is any consideration that is given in exchange for the leasehold interest, and is intended to reflect what is loosely defined as the value of the real estate. The traditional idea of rent is that it is payment by the tenant for the right to occupy the leased premises. But the modern reality is that it often includes more than just that simple monthly charge. The diversity of property types in the commercial market has resulted in a diversity among types of leases, based on types of rental schemes typical to each category of property. Once the base rent for a commercial property is set during pre-lease negotiating, the real negotiating drama results from the parties’ attempts to allocate responsibility between each other for the expenses incurred by the landlord to operate the property and pay the taxes and to agree on which of the many expenses will be considered as proper operating costs and taxes, includable as part of the tenant’s financial obligation under the lease.

a. Base Rent

Typically, the parties negotiate a base rent to be paid during the lease term, at an amount which remains constant throughout the term or is subject to adjustment at periodic intervals. The rent steps may be set forth in the lease or an adjustment factor, such as a percentage, will be included, which will be described as being effective annually, or more or less frequently than that. Sometimes the Consumer Price Index is used to determine appropriate increases during the term, in an effort by the parties to keep in step with inflation. In a retail setting, where the tenant may also pay to the landlord a percentage of its sales in the form of “percentage rent”, the amount of percentage rent payable by a tenant in one year may be added to the base rent to determine rent for the following year. The addition of the percentage rent to the base rent is seen as a way of adjusting the base rent so that it more closely reflects the revenue-generating value of that particular real estate.

b. Percentage Rent

As mentioned above, in a retail setting, the landlord may share in the upside of a tenant's business. This is particularly true with shopping center properties where the landlord has made a significant investment in creating and promoting the development as a destination for the public to visit for shopping, dining and entertainment. Typically, the base rent will be set at a market rate (which may vary depending on what type of retail business is to be operated in the premises). Once that is determined, the parties will agree that a certain percentage of all sales made from the premises each year in excess of a negotiated dollar figure will be paid over to the landlord in the form of percentage rent. There are often other provisions, related to the concept of percentage rent, which are included in a percentage rent lease, and intended to maximize for the landlord the possibility that the tenant will reach a percentage rent situation. Such a lease may include a covenant by the tenant that it will continuously operate throughout the term of the lease and may also include a "radius" provision. A radius provision is an agreement whereby a tenant agrees with the landlord not to open another similar store within a certain radius from the landlord's property. This agreement is meant to ensure that all possible sales of the tenant's within that radius are directed toward the tenant's store at the landlord's shopping center. The lease will also include a detailed definition of what constitutes "sales", for purposes of determining when the breakpoint is reached, obligations for the tenant to report sales on a monthly and annual basis, and may include rights for the landlord to audit the tenant's sales records.

c. Gross Rent v Net Rent

The base rent under a lease can be classified as a "gross rent" or as a "net rent", depending on what the rent is meant to cover. Whether there is percentage rent due under a given lease does not effect this classification. Under a gross lease, the rental payment a tenant makes each month is intended to cover all operating expenses, utilities costs, insurance premiums and taxes. The payment is specific and does not vary from month to month based on fluctuations in the landlord's operating costs. Under a net lease, the base rent is to be paid to the landlord "net" of all or a negotiated portion of all other costs of operating the property, and the tenant is to take on, to a greater or lesser degree, responsibility for the payment of the operating costs and taxes on the property.

i. Gross Rent

Under a gross lease, the risks of rising operating costs are the landlord's to bear. The tenant pays the landlord only the negotiated rent amount. A gross rent might be flat for the term, but more often than not, is subject to periodic adjustment by negotiated increases (e.g., 3% per year, or 5% every five years) or by changes in the Consumer Price Index, but the tenant pays the landlord only the gross rent and nothing in addition. Leases with gross rent are typically used for residential properties.

ii. Net Rent

Net leases allocate the costs of operating the property (sometimes referred to as the "net charges") between the landlord and tenant. A single net lease is a net lease where the tenant agrees to pay a monthly base rent as well as the property taxes, with the landlord remaining responsible for all other operating expenses of the premises. A double net lease is a net lease where the tenant agrees to pay a monthly base rent as well as the property taxes and the property insurance and, again, the landlord remains responsible for all other

operating expenses of the premises. A triple net lease is a net lease where the tenant pays base rent as well as all other costs and expenses of running the property.

iii. Expense Stop or Base Year

There are many variations on the net lease theme. Under some leases, the tenant's liability for operating costs and taxes may be determined by using an "expense stop". With this method, the tenant pays only the increases in such charges beyond either a set amount or beyond whatever their levels might have been during a certain "base year". The base year is usually the first year of the term of the lease and, in the second year, the tenant will begin paying the landlord any amount of such costs and taxes that exceeds the amount thereof incurred by the landlord in the first year.

iv. Proportionate Share and Gross-Up

In a single-tenant property, the tenant takes on 100% of whatever categories of net charges are determined to be passed on from the landlord. If the tenant occupies a multi-tenant property, the net charges to be passed through to the tenants are allocated to each on a "proportionate share" basis. In a retail setting, there are variations as to how the proportionate share is determined. In some cases, the share will be determined straight pro-rata, i.e., it will be a fraction of the total amount of the net charges to be passed through, the numerator of such fraction being the size of the leased premises and the denominator of which will be the leasable area of the building. In other cases, where the landlord leads in relative bargaining position, it may be determined based on occupancy of the building. That is, the fraction will use as its denominator the leasable floor area of the building which is, at the time, occupied by tenants who are also paying net charges. The closer that the numerator and denominator of this fraction come to one another, the greater the share of the net charges the tenant will pay. Therefore, it is in the tenant's interest to negotiate a denominator that is as large as possible, and that minimizes the relevance of occupancy, and it is in the landlord's interest to shift the risk of vacancy on to the tenant, so that the landlord collects its base rent net of any other expenses that might be incurred in operating the property. Sometimes, the parties will compromise on the occupancy issue by artificially setting a minimum level of occupancy, so that for purposes of calculating the tenant's proportionate share of expenses, occupancy will be deemed to be never less than X% of the total leasable floor area of the building, regardless of actual occupancy. Where this number is set varies based on actual occupancy, projected occupancy and the relative bargaining positions of the parties.

Under an office lease, the risk of vacancy is addressed not by modifying the fraction used to determine the tenant's proportionate share, but by use of a "gross-up" provision. At any time that the building is less than fully occupied, the fraction used to determine the tenant's share stays the same, but the landlord has the right to overstate certain of these expenses as if the building was completely or near completely leased and occupied. The expenses that are affected by a gross-up provision are those that are, in reality, affected by occupancy, such as, utilities, trash removal and janitorial services. There are certain building expenses that do not vary, such as taxes and insurance, and these should not be subject to gross-up. This arrangement clearly benefits the landlord, but it can also work to a tenant's favor in one limited situation. If low occupancy is an issue during the first year of the lease term, when base year costs are being determined, without a gross-up provision, the base year amounts will be low, resulting in the tenant bearing responsibility for what will likely be a greater increase once occupancy has filled in and stabilized.

d. Expenses: What's Included?

In addition to base rent, under a net lease, the tenant takes on a share of the costs incurred by the landlord to operate the property of which the premises form a part. While there are guidelines to what is included established by custom, the specifics are often subject to intense negotiation. The large categories of these expenses is usually real estate taxes, common area maintenance and repair costs (often referred to as "CAM"), utilities and insurance premiums. But within each category, the landlord's and tenant's interests collide. To allow it to freely pass on to the tenant all costs, the landlord will want to use the most comprehensive definition of each in its drafting of the lease, as the tenant attempts to narrow each definition as much as possible. It might seem that an agreement requiring the tenant to pay the real estate taxes on the premises is straightforward, but questions arise as to whether real estate taxes paid by the tenant should include interest and penalties that arise from the landlord's failure to pay, or should cover road improvement assessments (typically seen by tenants as more akin to a capital expense and not a cost of day-to-day operation). And what happens when a real estate tax is reduced and the reduced portion replaced by legislative enactment of a new tax measured by the landlord's gross receipts (as has happened in Michigan)? Should the replacement tax be the tenant's obligation, even if it isn't, per se, a real estate tax? Is the cost of replacing the building's air conditioning system a tenant expense or should the tenant's liability be limited to routine maintenance and repair of the system? And the negotiation is not limited to how to allocate any of these items between the landlord and the tenant. If only one tenant of the building operates after hours, should resulting additional security costs be shared by all tenants as a common expense? If one tenant is a larger user of water than others, should the share paid by each tenant still be determined based on relative floor area or should such disproportionate use be factored into the calculation? To get away from haggling over these questions, yet another variation on the traditional net lease is becoming increasingly popular. Rather than having CAM passed through to tenants at rates undetermined until such time as the bill comes each year, at the same time as the base rent, term and other fundamental elements of the deal are being negotiated before the deal goes to lease, CAM amounts are being fixed (or capped), with fixed (or capped) periodic increases. The fixed (or capped) CAM amount is usually easy to determine, based on expenses being incurred at the time of negotiation, adjusted by an inflation factor so that at the commencement of the term, the negotiated CAM approximates what will be incurred that year. The landlord typically bears the risk of occurrence of an unforeseen event that results in a spike in actual maintenance expenses, but even that can be the subject of negotiation. At times, even when CAM is set in this manner, exclusions are made from the set amount for so-called "uncontrollable" expenses, such as snow removal and utilities costs.

e. Audit Rights

When a lease is net and CAM is not fixed, tenants want to see the landlord's books. Tenants are typically unwilling to trust the landlord to bill them fairly for net charges and, unless an audit right is included in the lease as a matter of course, the tenant will work to negotiate such a right. Smaller landlords may find the idea fairly routine and acceptable. Larger landlords usually view the right as intrusive and an administrative headache. Auditing real estate tax records is not necessary because taxes are a matter of public record and the accuracy of any tax bill to the tenant usually can be confirmed without a look into the landlord's books. But CAM can be shrouded in mystery. Although the audit can be costly for a tenant, it may result in a significant reduction in the CAM bill. There

are auditing firms that work on a contingency fee basis, but landlords usually object to the tenant using such firms. In a lease of multi-tenant property, the landlord may also require the tenant's confidentiality as to the results of such audit. This is meant to prevent a stampede of angry tenants, should the first auditing tenant find that expenses were misstated.

6. Use

Depending on the type of property being leased, it is often important to the landlord to control the particular use to which the leased premises may be put by the tenant. Use can be controlled in a lease by language which prescribes a particular use or proscribes a use or uses, or, most commonly, by a combination of prescriptive and proscriptive language.

a. Public Restrictions

At a minimum, most leases will require that a tenant's use of the premises (and the use by any occupant of the premises by virtue of the tenant's interest therein, such as the tenant's sublessee, licensee, contractor, even its invitees) comply with applicable law. This is meant to ensure not only that there is no criminal activity in the premises, but also that zoning ordinances, environmental laws, building codes, health laws and laws governing public access, such as the Americans With Disabilities Act, are observed. As the owner of the property, the landlord is ultimately responsible for the property's legal compliance, notwithstanding that possession of the property may have been turned over to a tenant. So the landlord must see to it that the responsibility for compliance is carried out by its tenant (and those in the premises under the tenant) and, further, that the tenant indemnify the landlord against any claim raised by a third party resulting from the tenant's failure to follow the law.

b. Private Restrictions

The landlord will also want to make sure that the tenant complies with any restrictions on the use of the premises that encumber the premises by virtue of agreements between the landlord (or its predecessors in title) and neighboring landowners, such as easements, restrictive covenants, building and use restrictions and other similar underlying agreements. These agreements, often put in place as part of a scheme of development of a larger area which includes the premises, sometimes prohibit the premises (as well as the neighboring properties) from being operated for any one of the uses set forth on a list of noxious uses. Depending on the character of the area being developed, the list may include uses such as the operation of a junkyard, a rendering plant, a flea market, or an adult theater. Of the different types of commercial properties, an industrial property is likely to be the most lightly restricted in this manner; premises located in a retail or office development will probably be the most heavily restricted.

c. Multi-Tenant Property Concerns

The use of premises located within multi-tenant properties will sometimes be restricted so that neighboring tenants are not disturbed by the activities carried out in a particular premises. It is common to see in leases of multi-tenant properties provisions prohibiting the tenant from creating a nuisance for its neighbors, operating in a manner which results in the emission from the premises of loud noises, vibrations or offensive odors. Any one of these activities, if allowed to continue unchecked, may give the neighboring tenant enough ammunition to claim that its quiet enjoyment has been breached.

d. Use Clauses

Leases will often contain provisions prohibiting certain uses and activities and, just as often, a lease will include a provision delineating exactly what the tenant's permitted use of the premises is to be. A provision of this type is commonly referred to as a "use clause". The use clause is an important part of any lease in which it is included. But, of all of the categories of commercial property, its importance is particularly elevated when the lease is for premises in a multi-tenant retail development. In the shopping center situation, balancing the uses is critical to the success of the property. The right balance will maximize the landlord's investment as well as that of each tenant. Unlike an office, warehouse or industrial property, where business usually does not depend on foot traffic, or public exposure, a retail tenant's fortunes are inextricably tied to the retail community in which it operates. A retail development boasting just the right balance of different uses provides variety and convenience and will likely become a destination for customers. More customers means more sales, greater profits for the tenants and the ability of the landlord to demand a higher rent for the property. In addition, if percentage rent is a factor of the overall rent package under the lease, the astute landlord will take care when leasing space not to oversaturate one retail category or another. Oversaturating a retail category will result in the tenants operating in that category cannibalizing each other's sales, which, in turn, will greatly reduce the odds of any tenant reaching a percentage rent situation. Few customers will patronize a multi-tenant retail development where each premises is operated for a use identical or nearly identical with the one next door to it. So the landlord of retail property, sensitive to its market, will tenant its property accordingly. A carefully drafted use clause will allow the landlord to control the use to which each premises is put, and to make sure that the uses complement one another, do not conflict with one another, and do not "bleed" over into one another.

e. Exclusives

The use clause enhances the value of the property to the landlord. From the tenant's perspective, a retail space in a shopping center is more valuable if that tenant can convince the landlord not to lease to any of the tenant's competitors. This restriction of the landlord's ability to allow additional tenants to operate for a particular use is referred to as an "exclusive". Exclusives can be tricky provisions that must be carefully considered and negotiated, and drafted with great precision. Courts will construe the language of an exclusive very narrowly, so ambiguity in drafting benefits neither party. What is covered and what is an exception are critical elements, as are proper remedies for breach and clearly resolving what happens to the exclusive if the tenant ceases operating in the center.

B. Rights and Duties as Between Landlord and Tenant (Jonathan W. Anderson)

1. Delivery of Possession

a. Condition of Premises

The lease should describe the condition the premises will be in at the commencement of the term of the lease. Delivery of the premises in "as is" condition is the simplest to describe. The tenant takes possession of the premises in whatever condition they may be in at the time. Before accepting the premises in "as is" condition, a careful tenant should make arrangements for an inspection of the premises and address any concerns prior to signing a lease.

If work needs to be completed in the premises, the involvement of the landlord can vary from very limited work to very extensive work. The greatest involvement from a landlord is in a “turn key” arrangement under which the landlord completes all improvements necessary for the tenant to commence occupancy, so that the tenant need only “turn the key”, move in the furniture, and begin work. At the other end of the spectrum, in a “shell and allowance” or “vanilla box” arrangement, the landlord provides a basic shell (usually a concrete floor, drywalled interior walls, a ceiling and potentially electrical outlets) and then provides the tenant with an allowance to pay for the completion of the remaining work to be undertaken. There can be substantial variation among landlords and throughout the region as to what constitutes a “shell” or “vanilla box”. Accordingly, careful landlords and tenants will specify precisely what is included in the work to be undertaken.

b. Completing the Leasehold Improvements

The lease should specify whether the tenant or the landlord is responsible for completing the initial leasehold improvements. Although in a turn key arrangement, the landlord will have that responsibility, with a shell and allowance arrangement, the tenant will be responsible for the cost, in excess of any allowance, of completing the improvements. A careful landlord will require that the tenant’s remaining work be completed by the landlord’s contractor (or at least a contractor approved by the landlord), to help preserve the integrity of the landlord’s building.

If the tenant bears some of the economic risk of the cost of the improvements, the tenant should be sure to obtain an estimate of the cost of the work before the work is begun. This is especially important if the landlord insists on the landlord’s contractor (and not necessarily the lowest qualified bidder) completing the work.

c. Security for Cost of Improvements

When a tenant is responsible for the cost of the improvements, the lease should provide that no construction liens may be filed against the property (or if liens are filed, the tenant must discharge or bond over the liens in a timely manner). When the landlord is responsible for the cost of the leasehold improvements, a tenant with substantial bargaining power may insist that a landlord provide security for the cost of the leasehold improvements to be undertaken by the landlord. A major tenant incurs substantial expenses in planning for the new location, and if the landlord is unable to complete the improvements for that new location, the tenant will suffer loss. Security for landlord improvements includes evidence of financing or a letter of credit for the benefit of the tenant.

d. Evidence of Completion of Improvements

Many leases will tie the commencement date to the date of “substantial completion” of certain leasehold improvements. When the landlord has the obligation to complete the improvements before the term commences, a careful tenant will specify what evidence establishes the completion of the improvements. In some municipalities, a certificate of occupancy may be issued by the municipality. In other cases, an architect may certify to the completion of the improvements in accordance with the approved plans and specifications. The landlord will often seek agreement that remaining minor touch up or “punch list” work does not prevent “substantial completion.” Regardless of whether landlord or tenant completes the leasehold improvements, once the improvements are completed and

the term has commenced, the parties should confirm the date of commencement of the term with a supplemental agreement or letter.

2. Operating Expenses, Taxes, and Insurance

a. Building Operating Expenses

There are numerous expenses involved in operating and maintaining a commercial building. When all of these expenses are absorbed by the landlord, with no direct participation in the expenses by the tenant, the lease is called a “gross lease.” The tenant pays gross rent from which landlord pays all building-related expenses. In this arrangement, the landlord assumes the risk of increases in operating expenses, while the tenant is assured of a fixed rent obligation each year.

In most leases, the tenant bears a portion or all of the building expenses. In a “net lease” or “triple net lease”, the tenant bears the economic risk of taxes, insurance, and maintenance (the three “nets”), assuring the landlord a fixed rental stream not reduced by operating expenses. In some leases, the arrangement is a “modified net lease” in which the landlord may be responsible for certain negotiated expenses, such as roof repair and replacement. In a building occupied by a single tenant, the tenant often pays the expenses directly.

b. Expenses in Multi-Tenant Buildings

In a building with multiple tenants, the landlord will often charge tenants for building expenses on a proportionate basis. These expenses typically include expenses of operating, maintaining, and repairing the building and its common areas. Each tenant’s proportionate share is usually based on a ratio of that tenant’s area (in square feet) compared to the total area in square feet of all leasable space within the building. (Some leases provide that the tenant’s proportionate share is based on a fraction in which the numerator is the “leased” area, and not the “leaseable” area, within the building. A careful tenant lawyer should be aware of this clause which passes on the cost of vacant space to existing tenants.) Operating expenses in multi-tenant buildings are typically paid on a monthly basis, based on estimates, with an annual reconciliation between the landlord and the tenant. In office leases these expenses are called “operating expenses,” while in retail leases these expenses are called “common area maintenance charges” or “CAM charges.”

In lease negotiations, tenants seek to negotiate exclusions from the landlord’s list of permitted operating expenses. Typical expenses tenants seek to avoid include management fees (at least fees greater than a certain percentage of rent) and capital expenditures (although landlords will seek to include the amortized portion of some capital items on an annual basis). Tenants may also negotiate a cap or maximum dollar amount on operating expenses during the first year or in future years and a percentage cap on the increase in those expenses in future years. In office leases, operating expenses may be described as expenses in excess of a “base year” (typically the year in which the lease is signed) or in excess of an “expense stop” (such as a certain dollar amount per square foot, representing the current expense for the year in which the lease is signed). A tenant comparing various buildings should be sure to have expenses quoted in the same manner so that apples may be compared with apples.

c. Property Taxes

Real property taxes may be paid directly by the tenant in a single tenant building; by the landlord, with a proportionate reimbursement by tenants in a multi-tenant building; or

with some combination of sharing of tax costs by the landlord and the tenant. The lease should specify whether taxes are prorated during the first and last years of the lease. In addition, a tenant should clarify whether special assessments are included in amounts to be paid by the tenant. Tenants will seek to limit the share of special assessments each year to that portion of the special assessment coming due during the particular year (if the special assessment may be paid in annual installments over a period of years).

Various issues may be negotiated in the tax provisions of a lease. One issue is whether increases in real property taxes resulting from a transfer of the property and uncapping of the taxes should be paid in full by the tenant, or whether the landlord should bear some of that cost. Another issue is what property should be included with the tax bill. For example, vacant undeveloped land adjacent to the building may be included on the tax bill for the building, but the tenant may dispute paying a share of taxes for the vacant land. Some tenants are not willing to pay property taxes monthly based on the landlord's estimate; instead they desire to pay taxes only twice a year after the landlord has provided evidence that the landlord has already paid the taxes for that period. Finally, some tenants may require the right to appeal the property tax assessment. In multi-tenant buildings this can be particularly troublesome for a landlord since the appeal of the assessed value may require disclosing confidential information relating to income and expenses for the entire building.

d. Insurance Expenses

The cost of casualty and liability insurance maintained by the landlord may be included in the operating expenses, discussed above, or may be billed separately to the tenant in multi-tenant buildings. The proportionate share calculation and the issues of caps on insurance expenses or on increases in insurance are similar to the negotiations described above for operating expenses.

3. Maintenance, Repair and Replacement

a. Common Law

Under the common law, a landlord has no duty to maintain or repair premises leased to the tenant. Many leases modify the common law rule. For example, in new construction, a landlord may be required under the lease to provide a one-year warranty against defects in workmanship and materials for the build out of the space completed by the landlord or its contractor.

b. Landlord and Tenant Responsibilities

In defining the respective responsibilities of the tenant and the landlord, it is often appropriate to identify the specific maintenance and repair responsibilities of one party, and then to provide that the other party undertakes all other maintenance and repair responsibilities (other than the specifically enumerated ones). This avoids the ambiguities of an overlap in responsibilities, or more importantly, an omission of responsibilities for maintenance and repair of a particular component.

The landlord's responsibilities under a lease are often limited to repairs to the structural portions of the building, the roof, floor slab, foundation, exterior walls, and utilities up to the connection of the utilities to the leased premises. By contrast, the tenant's responsibilities are often limited to interior non-structural repairs to the premises. This may include doors and windows, and utility systems within the premises.

Repair and maintenance responsibilities often exclude repair necessitated by the acts or omissions of the other party. The obligation to repair and maintain the premises does not automatically include the duty to make *replacements* to components of the premises. In light of this, the drafter should be sure to specify whether maintenance and repair responsibilities include replacement. The issue of replacement can become contested in triple net leases, for example, where the tenant has all maintenance and repair responsibilities. If the roof requires replacement near the end of the term of the lease, a tenant may seek to avoid the replacement obligation, while the landlord may argue that the duty to replace is part of the duty to repair and maintain.

A landlord's duty to maintain and repair the premises is usually conditioned on the tenant notifying the landlord of the need for the repair. In some cases, a tenant will seek the right to make any repairs that the landlord fails to make in a timely manner, with the result that the tenant seeks to offset the cost of the repair against rent. This self-help remedy, and any limits on the dollar amount of permitted offsets, is often a vigorously negotiated issue.

The lease should specify who is responsible for repairs or alterations required by changes in governmental regulations. Although these items may be "grandfathered" until additional work is undertaken, the lease should specify which party bears the risk of unforeseen changes in governmental requirements.

c. Surrender

A sometimes-overlooked section in leases that addresses maintenance and repair obligations is the surrender clause, addressing surrender of the premises at termination of the lease. If the provision does not take exception for reasonable wear and tear, permitted alterations, and casualty damage, the tenant may have greater maintenance and repair responsibilities at the end of the lease than was contemplated.

d. Repair Following Casualty Damage

The lease should address whether the landlord or the tenant has the responsibility to repair the premises following fire or other casualty damage. The section should address the time within which the repairs must be commenced and completed, and whether the duty to repair is limited to the amount of insurance proceeds available to that party.

If the landlord has reconstruction obligations, the lease should specify the extent of a landlord's repair obligations, specifically whether the responsibilities include reconstruction of the leasehold improvements undertaken by the tenant.

e. Related Obligations

In many leases, it can be helpful to specify whether the landlord or the tenant has the responsibility for miscellaneous upkeep obligations, such as the replacement of light bulbs. A landlord will often require that the tenant be responsible for janitorial service to the leased premises, and in some cases, the landlord will specify that the landlord's janitorial service must be used. A tenant may seek to qualify that obligation by limiting use of the landlord's janitorial service to cases where the cost is competitive. Some national office tenants have lengthy specifications for janitorial work to be undertaken by the landlord. Some leases obligate tenants to keep the area around the premises neat, clean and free of rubbish or debris. A careful tenant should avoid taking responsibility for maintenance outside of the perimeter of the leased premises.

4. Alterations

a. Types of Alterations

Under the common law, a tenant has no right to make any alterations or modifications to the leased premises. As a result, each lease should address what rights the tenant has to make alterations or modifications to the physical condition of the leased premises. Some alterations may be merely cosmetic, such as painting the walls, or replacing the carpeting. Other alterations may be more involved but not affecting the structure, such as building a cabinet in a medical office building or building a checkout counter in a retail space. Other alterations may affect the structure of the building or the mechanical systems within a building, such as the installation of a doorway between two rooms or installing windows in an exterior wall. A lease should address each of these categories of alterations and what level of consent may be required by the landlord.

b. Limitations on Alterations

For a tenant, the lease should provide that no landlord consent is required for interior non-structural alterations that do not impact the building systems. A landlord may agree that no consent is required for non-structural alterations if the cost of those alterations in any year does not exceed a threshold amount, although the landlord may require advance notice before the work is undertaken. Many landlords will require approval rights over alterations if their cost exceeds a threshold amount, if the alterations affect the structure of the building or if the alterations affect the exterior of the leased premises. The landlord's approval may be limited to plans and specifications for the alterations or it may extend to the choice of contractor, key subcontractors, or the architect. Some landlords require that the only architect and contractor who may work within the building are the landlord's chosen contractor and architect. To the extent that the landlord's consent is required, the lease could specify that landlord's consent would not be unreasonably withheld or that the landlord may withhold its consent in its sole and absolute discretion.

In addition, the landlord may condition its consent on a variety of other matters, including (i) tenant compliance with laws in connection with undertaking the work, (ii) the tenant providing landlord with "as built" drawings when the work is completed, (iii) the tenant providing appropriate evidence of insurance, (iv) the tenant providing lien waivers when the work is complete, (v) all work being done in a workmanlike manner; (vi) the landlord having the right to inspect the work while it is being undertaken (without being deemed to be warranting its approval of the plans or the work), and (vii) the tenant agreeing to pay any increases in insurance premiums or property taxes resulting from the completion of the alterations.

c. Ownership of Alterations and Removal of Alterations

The landlord will typically require that all alterations to the leased premises become part of the premises upon installation. By contrast, the tenant will require that the alterations remain the property of the tenant during the term of the lease so that the tenant may depreciate the leasehold improvements, even though title to the leasehold improvements may pass to the landlord at the end of the lease term. The landlord may require that the tenant remove any alterations made by the tenant at the end of the term, at the direction of the landlord; the tenant, by contrast, will resist the obligation to remove the alterations at the end of the term or may counter that the tenant will remove those alterations at the end of the term only if the landlord advises tenant of that obligation at the time the landlord consents to the alterations. In the case of alterations made by the tenant in violation of the

lease (without obtaining the landlord's prior written consent), the lease may provide that the landlord has the right to require the tenant to remove those alterations at any time.

d. Fixtures and Trade Fixtures

Any alterations permanently affixed to the real estate become fixtures under the common law. Whenever a tenant has specific fixtures that it installs within the leased premises, the lease should specify how those fixtures will be handled. Ordinary fixtures such as customary office lighting, plumbing fixtures, HVAC units and floor-to-ceiling partitions, are often required to remain with the leased premises. On the other hand, fixtures that are unique to a particular tenant's business (a "trade fixture") should be expressly addressed in the lease. In medical office suites, for example, high intensity lighting in exam rooms, x-ray equipment affixed to the floor or the wall, and similar items may appear to be fixtures, but the tenant typically expects to be able to remove them at the end of the term. A landlord will require that the tenant be responsible for restoring any damage caused by the removal of these trade fixtures.

5. Landlord Access Rights

Under the common law, a landlord has no right of access to the premises leased to the tenant. To accommodate the need for access by the landlord, an access provision should be included in each lease.

a. Landlord Access Rights

A lease should provide the landlord with access to the leased premises when needed for various purposes. The landlord should have the general right to inspect the premises from time to time, to determine whether there are any conditions in the space requiring attention. If the landlord has an affirmative duty to repair and maintain the premises, the lease must reserve access rights for those purposes. If the landlord has the right to make alterations to the premises or to other space within the building, the lease should reserve the right for the landlord to access the Premises for those purposes. For example, the landlord may need to run a utility line or other duct work through a tenant's space in order to provide a service for another tenant in the building, and that right should be reserved. If the landlord is refinancing the building or selling the building, the landlord should have the right to bring others through the premises. Toward the end of the term, the landlord should have the right to show the premises to potential new tenants. If the landlord needs access to the space during emergencies, the lease should clarify that the landlord's access, even if with a master key, does not constitute a constructive eviction of the tenant.

b. Limitations on Landlord Access Rights

From a tenant's perspective, the lease should provide limitations on the landlord's access rights. The landlord should be obligated to provide reasonable written notice in advance of seeking access. The lease should specify how much notice is appropriate, and may provide that in some cases, notice by telephone, and not written notice, could be acceptable. The times during which the access right may be used should also be defined in the lease. The right of access may be limited to "reasonable times" or during "ordinary business hours". The landlord may seek an exception from the notice requirement for access during emergencies, although the tenant may require a clear definition of what constitutes an emergency so that the landlord does not overuse the access right. One definition of an "emergency" relates to an imminent risk of injury to person or damage to property.

The lease should describe the manner in which the landlord may exercise its access rights. For example, the lease may provide that the landlord's access should not unreasonably interfere with the business operations of the tenant. If the landlord desires access to the premises to show the space to prospective tenants, that should be limited to the last several months of the term of the lease, typically after the tenant's right to exercise any renewal option has lapsed.

In some situations, the tenant may have concerns about security during access. In medical offices and pharmacies, for example, a tenant may have privacy concerns under federal law and may require that any access by the landlord be in the presence of a representative of the tenant. The same concern arises with financial institutions, law firms, accounting firms, and other groups that maintain confidential records. Finally in some cases, industrial tenants may have concerns for "industrial espionage" and impose additional limits on access by the landlord or the landlord's agents.

6. Defaults and Remedies

a. Default by Tenant

Every lease must define when a tenant is in default and what the consequences are for the tenant's default. Defaults are often divided between a monetary default, such as the failure to pay rent, and a non-monetary default, which may include many different violations of the lease. As to monetary defaults, a tenant will seek to receive both written notice of the default and a grace period following the notice (or following the receipt of the notice, for the tenant with more bargaining power). The notice period can vary from as short as three or five days to as long as 15 days. Some landlords are unwilling to give written notice that rent is unpaid and will only provide for a grace period following the due date, under the theory that each tenant knows that rent is due on the first day of the month. In some cases, a landlord may be willing to give no more than a stated number of default notices (such as no more than two notices in a 12-month period, or three notices during a five-year term); following the maximum number of required notices, however, the landlord is not required to give any further notice. This can be an appropriate response for a repetitive defaulter or late paying tenant.

As to non-monetary defaults, these can range from unpermitted alterations to inadequate insurance, to un-consented assignments, to name just a few of the many other lease clauses that could be violated. A tenant typically receives both written notice and a cure period, and the cure period is typically longer than the cure period for monetary defaults. A tenant often requests additional time to complete the cure if the cure cannot be completed within the initial notice period; the landlord will often agree, so long as the cure is commenced during that period and diligently brought to completion. Some national tenants have form leases that limit tenant defaults to "material" defaults. A landlord should avoid this qualifying language since it raises ambiguities about whether a default is material or not.

b. Remedies Against Tenant

Once a tenant has committed a default under the lease and any cure period has expired, a landlord has two primary alternatives. First, the landlord may terminate the lease, which also has the effect of terminating the tenant's right to possession of the leased premises; however, the landlord may terminate the lease only if the lease expressly permits the landlord to terminate the lease. Careful drafting by the landlord should provide

that although the lease is terminated, the tenant remains liable for rental payments that would have come due under the lease.

Second, the landlord may terminate only the tenant's right to possession, without terminating the lease. Under this alternative, the landlord has the right to relet the premises on behalf of the defaulting tenant, and hold the tenant liable each month for the difference between the higher rent reserved under the lease and the lesser amount that the landlord obtains from the replacement tenant. From a landlord's perspective, the lease should permit the landlord to add the costs of any new broker commission and any new leasehold improvements to amounts owed by the defaulting tenant. Some leases permit the landlord to accelerate rents coming due for the balance of the term. To be enforceable in Michigan, the remedy should provide the landlord with the right to the *present value* of the difference between the (higher) rent reserved over the balance of the initial term, and the (lesser) amount paid by the replacement tenant (sometimes called the fair market rent credit). A court is less likely to enforce an excessively pro-landlord provision that permits the landlord to accelerate all rent, with no offset for the fair market rental that would be payable over the remaining term.

For lesser defaults, a landlord may negotiate for a liquidated damages clause. Imposing a penalty or fine on a tenant for a violation of a lease provision (relating to trash removal, janitorial issues, or other maintenance issues) could be an effective remedy for a landlord.

In the tenant default section, the lease often addresses the right of the landlord to recover legal fees and costs from a defaulting tenant. A typical tenant response is to ask that the clause be made mutual so that the prevailing party recovers its attorney's fees and costs from the losing party. In many cases, a landlord has a duty to seek to mitigate its damages under Michigan law, although this may vary depending on whether the landlord's claim is for a breach of contract or a claim for rent (in which case there may not be a duty to mitigate).

c. Default by Landlord

The starting point for the discussion of landlord default clauses is that most landlords are not willing to have these clauses added to their leases. A typical landlord response is that their lender will not allow a landlord default clause in the lease. In some cases, however, a landlord may agree to a basic landlord default clause that provides that the landlord may not be held to be in default unless the landlord has received notice of the default and a period within which to cure (typically 30 days or more). Although such a clause appears to give a benefit to the tenant, it is actually used by the landlord to defend against a claim by the tenant where the tenant did not provide notice or the opportunity to cure.

If a landlord is ultimately willing to agree to a landlord default clause, the defaults may once again be either monetary or non-monetary. As to monetary defaults, this may include the failure to pay the underlying mortgage or the failure to pay property taxes. If the default is a non-monetary default, the issue typically relates to maintenance of common areas or of the leased premises. As was the case with the tenant, a landlord should insist on appropriate notice and cure rights.

d. Remedies Against Landlord

As to remedies against the landlord, a tenant may insist on the right to cure the default on behalf of the landlord. A landlord may seek to limit this right by agreeing that the ten-

ant may cure a landlord default only if the alleged default is serious (for example, that it adversely affects business operations in the leased premises). Some leases provide that if the tenant cures on behalf of the landlord, the landlord is obligated to reimburse the tenant for the reasonable cost of the cure. Other more tenant-friendly leases provide that if the landlord does not reimburse the tenant, the tenant may offset the costs the tenant incurred against rent coming due under the lease. Landlords often oppose these clauses since they interfere with the income stream pledged to the lender. A compromise position could involve establishing a dollar maximum amount per year which tenant rent offsets may not exceed. The maximum may be a percentage of the monthly rent (such as no more than 50% of the monthly rent, and for no more than X months). Other landlords further limit the tenant's right by limiting the offset right to circumstances in which the tenant has obtained a judgment in court against the landlord.

Some tenants will seek a right to terminate the lease in the event of a landlord default. Landlords inevitably dispute this right and most are unwilling to give the right. Occasionally, tenants with substantially bargaining power obtain the termination right, although the landlord will seek to limit the right to circumstances in which the landlord has substantially and for an extended period intentionally interfered with the possessory rights of the tenant. A landlord often insists that the termination right apply only after a rather extensive cure period, to give the landlord adequate time to complete the cure.

C. Rights and Duties as to Third Parties (Thomas A. Kabel)

1. Insurance

a. Insurable Interests

Before deciding on the types and amounts of insurance the parties should be required to maintain during the term of the lease, it is important to first determine the insurable interests of each party. This is primarily determined by looking at both what each party owns or controls and which party is responsible for construction and on-going maintenance at the premises. In most leases, the landlord is responsible for constructing and maintaining the building shell and structural components of the building (and, in many instances, the initial build-out of the premises) and has control over the common areas, whereas the tenant is responsible for maintaining the interior of the premises (and, in some instances, the initial build-out of the premises) and has control over the premises. Under the foregoing scenario, the landlord will typically carry casualty insurance on the building shell and structural portions of the building and liability insurance on the common areas; the tenant will carry casualty insurance on any improvements it makes to the premises and on its personal property, equipment, fixtures and furnishings, and liability insurance on the premises. Obviously, the type and size of the building and tenancy will determine the relative rights and responsibilities of the parties with respect to insurance coverage.

b. Types of Coverage

i. Casualty Insurance

Property and casualty insurance provides coverage against damage or other loss to the building, improvements, furnishings, fixtures, equipment and personal property caused by various insurable events, such as fire, earthquake, tornado, hurricane, acts of war, terrorism or boiler damage. After an insurable casualty, the insurance proceeds will be made available to the insured in order to rebuild or replace the damaged items. In order to be fully covered in the event of a casualty, the parties should make certain that both the landlord and tenant have adequately insured their interests in the building and premises. Most

clauses will require that the insured party carry casualty insurance equal to the replacement cost of the items being insured, although it is not uncommon for the parties to limit this to an agreed upon amount. Under the former type of coverage, the insured will also be required to maintain insurance of at least 80% of the value of the property, whereas under the latter type of coverage this requirement does not pertain. If a lease requires the landlord to rebuild in the event of a casualty, it is important for the landlord to ensure that it is fully covered by its casualty insurance (subject to reasonable deductibles) and that the tenant will have sufficient coverage to rebuild/replace tenant's damaged items in order to recommence operating from the premises.

ii. Comprehensive General Liability

Comprehensive general liability (CGL) insurance provides coverage against bodily injury, death and property damage suffered by third parties. Unlike casualty insurance, claims made against a CGL insurance policy are paid directly to the third party making a claim. For instance, if a third party is personally injured or suffers property damage while at the tenant's place of business and makes a claim against the tenant, the tenant's CGL policy will pay the injured third party directly for its loss, up to the tenant's policy limits. CGL policies will be in the form of either an "occurrence policy" or a "claim-made policy." An "occurrence policy" covers against losses which occur during the term of the policy, even if the claim is made after the policy has lapsed. Conversely, a "claims-made policy" covers against losses so long as the claim is made during the term of the policy, regardless of when the loss actually occurs. The minimum amount of coverage is negotiable, but most leases will require the tenant to carry a minimum of anywhere between \$1,000,000 and \$3,000,000 per person/per occurrence, with an aggregate cap of anywhere between \$1,000,000 and \$5,000,000, depending on the type and size of the tenant's business. In order to adequately protect the landlord's interests (particularly if the tenant is required to indemnify the landlord for any loss or damage occurring within the premises), the lease should also require (a) that the landlord, and any mortgagee of landlord, be added to the tenant's policy as additional insureds, (b) that any liability insurance carried by the landlord be secondary and noncontributing, and (c) that tenant's insurance will provide coverage regardless of whether landlord is at fault for the loss or damage.

iii. Builder's Risk

Prior to commencing any construction work at the premises (either before or after lease commencement), the party responsible for performing the work should be required to maintain builder's risk insurance. This insurance protects against any losses which occur during construction. Typically, the amount of coverage is the anticipated value of the as-built improvements. Occasionally, the parties may agree to a specific dollar amount.

iv. Rental Interruption

Landlord's often elect to maintain rental interruption insurance as an additional part of their casualty insurance policy. This coverage is particularly important since most leases allow the tenant's rent to abate if it is unable to operate its business following an insured casualty. With a rental interruption insurance policy, the insurance company will insure the landlord against any loss in rental stream during a casualty for a certain period of time, typically 12 months.

v. Business Interruption

Many leases require the tenant to also maintain business interruption insurance. This insurance will cover the tenant for losses it may incur if it is unable to operate its business for a period of time after a casualty. This is particularly important if the lease contains a waiver of liability or exculpation clause wherein the tenant waives the right to make any claims against the landlord for casualties which cause an interruption in the tenant's business.

vi. Contractual Liability

Contractual liability insurance provides coverage against the insured's indemnity obligations under the lease. If the tenant has agreed to indemnify the landlord under the lease, then it is important to make sure the tenant has also procured contractual liability insurance to cover this liability.

c. Waiver of Subrogation

Waiver of subrogation provisions relate solely to the parties' respective casualty insurance, and not their liability insurance. In essence, this clause requires that each party look solely to their own casualty insurance policies for payment in the event of a fire or other casualty. To be effective, the clause must contain at least two key provisions. First, the clause must contain an express waiver by each party of their rights of subrogation in the event of casualty. Second, the clause must specifically obligate each party to obtain a waiver of subrogation from their insurance carrier. Often times, the lease will contain the second party but not the first. Without the contractual waiver, the waiver from the insurer is not effective. Since adding a waiver of subrogation to an insurance policy could increase the premium, some lease provisions also state that a party is not required to obtain such waiver if it is unavailable (which is rare) or will increase the cost of the insurance. In either instance, the other party should have the option to pay the extra cost or find a different insurer who will provide it. Also, if a lease containing a waiver of subrogation clause is executed *after* the insurance policy is in place, then the waiver is not effective unless the insurance carrier consents to it.

d. Insurance Carrier and Insurance Ratings

The lease should require that the tenant's insurance carrier be licensed and qualified to do business in the state in which the property is located. Most leases will also require that the tenant's insurance carrier be "reasonably acceptable" to the landlord. To better qualify what that means, a good insurance clause will also require both that the insurance carrier is financially creditworthy and that the insurance policy itself carries a sufficient policy rating from A.M. Best Company, Inc. A rating of AA or better with a financial class of at least VII is generally acceptable.

2. Indemnification

Every lease agreement should contain an indemnification clause of some form or another. Such a clause will state that the tenant agrees to indemnify, defend and hold harmless the landlord against any third party claims arising from, or relating to, the tenant's leased premises. In other words, if a third party sues the landlord for any injuries or property damage that it receives while at the leased premises, the tenant agrees to protect the landlord: it will defend the landlord in any such lawsuit, it will reimburse the landlord for any expenses it may incur as a result of the lawsuit and it will be responsible for any judgment entered against the landlord. In addition, the lease will likely contain an indem-

nification from the landlord in favor of the tenant, wherein the landlord will indemnify, defend and hold harmless the tenant against any third party claims arising from, or relating to, the common areas of the building.

a. Indemnification of Landlord

As indicated above, these provisions are most typically a one-way street: they favor the landlord. The reason, however, is fairly straightforward. In most instances, if an event happens at the leased premises—for instance, if a customer slips and falls while visiting a retail shop in a shopping center, or if faulty electrical wiring causes a fire at an office suite and destroys an employee’s property—the injured person will likely sue not only the tenant, but also the owner of the property and anyone else with an interest in the premises; he will leave it to the interested parties to determine amongst themselves who is ultimately liable to him for his damages. In this case, the landlord has a legitimate reason to seek indemnification from the tenant. After all, the injury occurred at the tenant’s place of business and the tenant is most likely required by the lease to carry both general liability and “all risk” property insurance covering the leased premises. The tenant’s insurance should therefore cover any damages which occur at the premises. Conversely, if someone is injured in the parking lot, or in the common areas of a building containing several tenants, then that person will certainly sue the landlord, but it is not very likely that he would also sue a particular tenant.

b. Indemnification of Tenant

Over the years, it has become much more common for tenants to seek mutual indemnification; that is, to ask that landlords similarly indemnify, defend and hold harmless the tenant against any third party claims arising from, or relating to, the common areas. Although it is less likely that a tenant would be included in any claim for damages against a landlord for damages occurring in the common areas, landlords will usually agree to this. So long as the indemnification is limited to common areas, the risk to the landlord is fairly limited. In any such mutual indemnification clause, the same concerns and issues present in landlord indemnification clauses apply.

c. Fault Based Indemnification

The most common form of indemnification is fault based. Under this type of clause, the tenant agrees to hold the landlord harmless from all third party damage claims, except to the extent (and, in some cases, unless) the landlord is at fault for the damage. The usual point of negotiation in this type of indemnification is to determine whether the landlord’s simple negligence, gross negligence, willful misconduct or intentional acts, or a combination of these, will be sufficient to limit the tenant’s indemnity. Typically, a tenant’s indemnification of the landlord will not extend to protect the landlord if the landlord’s gross negligence or willful misconduct contributed to the harm caused to the third party. The problem with this type of indemnification is that it does not usually afford the landlord with complete protection against third party claims, even if it is ultimately determined that the landlord was not at fault. Because assigning fault is necessarily a fact-based determination, a landlord under this type of clause may very well have to defend itself in a third-party lawsuit until it is determined that the landlord was not at fault, at which point the indemnification would be triggered and the tenant would be required to make the landlord whole for any costs it incurred in defending itself.

d. No-Fault Based Indemnification

“No fault” indemnification, which is also sometimes referred to as “location based” indemnification, is the most complete form of indemnification. Under this type of clause, the tenant agrees to hold the landlord harmless from all third party claims for any reason—even if the landlord is fully or partially at fault. The theory behind this is that the tenant should be maintaining general liability insurance and “all risk” casualty insurance covering the leased premises, and so the tenant’s insurance should cover any claims for acts which occur on the leased premises. The advantage for the landlord is that it does not have to wait for a final determination of fault in order to receive the full benefits of the protection. If a claim relates to an injury or damage occurring at the leased premises, the landlord is simply not liable; the tenant must fully protect the landlord from the beginning.

e. Costs; Right to Defend

As an indemnified party, it is important to make sure the indemnification also includes all costs related to the claim, including any reasonable attorneys and court costs that the indemnified party might incur. This is particularly important for “fault based” indemnification, since the indemnified party may very well have to incur costs in defending a lawsuit until it is determined that he is not liable. It is also a good idea to include a clause allowing the indemnified party the right to approve of the lawyers hired to defend the action and to be able to monitor the defense. Under a “fault based” indemnification clause, the indemnified party might also want to make sure that it has the right to hire its own legal counsel (at the other party’s expense) to handle the defense if it so desires. After all, it is not necessarily in the indemnifying party’s interest to make sure the indemnified party’s lack of fault is clearly established.

f. Exculpation

Many leases also contain an exculpatory clause, either within the indemnification clause or as a separate provision. Under this type of provision, the tenant not only indemnifies the landlord against any third party claims, but also agrees not to pursue any direct claims against the landlord for acts which occur on or at the leased premises, even if the damage is directly or indirectly caused by the landlord. A typical example is for damage caused by bursting pipes which were the landlord’s responsibility to maintain.

3. Casualty and Condemnation

A properly crafted lease should not only contain casualty and condemnation clauses, delineating the rights and responsibilities of the parties in the event of either occurrence, but should also be designed so that these clauses work properly with the insurance, indemnification, waiver of subrogation and leasehold improvement sections of the lease. Without properly accounting for these other areas of the lease, the casualty and condemnation clauses may not work correctly in the event of an actual casualty or condemnation.

a. Casualty

The casualty section of the lease will govern the parties in the event of a fire or other casualty at the property. This clause should identify which party is responsible for rebuilding which improvements, under what circumstances either party may terminate the lease, how much time the responsible party has to undertake and complete its reconstruction and how and when the tenant’s rent will abate during reconstruction.

b. Obligation to Rebuild/Repair

In the event of a casualty to the building or premises, the tenant will want to ensure that the landlord is obligated to rebuild those items covered by landlord's insurance in a timely manner, and the landlord will want to similarly ensure that the tenant is obligated to rebuild those items covered by tenant's insurance. In most situations, the party carrying insurance on the building should have the obligation to rebuild the building and the party carrying insurance on the tenant improvements and contents should have the obligation to rebuild or replace those. In a lease where the landlord performed the initial tenant improvements, both parties may want the landlord to also reconstruct these improvements. In this situation, if the improvements are covered by tenant's insurance, the casualty provision should require that the tenant assign the applicable insurance proceeds over to landlord for this purpose. In a retail or multi-tenant office development, the landlord will most likely be the one responsible for carrying casualty insurance on the building and will therefore have the obligation to rebuild or repair any damage to the building. In a single-tenant building where the tenant is responsible for carrying, or at least paying for, the building's casualty insurance, the lease may require the tenant to rebuild everything after a casualty. Before agreeing to this shift in responsibility, however, the landlord should confirm with its lender that this arrangement is acceptable and will be honored.

Assuming the landlord is responsible for rebuilding or repairing the structural components of the building and the common areas, the landlord will want a provision in the lease requiring the tenant to rebuild its own improvements and to replace any personal property after the landlord has completed its reconstruction work. The time to complete this work is typically tied to whatever time period the tenant had to complete its initial work.

c. Standard of Reconstruction

The casualty section should also make clear the standard to which any reconstruction should meet. Some clauses require the responsible party to rebuild or repair any damage to the same specifications to which the building or improvements were initially constructed. Other clauses simply require the responsible party to rebuild or repair to a condition equal to that which existed immediately prior to the casualty. The standard of reconstruction will obviously determine, to a great extent, how much time will be needed to complete the repairs and how much it will cost.

d. Termination Rights

Even though each party may ideally want the other to rebuild after a casualty, there are certain situations where either, or both, of the parties will want to simply end the landlord-tenant relationship following a casualty. Landlords typically want the right to elect not to rebuild, and instead terminate the lease, under some or all of the following circumstances: (1) if the casualty occurs during the last few years of the lease term; (2) if there is a "substantial" casualty, which is usually based on a specific percentage of damage to the premises, common areas or building (usually anywhere from 20%–50%); (3) if the casualty was not covered by landlord's insurance or if the available insurance proceeds are insufficient to properly rebuild; (4) if the landlord or landlord's architect determines that the repair or replacement will take longer than a specified period of time (usually anywhere from 90 days to 270 days); or (5) if the landlord's lender does not permit the insurance proceeds to be used for reconstruction. Once the landlord elects to rebuild, however, it will want some assurance that the tenant cannot simply walk away from its lease obligations.

Tenants, of course, want to limit the landlord's ability to terminate the lease and also usually want their own rights to terminate the lease in certain situations. The most common situations where the landlord should not be able to terminate the lease are where the landlord failed to maintain the insurance required under the lease (under the theory that the tenant should not suffer the consequences of the landlord's failure to comply with the lease) or where the landlord is not also terminating the leases of all similarly situated tenants at the development (in order to prevent the landlord from using the casualty as a pretext to simply remove this particular tenant from the development). Normally, a tenant would also want the right to terminate the lease if there is a "substantial" casualty, if the casualty occurs during the last 1–2 years of the lease term or if the landlord estimates that the reconstruction will take longer than a specified period of time. A casualty clause may also provide that the landlord will be obligated to rebuild so long as the tenant extends its lease for a sufficient period of time. Some casualty provisions also allow the tenant the right to terminate the lease if the actual reconstruction takes longer than the time allowed under the lease. Under this last scenario, however, the landlord should be careful to make sure there is a lag (usually 30 days) between the time required to rebuild and the time at which the tenant may terminate due to landlord's failure to finish the reconstruction—otherwise, the landlord may expend a great deal of time and effort to rebuild, only to have the lease terminated because the landlord just missed completing the work in the time allotted.

e. Notice

The landlord will need sufficient time after the occurrence of a casualty, or after receiving notice of a casualty, to notify its insurer that a casualty has occurred and file a claim, to engage a contractor to assess the damage and provide an estimate of the cost and time needed to properly rebuild or repair the damage, and to ascertain from the insurance carrier whether and how much it will pay out on the claim. All of this will need to take place before the landlord will be able to determine whether or not it will rebuild or repair the damage. Tenants, of course, do not want an extended period of uncertainty—they will want to know as soon as possible if the landlord will rebuild and how much time the landlord anticipates reconstruction to take. Most lease provisions allow the landlord anywhere from 30 to 60 days after notice of a casualty to make this determination. If the tenant has a right to terminate the lease following a "substantial" casualty or during the last year or so of the lease, then the tenant should have a similar period of time after the casualty to decide whether it will terminate the lease. If the tenant has the right to terminate if the landlord estimates that the reconstruction will exceed an agreed-upon period of time, then the tenant should have a specific number of days (usually 10 to 30) after receipt of landlord's estimated reconstruction time, to exercise this termination right.

f. Rent Abatement

Rent should abate during the period in which the premises are rendered untenantable after a casualty. This should not pose a problem for the landlord since the landlord will likely have rental interruption insurance (the premiums of which are likely being paid for by the tenants). In situations where there is only a partial casualty and the tenant is able to operate its business out of a portion of the premises, it is not uncommon for the lease to allow for a partial abatement of rent, typically based on the useable square footage of the premises.

g. Condemnation

Condemnation—or eminent domain—provisions are typically divided into two types of takings: partial and total or complete. In the event of a complete taking of the building or premises, or of a partial taking which renders the premises unusable, the lease will typically terminate on the date title to the property is conveyed to the condemning authority or the date that the parties are notified of the taking. Some condemnation clauses will also allow the tenant to terminate the lease if the available parking is reduced below a certain number and the landlord is unable to provide adequate alternative parking. At that point, the tenant will be required to surrender possession of the premises, the lease will terminate and each party will be relieved of all further obligations under the lease except for those which expressly survive termination. In the event of a partial taking under which all or a specified percentage of the premises will remain usable, the condemnation clause will typically mirror the casualty clause: it will delineate which party is responsible for reconstructing the remaining portion of the building or premises, under what circumstances either party may terminate the lease, how much time each party has to complete its reconstruction and how and when the tenant's rent will abate. In addition, if a portion of the premises is taken, the rent should be proportionately reduced.

Most condemnation clauses will provide that any compensation paid for the premises, including the value of the leasehold premises, as a result of a taking belong exclusively to the landlord. Tenants, however, will want to make sure that they have the right to pursue a separate claim for their own trade fixtures, moving expenses, loss of business, and other items personal to the tenant. It is important for the landlord to make sure that any such award does not diminish the award to which the landlord, or landlord's lender, would otherwise be entitled.

4. Transferability

Both parties to a lease should consider whether they have the ability to change the nature of the relationship during the term of the lease. As circumstances change, the landlord may desire to sell the property and will not want to be prevented from doing so by one of its tenants. Conversely, a tenant may desire to sell its business or merge with another entity, or may decide that it can no longer continue to operate at the premises, or it might seek out financing and need to pledge its assets or its leasehold interest as collateral. Naturally, each party has legitimate concerns with allowing the other party the right to change the nature of the relationship. Under Michigan law, however, in the absence of a lease provision prohibiting or restricting a party's right to transfer its interests in the lease, each party may freely do so without condition. In order to protect against unforeseen consequences, then, the lease should squarely address issues related to assignment, subleasing, leasehold mortgages and other security interests of the tenant, and the ability of the landlord to transfer its fee interest in the property.

a. Assignment and Sublease

The most common methods for a tenant to transfer its interests in a lease is by either assigning its rights under the lease to a third party or subletting the premises to a third party. Under a sublease, the tenant subleases all or a portion of the premises for less than the full remaining term of the lease, and thus reserves a reversionary interest in the premises. The primary lease between the landlord and tenant remains in place, and the tenant and subtenant enter into a separate sublease. The sublease will be subject and subordinate to all of the terms and conditions of the primary lease unless the landlord specifically con-

sents to modifications. Since a subtenant has neither privity of estate nor privity of contract with the landlord, its benefits and burdens flow through the tenant: it is not directly liable to the landlord, but neither does it receive any of the benefits, including the right to seek redress directly from landlord, that the tenant has under the lease. Under an assignment, on the other hand, the transferee assumes the tenant's interest under the lease for the remainder of the term, and thus has all of the benefits and burdens of the original tenant. The transferee has, in essence, stepped into the shoes of the original tenant under the lease. Regardless of the nature of the proposed transfer, however, the landlord and tenant should, at a minimum, address the following issues:

b. Consent

Very few leases are silent or contain an outright prohibition against assignment and subletting. Rather, the majority simply prohibit such transfers "without landlord's prior written consent." Although it is possible that some courts will read into this an obligation on the part of landlord to use good faith and fair dealing, a landlord is essentially free to grant or refuse its consent in its sole discretion. A prudent tenant will therefore want to ensure, at a minimum, that such consent will not be "unreasonably withheld, conditioned or delayed." Since incorporating a reasonableness standard often simply invites dispute (i.e., who determines whether the landlord is being reasonable?), the landlord will want to either specify the conditions under which it will be reasonable to withhold consent or specify the conditions under which consent will be granted. Depending on the nature of the tenancy (this is a more acute concern in retail leasing), the landlord's consent may be conditioned on the proposed transferee having a specified minimum net worth, having significant management experience, having a proposed use which does not conflict with any other tenant's use, not being an existing tenant of landlord's, and/or on landlord not having alternative space available in the development. Tenants will also want to make sure the landlord has a finite period of time—usually 10–30 days—to review and approve any proposed sublease or assignment.

c. Permitted Transfers

Many leases allow certain types of transfers without landlord's consent. The most common permitted transfers are those to the tenant's affiliates. It is also not unusual for a tenant to have the right to transfer its interests as a result of a merger or consolidation with one or more other entities, although landlords will typically want the original tenant to retain effective control of the new entity or for the new entity to have a specified minimum net worth.

d. Continuing Liability Following Transfer

Most transfer provisions state explicitly that the original tenant is not released from liability in the event of an assignment. Although tenants will often argue that they should be released since the new tenant will be directly liable to the landlord and since the original tenant will no longer retain any interest or control of the premises, most landlords will simply not agree to any release of liability. Accordingly, the assigning tenant will need to ensure that it has a proper indemnification from the assignee for any defaults or liabilities arising under the lease.

e. Profit Sharing

Most landlords do not want a tenant to be able to sublease the premises for more than the rental rate the landlord is charging the tenant. Thus, many transfer clauses will require

that all or a specified portion of any profit received by the tenant as a result of a sublease (i.e., amounts received by the tenant in excess of the amounts the tenant is required to pay landlord under the lease) be paid over to landlord. In this type of provision, it is important for the tenant to net out all costs associated with subleasing the space (commissions, any allowances or leasehold improvements the tenant has agreed to provide, etc.) before determining the amount of the profit.

f. Recapture Rights

It is not uncommon for the landlord to have the right to recapture the premises in the event a tenant seeks consent to an assignment or sublease. Since a subtenant has no direct relationship with the landlord, the landlord may find it advantageous to enter into a direct lease with the proposed transferee rather than continue to deal with the now-absentee tenant as an intermediary. Alternatively, the landlord may desire the space for another tenant who will pay a higher rental rate. Tenants may not object to recapture rights since they will be released from their obligations under the lease. That said, the lease should require the landlord to decide whether to exercise this right in a relatively brief period of time—10 to 30 days is typical—so that the tenant does not expend too much cost and energy pursuing a transfer that is ultimately rejected by the landlord exercising a recapture right.

g. Fees

If the landlord's consent is conditioned on the tenant satisfying various conditions (as discussed above), then the landlord will want to make sure that it has the right to require that the tenant pay all costs incurred by the landlord in connection with its review, including outside attorneys fees. Tenants will often negotiate a cap on these costs.

h. Leasehold Mortgages and Security Interests

Certain types of tenants may need to finance their equipment or inventory (or, in limited situations, their business operations). In these situations, the tenant's lender may very well require a security interest in the assets being financed or may desire a leasehold mortgage. If the tenant's lender is taking an interest in the tenant's assets, the landlord should be careful not to waive any interest it may have in those items, but rather to simply subordinate its interest to the lender. Any leasehold mortgage entered into after the date of the lease will automatically be subordinate to the lease. In either event, the tenant's lender will likely want to enter into a subordination agreement or a recognition agreement with the landlord. This document will identify the relative interests of the landlord and tenant's lender in the collateral, and will set forth the parameters for how and when the lender will be able to exercise its rights to the collateral. This issue is particularly important in retail leases since landlords will want to prevent a lender from taking over the tenant's store, conducting a fire sale from the premises or otherwise disturbing other tenants and occupants of the development.

i. Transfer of Fee Interest

Most leases are either silent on the issue of whether the landlord is allowed to transfer its interest in the fee (in which event they are free to do so without restriction) or provide certain protections for the tenant in the event of any such transfer. A tenant will want to make sure that the transferring landlord is only released from liability if the new landlord assumes, in writing, the landlord's obligations under the lease. The tenant will also want to ensure that any security deposit it may have provided is transferred to the new landlord. If

the landlord does transfer its interests under the lease, the transferee will likely want estoppel certificates from each tenant of the building. Estoppel certificates are discussed below.

5. Subordination of Lease

If the landlord's lender has recorded a mortgage against the property, then any lease agreement entered into after that date will be subject and subordinate to such superior interest. As a consequence, if the holder of a superior mortgage forecloses on the landlord's mortgage and takes over the landlord's fee interest to the property, the tenant's lease will automatically be terminated and the tenant will lose its possessory interest in the premises. Conversely, if a lease agreement is entered into prior to the date the mortgage is recorded against the property, then the lease will be superior to that mortgage so long as the mortgagee had knowledge of the existence of the lease prior to recording the mortgage. If the holder of such a junior interest forecloses on its mortgage, then it would acquire title to the property subject to the lease and the tenant's interest in the premises. (Although this section only addresses issues with the landlord's lender, the same concepts and concerns pertain to any superior interest in the premises, particularly ground leases.)

The landlord's lender will want its mortgage to be superior to any leases at the property, whether the leases currently exist or are entered into after the date the mortgage is recorded. By doing so, the lender will be better able to control the property after it becomes the fee owner. Since lenders want to ensure a continuous stream of rental income, they will almost always agree to a tenant's request for non-disturbance (discussed below) in exchange for the tenant's agreement to subordinate the lease to the lender's mortgage. Although a tenant is better protected if it is able to negotiate a separate agreement directly with the landlord's lender, setting for the rights of each party in the event of a foreclosure, more typically a tenant must simply rely on the provisions of the lease governing these issues.

a. Subordination to Fee Mortgage

Most leases contain a simple subordination provision under which the tenant acknowledges and agrees that the lease, and the tenant's right, title and interest therein, is subject and subordinate to the lien of any present or future mortgages recorded against the property. The majority of subordination clauses make the subordination automatic, while others state that the landlord or the landlord's mortgagee has the option to make the lease subordinate at any time during the term of the lease. Under either provision, a standard subordination clause will state that the tenant is not required to execute any additional documents in order to effectuate the subordination. Although the subordination clause in a lease is sufficient to subordinate the lease to any future mortgages (keeping in mind that the lease is already subordinate to pre-existing mortgages), some lenders will also want the tenant to execute a separate agreement acknowledging directly to the lender that the tenant's lease is subordinate. Whether dealing with a subordination clause in a lease or a separate written agreement, however, the tenant should bear in mind that its leasehold interest is at great risk by being subordinate to the mortgage. To protect itself, the tenant should demand non-disturbance protection from the lender.

b. Non-Disturbance

The tenant should always make sure that it only agrees to subordinate its lease (whether by a lease clause or a separate agreement), upon the express condition that the lender agree to recognize the tenant's leasehold interest and not disturb (*i.e.*, terminate) the

tenant's lease in the event the lender acquires the landlord's interest in the property following a foreclosure. The landlord and its lender will almost always agree to this, particularly since the lender is often relying on the rent stream from the property to service the debt. That said, the lender will likely want to qualify the non-disturbance so that it only applies in the event the tenant is not in default beyond any applicable cure periods. Since the non-disturbance concept requires an agreement from the lender, a prudent tenant will insist on a separate written agreement with the lender instead of simply relying on the provisions of its lease agreement with the landlord. Although such a separate agreement would ideally be entered into at the same time as the lease, that is often not practical. And, for smaller tenants, a separate agreement is impossible. If a tenant has sufficient bargaining power to require a separate agreement with the lender, but is not in a position to secure the agreement prior to lease execution, the lease should require the landlord to obtain such an agreement within a set period of time after lease execution.

c. Attornment

In addition to subordination, most lenders will require that the tenant agree to recognize the lender as the new landlord in the event the lender forecloses on its mortgage and becomes the fee owner of the property. This is referred to as attornment and is essentially the mirror image of non-disturbance. Without such a provision, a tenant may decide to terminate its subordinate lease and walk away after the landlord's mortgage is foreclosed, and the lender would have no recourse against the tenant.

d. Lender Modifications to Lease Agreement

Although lenders will usually agree to non-disturbance, they will often insist on modifying certain terms of the lease agreement in the event they become the new landlord following a foreclosure. The following are the most common modifications or concessions the lender will seek to impose on the tenant: (1) that the tenant will not modify the lease or agree to cancel or terminate the lease without the lender's prior consent (though the tenant should carve out any non-material modifications and any cancellation rights expressly set forth in the lease); (2) that before a tenant may terminate the lease after a landlord default, the tenant must provide the lender with notice of the default and an opportunity to cure (which usually starts after expiration of the landlord's cure period, though tenants should attempt to make the lender's cure rights coterminous with the landlord's); (3) that the lender is not liable for any security deposit or allowance money held by the landlord unless the money was turned over to the lender; (4) that the lender is not bound by any rent paid more than 30 days in advance; and (5) that the lender is not liable for any act, omission or default of the prior landlord, nor for any defenses or rights of set-off the tenant may have had against the prior landlord (though the tenant should attempt to carve out any set-off rights expressly provided for in the lease and should not release the lender from any landlord defaults for which the lender was provided notice and an opportunity to cure).

e. Estoppel Certificates

Any prospective lender or purchaser of the landlord's interest in the property will want to know, at a minimum, whether any existing lease is valid and accurate, whether there are any existing defaults on the part of either the landlord or the tenant, and whether rent and charges have been paid current. Accordingly, most leases will require the tenant to execute an estoppel certificate at any time during the lease term upon request. In order to ensure the purchaser or lender receives timely information, the typical estoppel clause also requires that the tenant execute the certificate within a very short time (usually 10

days), failing of which the Landlord will usually have one of the following options: (1) call an immediate default without the ability for the tenant to cure; (2) execute the certificate on behalf of tenant as the tenant's attorney-in-fact; or (3) treat tenant's failure as an acknowledgement that the statements in the certificate are true and accurate.

The estoppel certificate will be certified by the tenant to the prospective purchaser or lender and, once executed, will prevent the tenant from later denying the statements made in the certificate. Because of the consequences, tenants should take great care in reviewing any such certificate for accuracy, and should attempt to qualify the statements to the tenant's actual knowledge. If a tenant certifies that there are no landlord defaults, for example, then it will be prevented from claiming a landlord default if it later discovers that the landlord had, in fact, been in default at that time. By instead certifying that, to the best of the tenant's actual knowledge (without investigation), there are no landlord defaults, if the tenant later discovers that the landlord was in default at the time of the certification, the tenant will still be able to pursue the default against landlord or its successors.

6. Hazardous Materials

Many leases do not contain a specific section on environmental issues, presumably relying instead on the general requirement in the lease that the tenant must comply with, and all time operate its business in accordance with, all applicable laws, rules and regulations, and on the tenant's indemnity provisions of the lease. That said, a well crafted lease should include a section specifically addressing environmental issues so that each party has a clear understanding of their respective rights and responsibilities during the lease term.

a. Prohibition

At a minimum, the lease should contain a provision prohibiting the tenant from causing or permitting the use, generation, storage, treatment or disposal of "hazardous materials" at the premises and should also specifically identify what is considered a hazardous material (usually by reference to various governing statutes). Since cleaning supplies often fall within the technical definition of a hazardous material, tenants should be careful to include the right to use de minimum amounts of such items so long as they use them in compliance with applicable law. Depending on the type of tenancy, the tenant may also want to carve certain activities out of this general prohibition. If the tenant uses certain known hazardous materials in the normal operation of its business, this should be clearly identified in the lease. If this is the case, the landlord may want an exhibit identifying the materials the tenant intends on using, may require the tenant to carry environmental insurance, and may require periodic reviews of the materials used in the premises (along with a requirement that landlord's approval is required for any additional materials).

Depending on the tenant's negotiating strength and, as a corollary, the amount of space the tenant will be occupying, the tenant should attempt to have the landlord represent and warrant that the premises are, as of the date of the lease or delivery of the premises, in compliance with all applicable laws relating to hazardous materials, and specifically identifying any issues which currently exist at the building and/or the premises. If such a provision is added, then the lease should also contain a representation from the landlord that the landlord will not use, or allow others to use, generate, store treat or dispose of hazardous materials at the building or common areas during the term. Since

the landlord cannot control the actions of other occupants of the building, the landlord will likely attempt to carve out third party acts from any such representation.

b. Indemnification and Remediation

In addition to a prohibition against hazardous materials, the environmental section of the lease will usually require the tenant to indemnify the landlord for any environmental conditions at the premises or the building which are caused by or on behalf of the tenant during the term of the lease. The tenant should make clear, though, that it is not indemnifying the landlord for any pre-existing conditions. Along with indemnifications, many leases will also allow the landlord the right to conduct any and all remediation required at the premises or the building, although the tenant will be liable for the remediation costs if the tenant is at fault for the condition. Landlords should keep in mind, however, that the tenant's indemnity is only as strong as its net worth and the amount of insurance it is maintaining at the premises. Accordingly, if circumstances warrant, the landlord may require the tenant to maintain environmental liability insurance during the lease term. Since the premiums for this type of insurance can be expensive, any requirement should be specifically negotiated by the parties.

Regardless of whether the tenant is able to get a representation from the landlord that the premises are not currently in violation of any environmental laws, the tenant should insist on the landlord indemnifying the tenant for any environmental conditions at the premises and the building which exist as of the date of the lease or delivery of the premises to tenant. The landlord should also indemnify tenant for any environmental conditions caused by landlord during the term of the lease.

c. Environmental Due Diligence

If the tenant is leasing all or a substantial portion of the building, the tenant should be sure to include the express ability to conduct a Phase I Environmental Site Assessment (ESA) and, if necessary, a Phase II ESA, prior to entering into the lease in order to have a clear understanding of the environmental condition of the property and any potential liability or clean up costs that may be required in order to operate its business. In addition, Michigan law allows a new owner or operator (e.g., a tenant) to conduct, within a short period of time after acquiring its interest in the property, a baseline environmental assessment (BEA) on any property that might be contaminated. The results of the BEA are filed with the Michigan Department of Environmental Quality and establish the environmental condition of the property as of the date of the BEA. Once timely filed, the tenant will have protection against liability from the State for any environmental conditions identified in the BEA at that time; the tenant's potential liability will be limited to any new environmental conditions which arise during the lease term or any exacerbation of those items identified in the BEA. Landlords will also have the benefit of knowing the environmental state of the property at the time the tenant commences operations, and will be able to more readily establish the tenant's liability if the environmental condition changes during the tenant's use of the premises.

d. End of Term Issues

Since environmental conditions may not be discovered prior to the end of the lease term, it is also important for the environmental provision to include a statement that the restrictions and indemnifications will survive the expiration or termination of the lease. Even with a survivability provision, however, a prudent landlord will also want the ability

Leasing Fundamentals

to perform an exit environmental assessment prior to the time the tenant leaves the premises upon lease expiration or termination. Without this level of diligence on the back end of the lease, it may be difficult for the landlord to pursue the tenant for any environmental conditions that were, or may have been, created or exacerbated by the tenant during the term. By performing an exit assessment at this time, the landlord may be able to withhold the tenant's security deposit or take other appropriate action while the lease is still in force and effect.

Exhibit A
Gross Lease, Single-Tenant Building

II. LEASING FUNDAMENTALS: LEASE FORMS

GROSS LEASE, SINGLE-TENANT BUILDING

THIS LEASE (the “Lease”) dated _____, is entered into by and between ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Landlord”) and ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Tenant”).

1. **Basic Lease Definitions.** The following defined terms shall be used throughout this Lease:

- A. “Lease Date” means the date of full execution and delivery of this Lease .
- B. “Rental Payment Address” means **[address to which rent payments are to be sent]**.
- C. “Landlord Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
- D. “Tenant Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
- E. “Premises” means the building and land located at **[description]**, including **[description of any facilities included with the Premises, such as parking lots]**.
- F. “Term” means a period of **[number]** “Lease Years” beginning on the “Commencement Date” . .
- G. “Lease Year” means each period during the Term which begins on January 1 and ends on the next following December 31, except that if the Commencement Date occurs on a date other than January 1, the first Lease Year shall begin on the Commencement Date and end on the last day of the first full calendar year thereafter..
- H. “Commencement Date” means **[date on which rent and occupancy begin or the date on which only occupancy begins, if there is a rent-free build-out period]** .
- I. “Expiration Date” means the last day of the last Lease Year of the Term..
- J. “Annual Base Rent” is **[\$amount] [\$___ psf]**.
- K. “Monthly Installment of Base Rent” is **[\$amount]**.
- L. “Security Deposit” is **[\$amount]**.
- M. ”Permitted Use means **[describe use]**.

- N. "Rules and Regulations" means the rules established by Landlord from time to time for the Premises, the current version of which is attached as Exhibit **[number / letter]**.
- O. "Applicable Laws" means the present and future laws, statutes, ordinances and regulations of all governmental authorities having jurisdiction over Tenant, the Property, the Building and/or the Premises.

2. **Premises.** Landlord, in consideration of the Rent to be paid and the covenants to be performed by Tenant, does hereby demise and lease unto Tenant, and Tenant hereby rents and hires from Landlord, the Premises, subject to covenants, restrictions and easements of record. . Tenant has inspected the Premises and is satisfied with their condition. Landlord shall make reasonable efforts to tender possession of the Premises on the Commencement Date. Landlord shall not be liable for damages for failure to tender possession on the Commencement Date, and the validity of the Lease shall not be impaired by such a failure. Notwithstanding the foregoing, if, for any reason, the Commencement Date has not occurred within ____ [months/years] after the Lease Date, the Lease shall automatically terminated without further act of either party hereto, and the parties hereto shall be released from all obligations hereunder.

3. **Term.** The Term commences on the Commencement Date and expires on the Expiration Date, unless otherwise terminated or extended as provided in this Lease.

4. **Rent.** Beginning on the Commencement Date, Tenant shall pay Landlord the Annual Base Rent. The Annual Base Rent shall be paid by Monthly Installment of Base Rent, to the order of Landlord, in advance, on the first day of each calendar month, at Landlord's office or any other place that Landlord designates in writing, , all such payments to be without any prior demand therefor and without any deductions or setoff whatsoever . Any Rent not received by Landlord within [number] days after the due date [or receipt of the notice from Landlord that Rent is overdue] shall be assessed a one-time late charge equal to [number]% of the late payment. In addition, all Rent due and not paid before the expiration of any applicable grace period shall bear interest at the rate of [number]% per annum from the due date (prior to any grace period for payment) until paid. If the Commencement Date is other than the first day of a calendar month, the Monthly Installment of Base Rent for the first calendar month of the Term shall be prorated on a daily basis and paid on the Commencement Date.

5. **Holding Over.** If Tenant remains in possession of the Premises after the Expiration Date with the consent of Landlord, it shall occupy the Premises as a holdover tenant on a month-to-month basis. Landlord may withhold its consent to holdover in its sole discretion. If Landlord consents to the holdover, Tenant is subject to all the covenants of this Lease to the extent they can be applied to a month-to-month tenancy, except that the Monthly Installment of Base Rent for each month of the holdover shall be **[125 / 150 / 200]** percent of the

Leasing Fundamentals

Monthly Installment of Base Rent payable during the last month of the Term. This covenant does not preclude Landlord from recovering damages if Tenant fails to timely deliver possession of the Premises after termination of the holdover, nor does it establish any right to extend or renew the Term. If Tenant holds over after the Expiration Date without Landlord's consent, Tenant is liable for all damages resulting from the holdover. It is expressly within the contemplation of the parties that such damages may include: (a) the reasonable rental value of the Premises; (b) any damages arising from the loss of any sale, lease, or refinancing of the **Premises**; (c) any lost profits incurred by Landlord; and (d) any treble, double, or statutory damages allowed under the Applicable Laws.

6. Right of Access. Landlord and Landlord's agents shall have the right to enter the Premises at all times [or during regular business hours] to examine the Premises, to show the Premises to prospective purchasers, mortgagees, or lessees, and to make such repairs, alterations and improvements or additions as Landlord may deem necessary or desirable. Landlord shall be allowed to take all material into the Premises that may be required for the foregoing purposes, without such activities constituting an eviction of Tenant. Rent shall not abate while the repairs, alterations, improvements or additions are being made. During the [number] months prior to the expiration of the term of this Lease or any renewal term, Landlord may place upon the Premises the usual notices "For Rent" or "For Lease". If Tenant is not personally present to open and permit entry into the Premises at any time when entry is necessary or permissible, Landlord or Landlord's agents may enter the Premises by a master key or may forcibly enter the Premises, without rendering Landlord or its agents liable. Nothing in this Section, however, shall be deemed to impose on Landlord any obligation for the maintenance or repair of the Premises, except as otherwise specifically provided in this Lease.

7. Quiet Enjoyment. Unless this Lease is terminated or Tenant is evicted in accord with Michigan law, Landlord shall not disturb Tenant's quiet enjoyment of the Premises or unreasonably interfere with the Permitted Use.

8. Use of the Premises. The Premises shall be used for the Permitted Use and for no other use or purpose whatsoever. Tenant shall not use the Premises in any manner that violates the Rules and Regulations (as the same may be amended, modified or supplemented from time to time) or Applicable Laws. Landlord may amend, modify or supplement the Rules and Regulations in its **[sole / reasonable]** discretion.

9. Repairs and Liens. Tenant shall provide and pay for its own regular janitorial service to maintain the Premises in a neat and clean condition. Tenant shall be responsible for all repairs and replacements to the Premises occasioned by the negligence or willful act of Tenant, its agents, employees, invitees, and licensees. Tenant shall, at Tenant's expense,

comply with Applicable Laws (including the Americans with Disabilities Act of 1990, as amended) to the extent that the Applicable Laws relate to Tenant's specific Permitted Use.

Except as set forth in the preceding paragraph, Landlord shall, at Landlord's expense, maintain the Premises, the Building, and the Common Areas, in good condition and repair. Tenant shall keep the Premises free of construction or other liens. Tenant shall hold Landlord harmless against any liens that are placed against the Premises, except those attributable to the acts of Landlord. If a lien is filed against the Premises as the result of any action undertaken by Tenant, Tenant shall discharge the lien within [number] days after receiving notice of the lien. If Tenant fails to discharge the lien, Landlord may procure a discharge at Tenant's expense, which Tenant shall pay immediately on demand from Landlord.

10. **Utilities.** Tenant shall promptly pay all charges for separately metered utilities used in the Premises during the Term, including, without limitation, gas, electricity, light, heat, power, telephone, or other communication services, Landlord shall not be liable for any interruption of any utility service to the Premises, however caused, [except if due to the ordinary negligence of Landlord].

11. **Tenant's Alterations.** Landlord consents to Tenant's leasehold improvements described in Exhibit to the Lease (the "Initial Improvements"). Tenant shall not, without the prior written consent of Landlord, [such consent not to be unreasonably withheld,] make or cause to be made any alterations, improvements, additions or installations in or to the Premises (the "Alterations"), other than the Initial Improvements. [If Landlord so consents, before commencement of any such work, Tenant shall furnish to Landlord for approval: architectural plans and specifications; names and addresses of all contractors; necessary permits and licenses; and certificates of insurance. All of preceding items shall be in form and amount as may be reasonably satisfactory to landlord.] All Alterations shall be done only by contractors and subcontractors approved in writing by Landlord [, such approval not to be unreasonably withheld], and at such time and in such manner as Landlord may from time to time designate. Tenant shall hold Landlord and its agents harmless from all loss, costs, claims and damages which may arise out of the Alterations. Tenant shall pay the cost of the Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with sworn statements and full lien waivers for the Alterations. All Alterations shall comply with all applicable statutes, ordinances and rules. All Alterations shall be done in a good and workmanlike manner. All Alterations shall become part of the Premises at the time of their installation and shall remain on the Premises at the expiration of the termination of the term of this Lease.

12. **Signs.** Tenant shall not display any sign, notice, picture or advertising matter in or about the Building or the Premises at places that are visible from outside the Premises without Landlord's prior written consent [, such approval not to be unreasonably withheld]; however,

Leasing Fundamentals

the name of Tenant may be displayed on the entrance door of the Premises in accordance with the Building standards as established by Landlord. Upon expiration or earlier termination of the Lease, Tenant shall remove any signs or advertising consented to by Landlord and shall repair any damage caused by the removal.

13. Mutual indemnification. Tenant shall indemnify, defend and hold harmless Landlord and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents (individually and collectively, the “Landlord Parties”) against all claims, actions, damages, liability and expense in connection with all losses, including for bodily injury, loss of life or property damage relating to the Premises. The claims covered by this indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the Premises; (b) the use or misuse of the Premises by Tenant or its agents, contractors, or invitees; or (c) any event on the Premises, whatever the cause. Tenant’s indemnification does not extend to liability for damages resulting from the sole or gross negligence of Landlord or for Landlord’s intentional misconduct. Landlord shall indemnify, defend and hold harmless Tenant and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents against all claims for bodily injury or property damage relating to the common areas of the Property. The claims covered by this indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the common areas; (b) the use or misuse of the common areas by Landlord or its agents, contractors, or invitees; or (c) any event on or within the common areas, whatever the cause. Landlord’s indemnification does not extend to liability for damages resulting from the sole or gross negligence of Tenant or for Tenant’s intentional misconduct.

14. Limitations on Landlord’s liability. The Landlord, as defined in this Lease, includes successors in interest. The term is intended to refer to the owner of the Premises at the time in question. If the Premises are sold, the new owner shall automatically be substituted as the Landlord.

If Landlord fails to perform this Lease and as a result Tenant recovers a money judgment against Landlord, the judgment shall be satisfied out of the execution and sale of Landlord’s interest in the Property or by garnishment against the rents or other income from the Property. Landlord is not liable for any deficiency. This section constitutes Tenant’s sole and exclusive remedy for default.

Conditioned solely on the conveyance of the Property, Tenant agrees to the following release in favor of its then former landlord. Effective on the first anniversary of the date on which Tenant is given notice of the conveyance, Tenant releases its former landlord from all claims except those expressly preserved in this section. This release is intended to be broadly construed for the benefit of the former landlord and includes: (a) all claims regarding the performance of this Lease; (b) all claims for bodily injury or property damage relating to the

Premises; and (c) all claims in any other way relating to the Lease, the Premises, or the landlord-tenant relationship. However, this release does not extend to any claim filed in a court of appropriate jurisdiction within one year of the date of conveyance or to any claim for bodily injury or property damage resulting from the former landlord's gross negligence.

15. Insurance. Tenant shall continuously maintain in effect during the Term a commercial general liability insurance policy providing coverage against claims for bodily injury, personal injury and property damage for the Premises, including without limitation all common areas, and the business operated by Tenant and any other persons and entities conducting business in the Premises, with policy limits of not less than \$[amount] per person and \$[amount] per occurrence, exclusive of defense costs and without any provision for a deductible or self-insured retention.

Tenant shall continuously maintain in effect during the Term a property insurance policy on a special cause of loss form covering Tenant's personal property, trade fixtures, and improvements to their full replacement cost, without deduction for depreciation. The insurance shall include coverage for loss of profits or business income and reimbursement for extra expenses incurred as the result of damage or destruction to all or a part of the Premises.

All insurance policies that Tenant is required to maintain shall be written by carriers who are authorized to write insurance in Michigan and have an AM Best Company rating of not less than A-VIII. Any commercial general liability policy that Tenant is required to maintain shall: (a) name Landlord and any other parties in interest designated by Landlord as an additional insured using ISO form CG 20 26 11 85 without modification; (b) be endorsed to provide that it shall not be canceled or changed for any reason except on 30 days' prior written notice to Landlord; (c) provide coverage to Landlord whether or not the event giving rise to the claim is alleged to have been caused in whole or in part by the acts, omissions, or negligence of Landlord; (d) all policies shall be primary, with the policies of Landlord and Landlord's Mortgagees being excess, secondary, and noncontributing; and (e) Tenant shall reinstate any aggregate limit that is reduced because of losses paid to below 75 percent of the limit required by this Lease. Landlord and Tenant shall require their property insurance policies to include a clause or an endorsement allowing Landlord and Tenant to release each other from any liability to each other or anyone claiming through or under them by way of subrogation or otherwise, for any loss resulting from risks insured against. Notwithstanding the foregoing, if at any time either party's insurer refuses to permit a waiver of subrogation, then Landlord or Tenant may in each instance revoke any such waiver effective 30 days from the date of notice to the other unless, within that 30 days, the other party is able to secure and furnish, without additional expense, insurance in other companies with such waiver of subrogation. If any policy that Tenant is required to maintain is written on a claims-made insurance form, each policy shall have a retroactive date that is not later than the Commencement Date. Furthermore, if insurance coverage is written on a claims-made basis,

Leasing Fundamentals

Tenant's obligation to provide insurance shall be extended for an additional period equal to the statute of limitations for such claims on the Termination Date, plus one year. Insurance may be provided in the form of blanket insurance policies covering properties in addition to the Premises or entities in addition to Tenant. All blanket policies shall provide that the overall aggregate limit of liability that applies to Landlord or the Premises is independent from any overall or annual aggregate that applies to other entities or properties.

At Landlord's option, Tenant shall deliver either certificates of insurance or the original policies to Landlord before the Commencement Date, together with receipts evidencing payment of the premiums. Tenant shall deliver certificates of renewal for the policies to Landlord not less than 30 days before their expiration dates.

This Lease requires Tenant to obtain insurance to cover any claim for loss resulting from fire or other casualty. Landlord and Tenant shall each look to its own insurance for the recovery of insured claims. Landlord and Tenant release one another from insured claims. Subject to the provisions of this Section 14, Landlord and Tenant waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver remains effective despite either party's failure to obtain insurance in accord with this Lease. If either party fails to obtain insurance, it bears the full risk of its own loss.

16. Fire or other casualty. Tenant shall give Landlord notice of fire or other casualty on the Premises. In addition to the written notice, Tenant shall immediately and with all diligence attempt to contact Landlord by all means available, including telephone, pager, fax, and e-mail, to inform Landlord of the casualty. If the Premises are damaged or destroyed by fire or other casualty, Landlord may terminate this Lease by notice to Tenant. The notice of termination shall be given within **[number]** days after the occurrence of the casualty. If the notice of termination is not given within that period, this termination option shall lapse and no longer be effective. Within **[period]** after the notice of termination has been given, Tenant shall surrender the Premises to Landlord. After the surrender, each party is released from any further obligations under this Lease, with the following exceptions: (a) all Rent accruing through the surrender date shall be paid in full; (b) the Security Deposit shall be retained or returned as provided in this Lease; and (c) any provisions of this Lease which expressly survive termination of this Lease shall continue in full force and effect. Tenant has no obligation to pay any Rent accruing after the surrender date. If Landlord does not exercise this option within the designated period, Landlord shall diligently proceed to repair and restore the Premises to its condition before the casualty. In no event shall Landlord be required to repair or replace any merchandise, trade fixtures, furnishings, equipment, plate glass, signs and/or personal property of Tenant (collectively, "Tenant's Property"). If Landlord repairs or rebuilds, Tenant, at Tenant's sole cost, shall repair or replace all of Tenant's property in a manner and to at least a condition equal to that prior to the casualty.

17. **Eminent domain.** If [percentage] or more of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, this Lease shall automatically terminate as of the [date that title is vested in the condemning agency / date that Landlord or Tenant is notified of the taking / date that the condemning agency takes possession of any portion of the Premises / other date to be agreed upon by the parties]. Notwithstanding this termination, Tenant is required to pay Rent through the date that it actually surrenders possession of the Premises. If Landlord is notified in writing by a condemning agency that less than [percentage] of the [useable floor area / Premises / parking area][shall / may] be taken through eminent domain, Landlord may terminate this Lease by providing written notice to Tenant. Within [time period] after Landlord notifies Tenant that Landlord is terminating this Lease, Tenant shall surrender possession of the Premises to Landlord. After Tenant surrenders possession, the parties' obligations under this Lease are terminated, provided that Tenant surrenders possession in accord with this Lease and pays Rent through the date of surrender. [If Landlord does not exercise its termination option within [time period] after being notified of the taking, then the option to terminate lapses and this Lease continues in full effect.]

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Landlord and Tenant agree that all compensation paid for the Premises, including any value of Tenant's leasehold interest in the Premises, shall be paid to and be the property of Landlord. Tenant may seek compensation for any of its own trade fixtures, business interruption, going concern, moving expenses, and other items, provided that Tenant's compensation is not in diminution of Landlord's or Landlord's mortgagee's compensation for the Premises.

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Tenant has no claim against Landlord for the value of any unexpired term of this Lease. If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, and this Lease is not terminated, Landlord and Tenant agree that the Annual Base Rent for the Premises shall be reduced based on a ratio of the [useable floor space] that remains after the taking to the [useable floor space] of the original Premises.

18. **Assignment and Subletting.** Tenant shall not assign this Lease, sublet the Premises or in any manner transfer this Lease or any estate or interest in this Lease, or allow anyone to conduct business at the Premises (whether as a concessionaire, franchisee, subtenant, permittee, operator or otherwise), either by voluntary or involuntary act of Tenant or by operation of law or otherwise (in each such instance, a "Transfer"), without the prior consent of Landlord, which may be withheld in Landlord's sole discretion. In the event that Tenant, with or without the previous consent of Landlord, does assign, sublet or in any manner

transfer this Lease or any estate or interest in this Lease, Tenant shall in no way be released from any of its obligations under this Lease.

19. Subordination and Estoppel Certificates. At Landlord's mortgagee's option: (a) any mortgage or mortgages now or later placed on Landlord's interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof, may be subordinated to this Lease; or (b) this Lease may be subordinated to any mortgage or mortgages now or later placed on Landlord's interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. The mortgagee's option shall be exercised by notice to Tenant. Tenant shall execute and deliver, within **[number]** days after a request, any further commercially reasonable instruments, in a form acceptable to the mortgagee, confirming subordination as requested by Landlord or Landlord's mortgagee.

In the event of foreclosure or any conveyance by deed in lieu of foreclosure, Tenant shall attorn to Landlord's successor in interest, provided that the successor agrees in writing to recognize Tenant's rights under this Lease if Tenant is not in default beyond any applicable cure periods. Tenant shall execute and deliver, within **[number]** days after a request, any further commercially reasonable instruments, in a form acceptable to Landlord's successor in interest, attorning to the successor in interest and recognizing it as Landlord under this Lease.

Within **[number]** days after a written demand by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form acceptable to Landlord, certifying

- a. the Commencement Date;
- b. the Expiration Date;
- c. that this Lease is unmodified and in full force and effect, or is in full force and effect as modified, stating the modifications;
- d. that the Lease is not in default, or a list of any defaults;
- e. that Tenant does not claim any rights of setoff, or a list of rights of setoff;
- f. the amount of Rent due as of the date of the certificate, or the date to which the Rent has been paid in advance;
- g. the amount of any Security Deposit; and
- h. other matters reasonably requested by Landlord.

Landlord and any prospective purchaser or mortgagee of the Premises may rely on this certificate. It is within the contemplation of the parties that Tenant's failure to provide the estoppel certificate in the time and manner required could result in the loss of a prospective sale or loan and that Tenant is liable for all damages resulting from such a loss.

Tenant shall give Landlord's mortgagee, by certified mail, a copy of any notice of default served on Landlord, provided Tenant has been given notice of the mortgagee's address in writing by Landlord's mortgagee. If Landlord fails to cure any default within the time provided in this Lease, the mortgagee shall have an additional **[number]** days within which to cure the default, or if the default cannot be cured within that time, then whatever additional time is reasonably necessary if the mortgagee has commenced and is diligently pursuing the remedies necessary to cure the default.

20. Security Deposit. Within **[number]** days after the Lease Date, Tenant shall deposit the Security Deposit with Landlord. The Security Deposit shall be used to secure Tenant's performance of this Lease. Landlord may commingle the Security Deposit with its own funds. If Tenant fails to pay Rent or otherwise commits a default, Landlord may apply all or part of the Security Deposit to make the payment or cure the default. Landlord's rights under this section are in addition to any other rights or remedies Landlord may have under the terms of this Lease or under Michigan law. If Landlord uses all or part of the Security Deposit, within **[number]** days after demand by Landlord, Tenant shall pay Landlord sufficient funds to restore the Security Deposit to its original amount. Any unused portion of the Security Deposit shall be returned to Tenant, **[with interest at [percentage]/ without interest]**, within **[number]** days of the later of: (a) the termination of the Lease; (b) Tenant's surrender of the Premises; or (c) the return of the keys to Landlord. Landlord may deliver the Security Deposit to any purchaser of Landlord's interest in the Building containing the Premises, and thereafter, Landlord shall be discharged from any further liability with regard to the Security Deposit.

21. Remedies. Each of the following shall be deemed an event of default: (a) Tenant's failure to make payment of Rent when due as provided in this Lease; or (b) Tenant's failure to perform any of the other covenants of this Lease for a period of 30 days following written demand for performance by Landlord.

Landlord has the power to terminate this Lease and evict Tenant upon the occurrence of an event of default. Landlord shall exercise this power by the delivery of a notice of termination. The termination is effective **[immediately on delivery / on the [number] day following delivery]** of the notice to Tenant. If Landlord terminates this Lease, Landlord is entitled to recover all damages suffered as the result of any default. It is within the contemplation of the parties that such damages include: (a) the difference between the contract rent and the market rent through the remainder of the original Term; (b) the unamortized expenditures, calculated

Leasing Fundamentals

on a straight-line basis, undertaken by Landlord to fit the Premises to the needs of Tenant, including expenditures for Landlord Work, interior partitions, doors, floor coverings, wall coverings, paint, plaster, cabinetry, and all other work performed on the Premises; (c) the estimated cost of restoring the Premises to their original condition; (d) any commissions paid to re-lease the Premises; and (e) any other damages identified in this Lease.

Landlord may also evict Tenant without terminating this Lease. Tenant waives any right to possession of the Premises after eviction. Despite eviction, Tenant remains fully obligated for the payment of Annual Base Rent through the remainder of the Term. Landlord has no obligation to re-lease the Premises, and Landlord's failure or refusal to re-lease does not affect Tenant's obligation to pay Annual Base Rent.

The remedies provided to Landlord under this Lease are cumulative, regarding both other remedies provided by the Lease and any remedies provided by law. If Landlord commences an action to enforce this Lease, Tenant agrees to pay Landlord's reasonable costs and attorney fees. Landlord and Tenant knowingly and voluntarily waive trial by jury in any action: (a) to enforce this Lease; (b) to evict Tenant from the Premises; or (c) that is in any way related to the Lease, the Premises, or the relationship between Landlord and Tenant.

22. Surrender on Termination. On expiration or earlier termination of the Lease, Tenant shall surrender the Premises broom clean and in the same condition as on the [Lease Date / Commencement Date], reasonable wear and tear excepted, and shall promptly surrender all keys for the Premises to Landlord at the location then designated for the payment of rent. Any damage to the Premises resulting from the removal of trade fixtures or other items of personal property shall be repaired at Tenant's expense. Tenant shall reimburse all expenses paid or incurred by Landlord in connection with repairing or restoring the Premises to the designated condition immediately upon demand. If the Premises have become damaged or destroyed by fire or another casualty, Tenant shall restore them to the required condition, including any modifications required to comply with current codes and regulations. Tenant shall remove its personal property and trade fixtures from the Premises immediately on termination. Tenant represents that it is Tenant's intention that all personal property and trade fixtures remaining on the Premises after termination are abandoned by Tenant. Landlord may sell, discard, or keep such personal property and trade fixtures as it deems appropriate in its sole discretion. Tenant shall reimburse all expenses paid or incurred by Landlord in connection with removing Tenant's personal property and trade fixtures immediately upon demand. Tenant's obligations under this Section shall survive the expiration or other termination of the Lease.

23. Notices. All notices, bills, or statements required or permitted under the Lease shall be in writing and shall be deemed to have been given if either delivered personally or mailed by certified mail, return receipt requested, or sent by national overnight courier service, to the

parties at the addresses set forth below. The addresses specified in the notice may from time to time be changed by notice from one party to the other. Notice shall be effective upon delivery if personally delivered, on the next business day if sent by overnight courier, and upon receipt if sent by certified mail.

Landlord: _____

Tenant: _____

_____.

24. Construction and interpretation. This Lease shall be construed in accord with Michigan law. This Lease has been negotiated at arm's length and carefully reviewed by both parties. This Lease is not to be construed against Landlord.

The use of the word *may* in describing the right of a party means that the party has the option, but not the obligation, to exercise that right. Furthermore, the exercise of the right is not deemed an election of remedies or a waiver of any other right or claim. The use of the words *include* and *including* is intended to be illustrative, not exhaustive.

This Lease merges all proposals, negotiations, representations, agreements, and understandings with respect to the Lease. There are no representations with respect to the condition of the Premises or any other matter in any way related to the Premises or this Lease except as expressly set forth in this Lease. There are no damages within the contemplation of the parties except as expressly identified in this Lease. No rights, covenants, easements, or licenses may arise by implication. Reliance on any representation, omission, action, or inaction outside of this Lease is unreasonable and does not establish any rights or obligations on the part of either party. This Lease may only be modified or amended by a written document signed by Landlord and Tenant. There may be no oral modifications or amendments of this Lease, whether or not supported by consideration.

No endorsement or statement on any check or on any letter accompanying any check shall be deemed an accord and satisfaction. Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance of the amount due or to pursue any other remedy. Tenant acknowledges that the Annual Base Rent is a liquidated claim. Tenant waives any requirement that Landlord tender back funds as a condition to bringing an action

Leasing Fundamentals

to collect unpaid Annual Base Rent. No covenant or default is intended to be waived unless a waiver is clearly expressed in a document: (a) signed by the waiving party; (b) specifically identifying the covenant or default; and (c) expressly stating that it is a waiver of the identified covenant or default. The waiver of a covenant or default is not construed as a continuing waiver of the same covenant or of any future default. Consent by Landlord to any act requiring Landlord's consent does not constitute a waiver of the requirement of Landlord's consent with respect to any similar or subsequent act. Tenant is not entitled to surrender the Premises to avoid liability for Rent unless: (a) an acceptance of the surrender is evidenced in a document signed by Landlord; and (b) the document expressly states that it is the acceptance of a surrender. No action or inaction, other than as expressly provided in this section, may be construed as an acceptance of surrender by Landlord.

Notwithstanding anything to the contrary, Tenant's obligation to pay Rent is a material and independent covenant and is not subject to setoff, recoupment, or suspension. Notwithstanding anything to the contrary, Landlord has no obligation to mitigate any claim for Rent.

Time is of the essence with respect to both the definition of a material breach and the exercise of options, if any, within the Lease.

If any covenant of this Lease is invalid, illegal, or unenforceable, that covenant shall be enforced to the fullest extent permitted by law, and the validity, legality, and enforceability of the remaining covenants shall not in any way be affected or impaired.

25. Authorized and Binding. Tenant and each person executing this Lease on its behalf warrant and represent to Landlord that: (a) Tenant is validly organized, existing, and authorized to do business under Michigan law; (b) Tenant has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Tenant in accordance with its terms. Landlord and each person executing this Lease on its behalf warrant and represent to Tenant that: (a) Landlord is validly organized, existing, and authorized to do business under Michigan law; (b) Landlord has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Landlord in accordance with its terms. This Lease is binding on successors and assigns.

26. Environmental Compliance. Tenant shall not cause or permit the use, generation, storage, treatment or disposal in, on or about the Premises or the Building of any pollutant, contaminant, waste, or hazardous, toxic or radioactive substance or material (collectively, "Hazardous Materials") subject to regulation under any Federal, state or local laws, rules, regulations and ordinances from time to time in effect. Without limiting the foregoing, Tenant shall have sole and exclusive liability (including, but not limited to, liability under

environmental laws such as, but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act and the Michigan Environmental Response Act) for or related to, in whole or in part, the release or disposal of any substances, materials or wastes (whether Hazardous Materials or otherwise) by Tenant's employees, contractors or agents. Tenant will indemnify the Landlord Parties and save them harmless from and against any and all claims, actions, damages, liability and expense in connection with all losses, including loss of life, personal injury and/or damage to property arising from or out of any Hazardous Materials installed or introduced into the Premises or the Building by Tenant (or by others at Tenant's sufferance or with Tenant's permission) in whole or in part. In case any of the Landlord Parties shall be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold all such Landlord Parties harmless and shall pay all costs, expenses and reasonable attorney fees incurred or paid by the Landlord Parties in connection with such litigation. This paragraph shall survive the termination or expiration of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant, personally or by their duly authorized agents, have executed this Lease as of the day and year first above written.

LANDLORD

By _____

Its _____

Dated: _____

TENANT

By _____

Its _____

Dated: _____

Exhibit B
Net Lease, Single-Tenant Building

NET LEASE, SINGLE-TENANT BUILDING

THIS LEASE (the “Lease”) dated _____, is entered into by and between ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Landlord”) and ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Tenant”).

1. **Basic Lease Definitions.** The following defined terms shall be used throughout this Lease:

- A. “Lease Date” means the date of full execution and delivery of this Lease.
- B. “Operating Expenses” means all expenses of every kind or nature paid or incurred by Landlord in in operating, equipping, policing and protecting, lighting, heating, air conditioning, providing sanitation and sewer and other services, insuring (including self-insurance and the payment of deductible amounts under insurance policies), repairing, replacing and maintaining the Property and all portions thereof, including, without limitation, the Common Areas and the Building, and all other areas, facilities and buildings, including project office, parking facilities, vertical transportation facilities, retention ponds (if applicable),.
- C. “Landlord Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
- D. “Tenant Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
- E. “Premises” means the building and all land located at **[description]**, including **[description of any facilities included with the Premises, such as parking lots]**.
- F. “Term” means a period of “Lease Years” beginning on the “Commencement Date” .
- G. “Lease Year” means each period during the Term which begins on January 1 and ends on the next following December 31, except that if the Commencement Date occurs on a date other than January 1, the first Lease Year shall begin on the Commencement Date and end on the last day of the first full calendar year thereafter.
- H. “Commencement Date” means **the date on which Landlord tenders possession of the Premises to Tenant [or the date on which rent commences, if there is a rent-free build-out period from delivery]. .**
- I. “Expiration Date” is the last day of the last Lease Year of the Term.
- J. “Rent” means Annual Base Rent, each Monthly Installment of Base Rent, and all Additional Rent.
- K. Annual Base Rent is **[\$amount] [\$___ psf]**.

- L. Monthly Installment of Base Rent is **[\$amount]**.
 - M. “Additional Rent” means all expenses paid or incurred by Landlord in connection with the Premises, including Real Estate Taxes and Operating Expenses and all other charges that may become due under the terms of this Lease.
 - N. Real Estate Taxes means all: (i) real estate taxes; (ii) ad valorem taxes; (iii) general, special, ordinary, or extraordinary assessments; (iv) water and sewer charges; (v) taxes based on the receipt of rent, other than federal, state, and local income taxes; and (vi) any other federal, state, or local charge that may now or later be imposed, levied, or assessed against the Premises. In the event that any present or future enactment of the State or any political subdivision thereof or any governmental authority having jurisdiction thereover either: (a) imposes a direct or indirect tax and/or assessment of any kind or nature upon, against or with respect to the rents payable by Tenant or with respect to Landlord's ownership of any portion of the Premises, either in addition to or by way of substitution for all or any part of the taxes and assessments levied or assessed against the Premises including, without limitation, the Michigan Business Tax, any net profits tax or any comparable tax imposed on any portion of Landlord's revenues from the Premises; and/or (b) imposes a direct or indirect tax or surcharge of any kind or nature, upon, against or with respect to the parking areas of the Premises, the same shall be included in Real Estate Taxes, for purposes of this Lease.
 - O. Insurance means all insurance expenses paid or incurred by Landlord in connection with the **[Premises]**, including commercial general liability, property, fire, casualty, extended coverage, worker's compensation, elevator, boiler and machinery, war risk, or any other insurance carried in good faith by Landlord or required by Landlord's mortgagee.
 - P. Utilities means all utility expenses paid or incurred by Landlord in connection with the **[Premises]**, including charges for electricity, gas, steam, water, and sewer.
 - Q. Security Deposit is **[\$amount]**.
 - R. Permitted Use is **[use]**.
 - S. Building Rules and Regulations means the rules established by Landlord, from time to time, for the Premises, the current version of which is attached as Exhibit **[number / letter]**
 - T. “Applicable Laws” means the present and future laws, statutes, ordinances and regulations of all governmental authorities having jurisdiction over Tenant, the Property, the Building and/or the Premises.
2. **Premises.** Landlord, in consideration of the Rent to be paid and the covenants to be performed by Tenant, does hereby demise and lease unto Tenant, and Tenant hereby rents and hires from Landlord, the Premises, subject to covenants, restrictions and easements of

Leasing Fundamentals

record. . Tenant has inspected the Premises and is satisfied with their condition. Landlord shall make reasonable efforts to tender possession of the Premises on the Commencement Date. Landlord shall not be liable for damages for failure to tender possession on the Commencement Date, and the validity of the Lease shall not be impaired by such a failure. Notwithstanding the foregoing, if, for any reason, the Commencement Date has not occurred within ____ [months/years] after the Lease Date, the Lease shall be automatically terminated without further act of either party hereto, and the parties hereto shall be released from all obligations hereunder.

3. **Term.** The Term commences on the Commencement Date and expires on the Expiration Date, unless otherwise terminated or extended as provided in this Lease.

4. **Rent.** Beginning on the Commencement Date, Tenant shall pay Landlord the Annual Base Rent and Additional Rent. The Annual Base Rent shall be paid by Monthly Installment of Base Rent, to the order of Landlord, in advance, on the first day of each calendar month, at Landlord's office or any other place that Landlord designates in writing, all such payments to be without any prior demand therefor and without any deductions or setoff whatsoever. Any Rent not received by Landlord within [number] days after the due date [**or receipt of the notice from Landlord that Rent is overdue**] shall be assessed a one-time late charge equal to [number]% of the late payment. In addition, all Rent due and not paid before the expiration of any applicable grace period shall bear interest at the rate of [number]% per annum from the due date (prior to any grace period for payment) until paid. If the Commencement Date is other than the first day of a calendar month, the Monthly Installment of Base Rent for the first calendar month of the Term shall be prorated on a daily basis and paid on the Commencement Date.

With each Monthly Installment of Base Rent, Tenant shall also pay the Additional Rent by depositing with Landlord an amount equal to 1/12th of the estimated Additional Rent ("Estimated Additional Rent") for each Lease Year, as reasonably determined by Landlord. If the funds deposited with Landlord are insufficient to pay the actual Additional Rent in full, Tenant shall, immediately on demand by Landlord, deposit with Landlord the difference between the Estimated Annual Rent paid by Tenant for such Lease Year and the actual Additional Rent due for such Lease Year. If the Estimated Additional Rent paid by Tenant for a Lease Year exceeds the amount of actual Additional Rent due for such Lease Year, Landlord shall credit the excess to the payment of future Additional Rent.

5. **Holding Over.** If Tenant remains in possession of the Premises after the Termination Date with the consent of Landlord, it shall occupy the Premises as a holdover tenant on a month-to-month basis. Landlord may withhold its consent to hold over in its sole discretion. If Landlord consents to the holdover, Tenant is subject to all the covenants of this Lease to the extent they can be applied to a month-to-month tenancy, except that the Monthly Installment

of Base Rent for each month of the holdover shall be [125 / 150 / 200] percent of the Monthly Installment of Base Rent payable during the last month of the Term, plus an amount equal to the amount of Estimated Additional Rent payable by Tenant during the last month of the Term. This covenant does not preclude Landlord from recovering damages if Tenant fails to timely deliver possession of the Premises after termination of the holdover, or the Expiration Date, nor does it establish any right to extend or renew the Term. If Tenant holds over after the Expiration Date without Landlord's consent, Tenant is liable for all damages resulting from the holdover. It is expressly within the contemplation of the parties that such damages may include: (a) the reasonable rental value of the Premises; (b) any damages arising from the loss of any sale, lease, or refinancing of the Premises ; (c) any lost profits incurred by Landlord; and (d) any treble, double, or statutory damages allowed under Applicable Laws.

6. Right of Access. Landlord and Landlord's agents shall have the right to enter the Premises at all times [or during regular business hours] to examine the Premises, to show the Premises to prospective purchasers, mortgagees, or lessees, and to make such repairs, alterations and improvements or additions as Landlord may deem necessary or desirable. Landlord shall be allowed to take all material into the Premises that may be required for the foregoing purposes, without such activities constituting an eviction of Tenant. Rent shall not abate while the repairs, alterations, improvements or additions are being made. During the [number] months prior to the expiration of the term of this Lease or any renewal term, Landlord may place upon the Premises the usual notices "For Rent" or "For Lease". If Tenant is not personally present to open and permit entry into the Premises at any time when entry is necessary or permissible, Landlord or Landlord's agents may enter the Premises by a master key or may forcibly enter the Premises, without rendering Landlord or its agents liable. Nothing in this Section, however, shall be deemed to impose on Landlord any obligation for the maintenance or repair of the Premises, except as otherwise specifically provided in this Lease.

7. Quiet Enjoyment. Unless this Lease is terminated or Tenant is evicted in accord with Michigan law, Landlord shall not disturb Tenant's quiet enjoyment of the Premises or unreasonably interfere with the Permitted Use.

8. Use of the Premises. The Premises shall be used for the Permitted Use and for no other purpose. Tenant shall not use the Premises in any manner that violates the Rules and Regulations, (as the same may be amended, modified or supplemented from time to time) or Applicable Laws. Landlord may amend , modify or supplement the Rules and Regulations in its sole discretion.

9. Repairs and Liens. Landlord shall not be required to make any expenditures of any kind in connection with this Lease, or to make any repairs or improvements to the Premises. It is

Leasing Fundamentals

expressly understood that this is a net lease intended to assure Landlord the rent reserved on an absolute net basis. Tenant shall, at Tenant's expense, maintain the Premises and make all replacements necessary to keep the Premises in good condition and repair. This includes janitorial service, interior and exterior repairs and replacements, structural and non-structural repairs and replacements, and repairs and replacements to systems. Tenant shall, at Tenant's expense, comply with Applicable Laws (including the Americans with Disabilities Act of 1990, as amended). Tenant shall keep the Premises free of construction or other liens. Tenant shall hold Landlord harmless against any liens that may be placed on the Premises, except those attributable to the acts of Landlord. If a lien is filed against the Premises as the result of any action undertaken by Tenant, Tenant shall discharge the lien within [number] days after receiving notice of the lien. If Tenant fails to discharge the lien, Landlord may procure a discharge at Tenant's expense, which Tenant shall pay immediately on a demand from Landlord.

10. Utilities. Any Rent not received by Landlord within [number] days after the due date [or receipt of the notice from Landlord that Rent is overdue] shall be assessed a one-time late charge equal to [number]% of the late payment. In addition, all Rent due and not paid before the expiration of any applicable grace period shall bear interest at the rate of [number]% per annum from the due date (prior to any grace period for payment) until paid.

11. Tenant's Alterations. Landlord consents to Tenant's leasehold improvements described in Exhibit to the Lease (the "Initial Improvements"). Tenant shall not, without the prior written consent of Landlord, [such consent not to be unreasonably withheld,] make or cause to be made any alterations, improvements, additions or installations in or to the Premises (the "Alterations"), other than the Initial Improvements. [If Landlord so consents, before commencement of any such work, Tenant shall furnish to Landlord for approval: architectural plans and specifications; names and addresses of all contractors; necessary permits and licenses; and certificates of insurance. All of preceding items shall be in form and amount as may be reasonably satisfactory to landlord.] All Alterations shall be done only by contractors and subcontractors approved in writing by Landlord [, such approval not to be unreasonably withheld], and at such time and in such manner as Landlord may from time to time designate. Tenant shall hold Landlord and its agents harmless from all loss, costs, claims and damages which may arise out of the Alterations. Tenant shall pay the cost of the Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with sworn statements and full lien waivers for the Alterations. All Alterations shall comply with all applicable statutes, ordinances and rules. All Alterations shall be done in a good and workmanlike manner. All Alterations shall become part of the Premises at the time of their installation and shall remain on the Premises at the expiration of the termination of the term of this Lease.

12. **Signs.** Tenant shall not display any sign, notice, picture or advertising matter in or about the Building or the Premises at places that are visible from outside the Premises without Landlord's prior written consent, such approval not to be unreasonably withheld]; however, the name of Tenant may be displayed on the entrance door of the Premises in accordance with the Building standards as established by Landlord. Upon expiration or earlier termination of the Lease, Tenant shall remove any signs or advertising consented to by Landlord and shall repair any damage caused by the removal.

13. **Mutual Indemnification.** Tenant shall indemnify, defend and hold harmless Landlord and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents (individually and collectively, the "Landlord Parties") against all claims, actions, damages, liability and expense in connection with all losses, including for bodily injury, loss of life or property damage relating to the Premises. The claims covered by this indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the Premises; (b) the use or misuse of the Premises by Tenant or its agents, contractors, or invitees; or (c) any event on the Premises, whatever the cause. Tenant's indemnification does not extend to liability for damages resulting from the sole or gross negligence of Landlord or for Landlord's intentional misconduct. Landlord shall indemnify, defend and hold harmless Tenant and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents against all claims for bodily injury or property damage relating to the common areas of the Property. The claims covered by this indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the common areas; (b) the use or misuse of the common areas by Landlord or its agents, contractors, or invitees; or (c) any event on or within the common areas, whatever the cause. Landlord's indemnification does not extend to liability for damages resulting from the sole or gross negligence of Tenant or for Tenant's intentional misconduct.

14. **Limitations on Landlord's liability.** The Landlord, as defined in this Lease, includes successors in interest. The term is intended to refer to the owner of the Premises at the time in question. If the Premises are sold, the new owner shall automatically be substituted as the Landlord.

If Landlord fails to perform this Lease and as a result Tenant recovers a money judgment against Landlord, the judgment shall be satisfied out of the execution and sale of Landlord's interest in the Property or by garnishment against the rents or other income from the Property. Landlord is not liable for any deficiency. This section constitutes Tenant's sole and exclusive remedy for default.

Conditioned solely on the conveyance of the Property, Tenant agrees to the following release in favor of its then former landlord. Effective on the first anniversary of the date on which Tenant is given notice of the conveyance, Tenant releases its former landlord from all claims

Leasing Fundamentals

except those expressly preserved in this section. This release is intended to be broadly construed for the benefit of the former landlord and includes: (a) all claims regarding the performance of this Lease; (b) all claims for bodily injury or property damage relating to the Premises; and (c) all claims in any other way relating to the Lease, the Premises, or the landlord-tenant relationship. However, this release does not extend to any claim filed in a court of appropriate jurisdiction within one year of the date of conveyance or to any claim for bodily injury or property damage resulting from the former landlord's gross negligence.

15. Insurance. Tenant shall continuously maintain in effect during the Term a commercial general liability insurance policy providing coverage against claims for bodily injury, personal injury and property damage for the Premises, including without limitation all common areas, and the business operated by Tenant and any other persons and entities conducting business in the Premises, with policy limits of not less than \$[amount] per person and \$[amount] per occurrence, exclusive of defense costs and without any provision for a deductible or self-insured retention.

Tenant shall continuously maintain in effect during the Term a property insurance policy on a special cause of loss form covering Tenant's personal property, trade fixtures, and improvements to their full replacement cost, without deduction for depreciation. The insurance shall include coverage for loss of profits or business income and reimbursement for extra expenses incurred as the result of damage or destruction to all or a part of the Premises.

All insurance policies that Tenant is required to maintain shall be written by carriers who are authorized to write insurance in Michigan and have an AM Best Company rating of not less than A-VIII. Any commercial general liability policy that Tenant is required to maintain shall: (a) name Landlord and any other parties in interest designated by Landlord as an additional insured using ISO form CG 20 26 11 85 without modification; (b) be endorsed to provide that it shall not be canceled or changed for any reason except on 30 days' prior written notice to Landlord; (c) provide coverage to Landlord whether or not the event giving rise to the claim is alleged to have been caused in whole or in part by the acts, omissions, or negligence of Landlord; (d) all policies shall be primary, with the policies of Landlord and Landlord's Mortgagees being excess, secondary, and noncontributing; and (e) Tenant shall reinstate any aggregate limit that is reduced because of losses paid to below 75 percent of the limit required by this Lease. Landlord and Tenant shall require their property insurance policies to include a clause or an endorsement allowing Landlord and Tenant to release each other from any liability to each other or anyone claiming through or under them by way of subrogation or otherwise, for any loss resulting from risks insured against. Notwithstanding the foregoing, if at any time either party's insurer refuses to permit a waiver of subrogation, then Landlord or Tenant may in each instance revoke any such waiver effective 30 days from the date of notice to the other unless, within that 30 days, the other party is able to secure and furnish, without additional expense, insurance in other companies with such waiver of

subrogation. If any policy that Tenant is required to maintain is written on a claims-made insurance form, each policy shall have a retroactive date that is not later than the Commencement Date. Furthermore, if insurance coverage is written on a claims-made basis, Tenant's obligation to provide insurance shall be extended for an additional period equal to the statute of limitations for such claims on the Termination Date, plus one year. Insurance may be provided in the form of blanket insurance policies covering properties in addition to the Premises or entities in addition to Tenant. All blanket policies shall provide that the overall aggregate limit of liability that applies to Landlord or the Premises is independent from any overall or annual aggregate that applies to other entities or properties.

At Landlord's option, Tenant shall deliver either certificates of insurance or the original policies to Landlord before the Commencement Date, together with receipts evidencing payment of the premiums. Tenant shall deliver certificates of renewal for the policies to Landlord not less than 30 days before their expiration dates.

This Lease requires Tenant to obtain insurance to cover any claim for loss resulting from fire or other casualty. Landlord and Tenant shall each look to its own insurance for the recovery of insured claims. Landlord and Tenant release one another from insured claims. Subject to the provisions of this Section 14, Landlord and Tenant waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver remains effective despite either party's failure to obtain insurance in accord with this Lease. If either party fails to obtain insurance, it bears the full risk of its own loss.

16. Fire or Other Casualty. Tenant shall give Landlord notice of fire or other casualty on the Premises. In addition to the written notice, Tenant shall immediately and with all diligence attempt to contact Landlord by all means available, including telephone, pager, fax, and e-mail, to inform Landlord of the casualty. If the Premises are damaged or destroyed by fire or other casualty, Landlord may terminate this Lease by notice to Tenant. The notice of termination shall be given within **[number]** days after the occurrence of the casualty. If the notice of termination is not given within that period, this termination option shall lapse and no longer be effective. Within **[period]** after the notice of termination has been given, Tenant shall surrender the Premises to Landlord. After the surrender, each party is released from any further obligations under this Lease, with the following exceptions: (a) all Rent accruing through the surrender date shall be paid in full; (b) the Security Deposit shall be retained or returned as provided in this Lease; and (c) any provisions of this Lease which expressly survive termination of this Lease shall continue in full force and effect. Tenant has no obligation to pay any Rent accruing after the surrender date. If Landlord does not exercise this option within the designated period, Landlord shall diligently proceed to repair and restore the Premises to its condition before the casualty. In no event shall Landlord be required to repair or replace any merchandise, trade fixtures, furnishings, equipment, plate

glass, signs and/or personal property of Tenant (collectively, “Tenant’s Property”). If Landlord repairs or rebuilds, Tenant, at Tenant’s sole cost, shall repair or replace all of Tenant’s property in a manner and to at least a condition equal to that prior to the casualty.

17. Eminent Domain. If [percentage] or more of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, this Lease shall automatically terminate as of the [date that title is vested in the condemning agency / date that Landlord or Tenant is notified of the taking / date that the condemning agency takes possession of any portion of the Premises / other date to be agreed upon by the parties]. Notwithstanding this termination, Tenant is required to pay Rent through the date that it actually surrenders possession of the Premises. If Landlord is notified in writing by a condemning agency that less than [percentage] of the [useable floor area / Premises / parking area][shall / may] be taken through eminent domain, Landlord may terminate this Lease by providing written notice to Tenant. Within [time period] after Landlord notifies Tenant that Landlord is terminating this Lease, Tenant shall surrender possession of the Premises to Landlord. After Tenant surrenders possession, the parties’ obligations under this Lease are terminated, provided that Tenant surrenders possession in accord with this Lease and pays Rent through the date of surrender. [If Landlord does not exercise its termination option within [time period] after being notified of the taking, then the option to terminate lapses and this Lease continues in full effect.]

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Landlord and Tenant agree that all compensation paid for the Premises, including any value of Tenant’s leasehold interest in the Premises, shall be paid to and be the property of Landlord. Tenant may seek compensation for any of its own trade fixtures, business interruption, going concern, moving expenses, and other items, provided that Tenant’s compensation is not in diminution of Landlord’s or Landlord’s mortgagee’s compensation for the Premises.

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Tenant has no claim against Landlord for the value of any unexpired term of this Lease. If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, and this Lease is not terminated, Landlord and Tenant agree that the Annual Base Rent for the Premises shall be reduced based on a ratio of the [useable floor space] that remains after the taking to the [useable floor space] of the original Premises.

18. Assignment and Subletting. Tenant shall not assign this Lease, sublet the Premises or in any manner transfer this Lease or any estate or interest in this Lease, or allow anyone to conduct business at the Premises (whether as a concessionaire, franchisee, subtenant, permittee, operator or otherwise), either by voluntary or involuntary act of Tenant or by

operation of law or otherwise (in each such instance, a “Transfer”), without the prior consent of Landlord, which may be withheld in Landlord’s sole discretion. In the event that Tenant, with or without the previous consent of Landlord, does assign, sublet or in any manner transfer this Lease or any estate or interest in this Lease, Tenant shall in no way be released from any of its obligations under this Lease.

19. Subordination and Estoppel Certificates. At Landlord’s mortgagee’s option: (a) any mortgage or mortgages now or later placed on Landlord’s interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof, may be subordinated to this Lease; or (b) this Lease may be subordinated to any mortgage or mortgages now or later placed on Landlord’s interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. The mortgagee’s option shall be exercised by notice to Tenant. Tenant shall execute and deliver, within **[number]** days after a request, any further commercially reasonable instruments, in a form acceptable to the mortgagee, confirming subordination as requested by Landlord or Landlord’s mortgagee.

In the event of foreclosure or any conveyance by deed in lieu of foreclosure, Tenant shall attorn to Landlord’s successor in interest, provided that the successor agrees in writing to recognize Tenant’s rights under this Lease if Tenant is not in default beyond any applicable cure periods. Tenant shall execute and deliver, within **[number]** days after a request, any further commercially reasonable instruments, in a form acceptable to Landlord’s successor in interest, attorning to the successor in interest and recognizing it as Landlord under this Lease.

Within **[number]** days after a written demand by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form acceptable to Landlord, certifying

- a. the Commencement Date;
- b. the Expiration Date;
- c. that this Lease is unmodified and in full force and effect, or is in full force and effect as modified, stating the modifications;
- d. that the Lease is not in default, or a list of any defaults;
- e. that Tenant does not claim any rights of setoff, or a list of rights of setoff;
- f. the amount of Rent due as of the date of the certificate, or the date to which the Rent has been paid in advance;
- g. the amount of any Security Deposit; and

Leasing Fundamentals

h. other matters reasonably requested by Landlord.

Landlord and any prospective purchaser or mortgagee of the Premises may rely on this certificate. It is within the contemplation of the parties that Tenant's failure to provide the estoppel certificate in the time and manner required could result in the loss of a prospective sale or loan and that Tenant is liable for all damages resulting from such a loss.

Tenant shall give Landlord's mortgagee, by certified mail, a copy of any notice of default served on Landlord, provided Tenant has been given notice of the mortgagee's address in writing by Landlord's mortgagee. If Landlord fails to cure any default within the time provided in this Lease, the mortgagee shall have an additional **[number]** days within which to cure the default, or if the default cannot be cured within that time, then whatever additional time is reasonably necessary if the mortgagee has commenced and is diligently pursuing the remedies necessary to cure the default.

20. Security Deposit. Within **[number]** days of the Lease Date, Tenant shall deposit the Security Deposit with Landlord. The Security Deposit shall be used to secure Tenant's performance of this Lease. Landlord may commingle the Security Deposit with its own funds. If Tenant fails to pay Rent or otherwise commits a default, Landlord may apply all or part of the Security Deposit to make the payment or cure the default. Landlord's rights under this section are in addition to any other rights or remedies Landlord may have under the terms of this Lease or under Michigan law. If Landlord uses all or part of the Security Deposit, within **[number]** days after demand by Landlord, Tenant shall pay Landlord sufficient funds to restore the Security Deposit to its original amount. Any unused portion of the Security Deposit shall be returned to Tenant, **[with interest at [percentage]/ without interest]**, within **[number]** days of the later of: (a) the termination of the Lease; (b) Tenant's surrender of the Premises; or (c) the return of the keys to Landlord. If Landlord uses the Security Deposit, within **[number]** days after a demand by Landlord, Tenant shall pay Landlord sufficient funds to restore the Security Deposit to its original amount. Any unused portion of the Security Deposit shall be returned to Tenant, without interest, within **[number]** days after Tenant's surrender of the Premises in accord with this Lease. Landlord may deliver the Security Deposit to any purchaser of Landlord's interest in the Building containing the Premises, and thereafter, Landlord shall be discharged from any further liability with regard to the Security Deposit.

21. Remedies. Each of the following shall be deemed an event of default: (a) Tenant's failure to make payment of Rent when due as provided in this Lease; or (b) Tenant's failure to perform any of the other covenants of this Lease for a period of 30 days following written demand for performance by Landlord.

Landlord has the power to terminate this Lease and evict Tenant upon the occurrence of a default. Landlord shall exercise this power by the delivery of a notice of termination. The termination is effective **[immediately on delivery / on the [number] day following delivery]** of the notice to Tenant. If Landlord terminates this Lease, Landlord is entitled to recover all damages suffered as the result of any default. It is within the contemplation of the parties that such damages include: (a) the difference between the contract rent and the market rent through the remainder of the original Term; (b) the unamortized expenditures, calculated on a straight-line basis, undertaken by Landlord to fit the Premises to the needs of Tenant, including expenditures for Landlord Work, interior partitions, doors, floor coverings, wall coverings, paint, plaster, cabinetry, and all other work performed on the Premises; (c) the estimated cost of restoring the Premises to their original condition; (d) any commissions paid to re-lease the Premises; and (e) any other damages identified in this Lease.

Landlord may also evict Tenant without terminating this Lease. Tenant waives any right to possession of the Premises after eviction. Despite eviction, Tenant remains fully obligated for the payment of Rent through the remainder of the Term. Landlord has no obligation to re-lease the Premises, and Landlord's failure or refusal to re-lease does not affect Tenant's obligation to pay Rent.

The remedies provided to Landlord under this Lease are cumulative, regarding both other remedies provided by the Lease and any remedies provided by law. If Landlord commences an action to enforce this Lease, Tenant agrees to pay Landlord's reasonable costs and attorney fees. Landlord and Tenant knowingly and voluntarily waive trial by jury in any action: (a) to enforce this Lease; (b) to evict Tenant from the Premises; or (c) that is in any way related to the Lease, the Premises, or the relationship between Landlord and Tenant.

22. Surrender of Premises. On expiration or earlier termination, or other expiration of the Lease, Tenant shall surrender the Premises broom clean and in the same condition as on the **[Lease Date / Commencement Date]**, reasonable wear and tear excepted, and shall promptly surrender all keys for the Premises to Landlord at the location then designated for the payment of rent. Any damage to the Premises resulting from the removal of trade fixtures or other items of personal property shall be repaired at Tenant's expense. Tenant shall reimburse all expenses paid or incurred by Landlord in connection with repairing or restoring the Premises to the designated condition immediately upon demand. If the Premises have become damaged or destroyed by fire or another casualty, Tenant shall restore them to the required condition, including any modifications required to comply with current codes and regulations. Tenant shall remove its personal property and trade fixtures from the Premises immediately on termination. Tenant represents that it is Tenant's intention that all personal property and trade fixtures remaining on the Premises after termination are abandoned by Tenant. Landlord may sell, discard, or keep such personal property and trade fixtures as it deems appropriate in its sole discretion. Tenant shall reimburse all expenses paid or incurred

Leasing Fundamentals

by Landlord in connection with removing Tenant's personal property and trade fixtures immediately upon demand. Tenant's obligations under this Section shall survive the expiration or other termination of the Lease.

23. **Notices.** All notices, bills, or statements required or permitted under the Lease shall be in writing and shall be deemed to have been given if either delivered personally or mailed by certified mail, return receipt requested, or sent by national overnight courier service, to the parties at the addresses set forth below. The addresses specified in the notice may from time to time be changed by notice from one party to the other. Notice shall be effective upon delivery if personally delivered, on the next business day if sent by overnight courier, and upon receipt if sent by certified mail.

Landlord: _____

Tenant: _____

_____.

24. **Construction and Interpretation.** This Lease shall be construed in accord with Michigan law. This Lease has been negotiated at arms' length and carefully reviewed by both parties. This Lease is not to be construed against Landlord.

The use of the word *may* in describing the right of a party means that the party has the option, but not the obligation, to exercise that right. Furthermore, the exercise of the right is not an election of remedies or a waiver of any other right or claim. The use of the words *include* and *including* is intended to be illustrative, not exhaustive.

The parties shall rely solely on the terms of this Lease to govern their relationship. This Lease merges all proposals, negotiations, representations, agreements, and understandings with respect to the Lease. There are no representations with respect to the condition of the Premises, the Building, Additional Rent or any other matter in any way related to the Premises or this Lease except as expressly set forth in this Lease. There are no damages within the contemplation of the parties except as expressly identified in this Lease. No rights, covenants, easements, or licenses may arise by implication. Reliance on any representation, omission, action, or inaction outside of this Lease is unreasonable and does not establish any rights or obligations on the part of either party. This Lease may only be modified or amended

by a written document signed by Landlord and Tenant. There may be no oral modifications or amendments of this Lease, whether or not supported by consideration.

No endorsement or statement on any check or on any letter accompanying any check shall be deemed an accord and satisfaction. Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance of the amount due or to pursue any other remedy. Tenant acknowledges that the Annual Base Rent is a liquidated claim. Tenant waives any requirement that Landlord tender back funds as a condition to bringing an action to collect unpaid Annual Base Rent. No covenant or default is intended to be waived unless a waiver is clearly expressed in a document: (a) signed by the waiving party; (b) specifically identifying the covenant or default; and (c) expressly stating that it is a waiver of the identified covenant or default. The waiver of a covenant or default is not construed as a continuing waiver of the same covenant or of any future default. Consent by Landlord to any act requiring Landlord's consent does not constitute a waiver of the requirement of Landlord's consent with respect to any similar or subsequent act. Tenant is not entitled to surrender the Premises to avoid liability for Rent unless: (a) an acceptance of the surrender is evidenced in a document signed by Landlord; and (b) the document expressly states that it is the acceptance of a surrender. No action or inaction, other than as expressly provided in this section, may be construed as an acceptance of surrender by Landlord.

Notwithstanding anything to the contrary, Tenant's obligation to pay Rent is a material and independent covenant and is not subject to setoff, recoupment, or suspension. Notwithstanding anything to the contrary, Landlord has no obligation to mitigate any claim for Rent.

Time is of the essence with respect to both the definition of a material breach and the exercise of options, if any, within the Lease.

If any covenant of this Lease is invalid, illegal, or unenforceable, that covenant shall be enforced to the fullest extent permitted by law, and the validity, legality, and enforceability of the remaining covenants shall not in any way be affected or impaired.

25. Authorized and Binding. Tenant and each person executing this Lease on its behalf warrant and represent to Landlord that: (a) Tenant is validly organized, existing, and authorized to do business under Michigan law; (b) Tenant has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Tenant in accordance with its terms. Landlord and each person executing this Lease on its behalf warrant and represent to Tenant that: (a) Landlord is validly organized, existing, and authorized to do business under Michigan law; (b) Landlord has full power and lawful authority to enter into this Lease; and (c) the execution of this

Leasing Fundamentals

Lease by the individual who has signed below is legally binding on Landlord in accordance with its terms. This Lease is binding on successors and assigns.

26. Environmental Compliance. Tenant shall not cause or permit the use, generation, storage, treatment or disposal in, on or about the Premises or the Building of any pollutant, contaminant, waste, or hazardous, toxic or radioactive substance or material (collectively, "Hazardous Materials") subject to regulation under any Federal, state or local laws, rules, regulations and ordinances from time to time in effect. Without limiting the foregoing, Tenant shall have sole and exclusive liability (including, but not limited to, liability under environmental laws such as, but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act and the Michigan Environmental Response Act) for or related to, in whole or in part, the release or disposal of any substances, materials or wastes (whether Hazardous Materials or otherwise) by Tenant's employees, contractors or agents. Tenant will indemnify the Landlord Parties and save them harmless from and against any and all claims, actions, damages, liability and expense in connection with all losses, including loss of life, personal injury and/or damage to property arising from or out of any Hazardous Materials installed or introduced into the Premises or the Building by Tenant (or by others at Tenant's sufferance or with Tenant's permission) in whole or in part. In case any of the Landlord Parties shall be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold all such Landlord Parties harmless and shall pay all costs, expenses and reasonable attorney fees incurred or paid by the Landlord Parties in connection with such litigation. This paragraph shall survive the termination or expiration of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant, personally or by their duly authorized agents, have executed this Lease as of the day and year first above written.

LANDLORD

By _____

Its _____

Dated: _____

TENANT

By _____

Its _____

Dated: _____

Exhibit C
Expense Escalation Lease, Multitenant Building

EXPENSE ESCALATION LEASE, MULTITENANT BUILDING

THIS LEASE (the “Lease”) dated _____, is entered into by and between ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Landlord”) and ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Tenant”).

1. **Basic lease definitions.** The following defined terms shall be used throughout this Lease:
- A. “Lease Date” means the date of full execution and delivery of this Lease..
 - B. “Landlord Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
 - C. “Tenant Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
 - D. “Premises” means suite **[number]** of the “Building”, located approximately as shown on the floor plan attached as Exhibit **[number / letter]**.
 - E. “Building” means **[building description]**.
 - F. “Property” means the Premises, the Building, and all related land and improvements.
 - G. “Rentable Floor Area” of the Premises means approximately **[number]** rentable square feet and includes an allocated percentage of the ”Common Areas”.
 - H. Term means a period of **[number]** “Lease Years” beginning on the “Commencement Date”.
 - I. “Lease Year” means each period during the Term which begins on January 1 and ends on the next following December 31, except that if the Commencement Date occurs on a date other than January 1, the first Lease Year shall begin on the Commencement Date and end on the last day of the first full calendar year thereafter.
 - J. “Commencement Date” means **[date on which rent and occupancy begin or the date on which only occupancy begins, if there is a rent-free build-out period]**.
 - K. “Expiration Date means the last day of the last Lease Year of the Term..
 - L. “Rent” means “Annual Base Rent and all “Additional Rent.

- M. “Annual Base Rent” means \$[amount] [\$____psf] and is payable in consecutive Monthly Installments of Base Rent.
- N. “Monthly Installment of Base Rent” means \$[amount].
- O. “Additional Rent” means Tenant’s “Proportionate Share” of all expenses paid or incurred by Landlord in connection with the Property, including, without limitation, **[Real Estate Taxes / Operating Expenses / Insurance / Utilities]** and all other charges that may become due under the terms of this Lease.
- P. “Proportionate Share” means **[percentage]**.
- Q. “Base Year” means **[year]**.
- R. “Real Estate Taxes” means all: (i) real estate taxes; (ii) ad valorem taxes; (iii) general, special, ordinary, or extraordinary assessments; (iv) water and sewer charges; (v) taxes based on the receipt of rent, other than federal, state, and local income taxes; and (vi) any other federal, state, or local charge that may now or later be imposed, levied, or assessed against the Property. In the event that any present or future enactment of the State or any political subdivision thereof or any governmental authority having jurisdiction thereover either: (a) imposes a direct or indirect tax and/or assessment of any kind or nature upon, against or with respect to the rents payable by tenants or occupants in the Building to Landlord or with respect to Landlord's ownership of any portion of the Property, either in addition to or by way of substitution for all or any part of the taxes and assessments levied or assessed against the Property including, without limitation, the Michigan Business Tax, any net profits tax or any comparable tax imposed on any portion of Landlord's revenues from the Property; and/or (b) imposes a direct or indirect tax or surcharge of any kind or nature, upon, against or with respect to the parking areas of the Property, the same shall be included in Real Estate Taxes, for purposes of this Lease.
- S. “Operating Expenses” means all expenses of every kind or nature paid or incurred by Landlord in in operating, equipping, policing and protecting, lighting, heating, air conditioning, providing sanitation and sewer and other services, insuring (including self-insurance and the payment of deductible amounts under insurance policies), repairing, replacing and maintaining the Property and all portions thereof, including, without limitation, the Common Areas and the Building, and all other areas, facilities and buildings, including project office, parking facilities, vertical transportation facilities, retention ponds (if applicable),.
- T. “Security Deposit” means \$[amount].
- U. “Permitted Use” means **[use]**.
- V. “Rules and Regulations” means the rules established by Landlord from time to time for the Building, and Common Areas, the current version of which is attached as Exhibit **[number / letter]**.

Leasing Fundamentals

W. “Applicable Laws” means the present and future laws, statutes, ordinances and regulations of all governmental authorities having jurisdiction over Tenant, the Property, the Building and/or the Premises.

2. **Premises.** Landlord, in consideration of the Rent to be paid and the covenants to be performed by Tenant, does hereby demise and lease unto Tenant, and Tenant hereby rents and hires from Landlord, the Premises, subject to covenants, restrictions and easements of record. . Tenant has inspected the Premises and is satisfied with the condition of the Premises, the Building and the Property. Landlord shall make reasonable efforts to tender possession of the Premises on the Commencement Date. Landlord shall not be liable for damages for failure to tender possession on the Commencement Date, and the validity of the Lease shall not be impaired by such a failure.

Notwithstanding anything contained in this Lease (including the Exhibits hereto) to the contrary, The exterior walls and the roof of the Premises and the area beneath the Premises are not demised hereunder, and the use thereof, together with the right to locate, both vertically and horizontally, install, maintain, use, repair and replace pipes, utility lines, ducts, conduits, flues, refrigerant lines, drains, sprinkler mains and valves, access panels, wires and structural elements leading through the Premises serving other parts of the Building, is hereby reserved unto Landlord. Landlord reserves an easement in, over and through the area occupied by the Premises, and an easement above Tenant's finished ceiling to the roof, or to the bottom of the floor deck above the Premises, for general access purposes and in connection with the exercise of Landlord's other rights under this Lease. Landlord reserves the right to make alterations or additions to the Property, to demolish or build improvements on the Property, and to change the name and/or address of the Building, in its sole discretion without the consent of Tenant. Landlord further reserves the right at any time, and from time to time, to make alterations to, and to build additional stories on the Building, and to construct other improvements on the Property, including any modifications of the Common Areas in connection therewith, and to sell or lease any part of the land comprising the Property. The purpose of Exhibit A is to show the approximate location of the Premises and Landlord reserves the right at any time to relocate, enlarge or reconfigure any portion of the Building, the parking areas and other Common Areas as the same may be shown on any current site plan of the Property or on any Exhibit to this Lease.

3. **Term.** The Term commences on the Commencement Date and expires on the Expiration Date, unless otherwise terminated or extended as provided in this Lease.

4. **Annual Base Rent.** Beginning on the Commencement Date, Tenant shall pay Landlord the Annual Base Rent. Tenant shall pay the Annual Base Rent by Monthly Installment of Base Rent, to the order of Landlord, in advance, on the first day of each calendar month, at Landlord’s office or any other place that Landlord designates in writing, all such payments to

be without any prior demand therefor and without any deductions or setoff whatsoever . Any Rent that is not received when due shall bear interest at the annual rate of **[percentage]**. If the Commencement Date is other than the first day of a calendar month, the Monthly Installment of Base Rent for the first calendar month of the Term shall be prorated on a daily basis and paid on the Commencement Date.

5. Real Estate Taxes. Tenant shall pay as Additional Rent its Proportionate Share of the “Tax Increase”. The “Tax Increase” shall be computed, by subtracting the amount of Real Estate Taxes in effect for the Base Year from the Real Estate Taxes for each subsequent calendar year of the Term. Tenant shall pay its Proportionate Share of the Tax Increase by depositing with Landlord, on the 1st day of each month, an amount equal to 1/12th of the Tax Increase reasonably estimated by Landlord (the total of all such deposits made by Tenant during a single calendar year is hereinafter referred to as the “Estimated Tax Increase Payment ”). Landlord reserves the right to adjust the estimates whenever Landlord deems appropriate. If Landlord determines that the Estimated Tax Increase Payment for a particular calendar year is less than the actual amount of Tenant’s Proportionate Share of the Tax Increase for such calendar year, Tenant shall, immediately on demand by Landlord, deposit with Landlord the difference between such Estimated Tax Increase Payment and the actual amount of Tenant’s Proportionate Share of the Tax Increase for such calendar year. If the Estimated Tax Increase Payment for a particular calendar year exceeds the actual amount of Tenant’s Proportionate Share of the Tax Increase for such calendar year, Landlord shall credit the excess to the subsequent deposits required to be made by Tenant to pay future Tax Increases. After written request, Landlord shall furnish Tenant with copies of bills for the Real Estate Taxes. As soon as reasonable after the end of each calendar year, Landlord shall give Tenant a statement showing the following: (a) actual Real Estate Taxes for the just expired calendar year and (b) the estimated increase in Tenant’s Proportionate Share of the Tax Increase for the new calendar year.

During the calendar year in which the Commencement Date occurs (if the Commencement Date does not occur on January 1), Tenant’s liability for its Proportionate Share of Tax Increases for such calendar year shall be adjusted pro rata based on the total number of days in such calendar year falling within the Term.

In addition to the payment of Tax Increases, Tenant shall pay in full to the appropriate taxing authority, before delinquent, all municipal, county, and state taxes assessed, levied, or imposed on Tenant’s leasehold interest and all personal property of any kind located on or used in connection with the Premises or its operation.

6. Operating Expenses. Tenant shall pay as Additional Rent its Proportionate Share of any “Operating Expense Increase”. An Operating Expense Increase shall be computed by subtracting the total amount of Operating Expenses for the Base Year from the Operating

Leasing Fundamentals

Expenses for each calendar year of the Term. Tenant shall pay its Proportionate Share of the Operating Expense Increase by depositing with Landlord, on the 1st day of each month, an amount equal to 1/12th of its Proportionate Share of the Operating Expense Increase, as reasonably determined by Landlord (the total amount so deposited by Tenant during a calendar year hereinafter referred to as the "Estimated Operating Expense Payment". Landlord reserves the right to adjust the estimates whenever Landlord deems appropriate. If Landlord determines that the Estimated Operating Expense Payment is less than the actual amount of Tenant's Proportionate Share of Operating Expenses Increase, Tenant shall, immediately on demand by Landlord, deposit with Landlord the difference between the Estimated Operating Expense Payment for such calendar year and the actual amount of Tenant's Proportionate Share of the Operating Expense Increase. If the Estimated Operating Expense Payment for a calendar year exceeds the actual amount of Tenant's Proportionate Share of Operating Expense Increase for such calendar year, Landlord shall credit the excess to the subsequent deposits Tenant shall make toward the Estimated Operating Expense Payment for subsequent calendar years. During the calendar year in which the Commencement Date occurs (if the Commencement Date does not occur on January 1), Tenant's liability for its Proportionate Share of the Operating Expense Increase for such calendar year shall be adjusted pro rata based on the total number of days in such calendar year falling within the Term.

If the Property is not fully rented during all or a portion of any calendar year, Landlord may elect to make an appropriate adjustment of the Operating Expenses for that calendar year, employing sound accounting and management principles to determine the amount of Operating Expenses that would have been paid or incurred by Landlord had the Property been fully rented. The amount so determined is deemed to have been the amount of Operating Expenses for that calendar year. If any Operating Expenses, though paid in one calendar year, relate to more than one calendar year, at the option of Landlord, such expenses may be proportionately allocated among the related calendar years.

As soon as reasonable after the end of each calendar year, Landlord shall give Tenant a statement showing the following: (a) actual Operating Expenses for the just expired calendar year and (b) the estimated increase in Tenant's Proportionate Share of the Operating Expense Increase for the new calendar year.

7. Repairs and Liens. Tenant shall provide and pay for its own regular janitorial service to maintain the Premises in a neat and clean condition. Tenant shall be responsible for all repairs and replacements to the Premises occasioned by the negligence or willful act of Tenant, its agents, employees, invitees, and licensees. Tenant shall, at Tenant's expense, comply with Applicable Laws (including the Americans with Disabilities Act of 1990, as amended) to the extent that the Applicable Laws relate to Tenant's specific Permitted Use.

Except as set forth in the preceding paragraph, and subject to Tenant's obligation to reimburse Landlord for Operating Expenses as described in Section 6 of the Lease, Landlord shall maintain and repair the Premises, the Building, and the Common Areas in good condition and repair, including the heating, ventilating and air conditioning system, and the plumbing and electrical systems. Landlord shall be obligated to make repairs only after Tenant has given Landlord written notice of the need for the repair.

Tenant shall keep the Premises free of construction or other liens. Tenant shall hold Landlord harmless against any liens placed against the Premises, except those attributable to the acts of Landlord. If a lien is filed against the Premises as the result of any action undertaken by Tenant, Tenant shall discharge the lien within [number] days after receiving notice of the lien. If Tenant fails to discharge the lien, Landlord may procure a discharge at Tenant's expense, which Tenant shall pay immediately on a demand from Landlord.

8. **Services.** Landlord shall furnish heat and air-conditioning during normal business hours ([time] a.m. to [time] p.m., Monday through Friday, and Saturday [time] a.m. to [time] p.m.); electricity; water for ordinary lavatory purposes; and use in common of the Building's elevators, common areas, rest rooms, and similar facilities. Landlord shall also perform the janitorial services set forth in exhibit [number / letter].

Landlord shall provide [number] directory signage strips for Tenant's use in the Building directory, which is located in the main floor lobby. Tenant shall designate the names that are to appear in the Building directory in writing on or before the Commencement Date. Any changes made after the Commencement Date shall be at Tenant's expense.

Any service the Landlord is required to furnish may be furnished by Landlord's managing agent or by one or more independent contractors.

Landlord is not liable for interruption in [utilities/ services] caused by riots, strikes, labor disputes, wars, terrorist acts, accidents, or any other cause beyond the control of Landlord. Landlord may interrupt [utilities/ services] to make repairs or improvements. Interruption in [utilities/ services] does not constitute an act of eviction; nor does any interruption in [utilities/ services] release Tenant from any obligation under this Lease, including the payment of Rent.

9. **Utilities.** Tenant shall promptly pay all charges for separately metered utilities used in the Premises during the Term, including, without limitation, gas, electricity, light, heat, power, telephone, or other communication services, Landlord shall not be liable for any interruption of any utility service to the Premises, however caused, [except if due to the ordinary negligence of Landlord].

10. Holding Over. If Tenant remains in possession of the Premises after the Expiration Date with the consent of Landlord, it shall occupy the Premises as a holdover tenant on a month-to-month basis. Landlord may withhold its consent to hold over in its sole discretion. If Landlord consents to the holdover, Tenant is subject to all the covenants of this Lease to the extent they can be applied to a month-to-month tenancy, except that the Monthly Installment of Base Rent for each month of the holdover shall be **[125 / 150 / 200]** percent of the Monthly Installment of Base Rent payable during the last month of the Term, and Tenant shall pay each month of such tenancy an amount equal to the total of the monthly amount of Tenant's Estimated Operating Expense Payment and Tenant's Estimated Tax Increase Payment due during the last month of the Term. This covenant does not preclude Landlord from recovering damages if Tenant fails to timely deliver possession of the Premises after termination of the holdover, nor does it establish any right to extend or renew the Term. If Tenant holds over after the expiration of the Term without Landlord's consent, Tenant is liable for all damages resulting from the holdover. It is expressly within the contemplation of the parties that such damages may include: (a) the reasonable rental value of the Premises; (b) any damages arising from the loss of any sale, lease, or refinancing of the **[Premises / Building / Shopping Center]**; (c) any lost profits incurred by Landlord; and (d) any treble, double, or statutory damages allowed under the Applicable Laws.

11. Right of Access. Landlord and Landlord's agents shall have the right to enter the Premises at all times **[or during regular business hours]** to examine the Premises, to show the Premises to prospective purchasers, mortgagees, or lessees, and to make such repairs, alterations and improvements or additions as Landlord may deem necessary or desirable. Landlord shall be allowed to take all material into the Premises that may be required for the foregoing purposes, without such activities constituting an eviction of Tenant. Rent shall not abate while the repairs, alterations, improvements or additions are being made. During the **[number]** months prior to the expiration of the term of this Lease or any renewal term, Landlord may place upon the Premises the usual notices "For Rent" or "For Lease". If Tenant is not personally present to open and permit entry into the Premises at any time when entry is necessary or permissible, Landlord or Landlord's agents may enter the Premises by a master key or may forcibly enter the Premises, without rendering Landlord or its agents liable. Nothing in this Section, however, shall be deemed to impose on Landlord any obligation for the maintenance or repair of the Premises, except as otherwise specifically provided in this Lease.

12. Quiet Enjoyment. Unless this Lease is terminated or Tenant is evicted in accord with Michigan law, Landlord shall not disturb Tenant's quiet enjoyment of the Premises or unreasonably interfere with Tenant's Permitted Use of the Premises.

13. Use of the Premises. The Premises shall be used for the Permitted Use and for no other use or purpose whatsoever. Tenant shall not use the Premises in any manner which violates

the Rules and Regulations (as the same may be amended, modified or supplemented from time to time) or Applicable Laws. The Rules and Regulations may be amended, modified or supplemented by Landlord in its **[sole / reasonable]** discretion. Tenant shall not: (a) use the Premises for any objectionable, improper or offensive purpose; (b) use any part of the Property, other than the Premises, for the sale, display or storage of any merchandise or services, or for the solicitation of customers or for any other business, occupation or undertaking; (c) keep or place any property or other obstruction in any part of the Common Area; or (d) use the Premises for any use or purpose other than as permitted in this Section.

14. **Signs.** Tenant shall not display any sign, notice, picture or advertising matter in or about the Building or the Premises at places that are visible from outside the Premises without Landlord's prior written consent **[, such approval not to be unreasonably withheld]**; however, the name of Tenant may be displayed on the entrance door of the Premises in accordance with the Building standards as established by Landlord. Upon expiration or earlier termination of the Lease, Tenant shall remove any signs or advertising consented to by Landlord and shall repair any damage caused by the removal.

15. **Tenant's Alterations.** Landlord consents to Tenant's leasehold improvements described in Exhibit _ to the Lease (the "Initial Improvements"). Tenant shall not, without the prior written consent of Landlord, **[such consent not to be unreasonably withheld,]** make or cause to be made any alterations, improvements, additions or installations in or to the Premises (the "**Alterations**"), other than the Initial Improvements. **[If Landlord so consents, before commencement of any such work, Tenant shall furnish to Landlord for approval: architectural plans and specifications; names and addresses of all contractors; necessary permits and licenses; and certificates of insurance. All of preceding items shall be in form and amount as may be reasonably satisfactory to landlord.]** All Alterations shall be done only by contractors and subcontractors approved in writing by Landlord **[, such approval not to be unreasonably withheld]**, and at such time and in such manner as Landlord may from time to time designate. Tenant shall hold Landlord and its agents harmless from all loss, costs, claims and damages which may arise out of the Alterations. Tenant shall pay the cost of the Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with sworn statements and full lien waivers for the Alterations. All Alterations shall comply with all applicable statutes, ordinances and rules. All Alterations shall be done in a good and workmanlike manner. All Alterations shall become part of the Premises at the time of their installation and shall remain on the Premises at the expiration of the termination of the term of this Lease.

16. **Mutual Indemnification.** Tenant shall indemnify, defend and hold harmless Landlord and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents (individually and collectively, the "Landlord Parties") against all claims, actions, damages, liability and expense in connection with all losses, including for bodily injury, loss of life or property damage relating to the Premises. The claims covered by this

Leasing Fundamentals

indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the Premises; (b) the use or misuse of the Premises by Tenant or its agents, contractors, or invitees; or (c) any event on the Premises, whatever the cause. Tenant's indemnification does not extend to liability for damages resulting from the sole or gross negligence of Landlord or for Landlord's intentional misconduct. Landlord shall indemnify, defend and hold harmless Tenant and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents against all claims for bodily injury or property damage relating to the common areas of the Property. The claims covered by this indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the common areas; (b) the use or misuse of the common areas by Landlord or its agents, contractors, or invitees; or (c) any event on or within the common areas, whatever the cause. Landlord's indemnification does not extend to liability for damages resulting from the sole or gross negligence of Tenant or for Tenant's intentional misconduct.

17. Limitations on Landlord's Liability. The Landlord, as defined in this Lease, includes successors in interest. The term is intended to refer to the owner of the Premises at the time in question. If the Premises are sold, the new owner shall automatically be substituted as the Landlord.

If Landlord fails to perform this Lease and as a result Tenant recovers a money judgment against Landlord, the judgment shall be satisfied out of the execution and sale of Landlord's interest in the Property or by garnishment against the rents or other income from the Property. Landlord is not liable for any deficiency. This section constitutes Tenant's sole and exclusive remedy for default.

Conditioned solely on the conveyance of the Property, Tenant agrees to the following release in favor of its then former landlord. Effective on the first anniversary of the date on which Tenant is given notice of the conveyance, Tenant releases its former landlord from all claims except those expressly preserved in this section. This release is intended to be broadly construed for the benefit of the former landlord and includes: (a) all claims regarding the performance of this Lease; (b) all claims for bodily injury or property damage relating to the Premises; and (c) all claims in any other way relating to the Lease, the Premises, or the landlord-tenant relationship. However, this release does not extend to any claim filed in a court of appropriate jurisdiction within one year of the date of conveyance or to any claim for bodily injury or property damage resulting from the former landlord's gross negligence.

18. Insurance. Tenant shall continuously maintain in effect during the Term a commercial general liability insurance policy providing coverage against claims for bodily injury, personal injury and property damage for the Premises, including without limitation all common areas, and the business operated by Tenant and any other persons and entities conducting business in the Premises, with policy limits of not less than \$[amount] per person

and \$[amount] per occurrence, exclusive of defense costs and without any provision for a deductible or self-insured retention.

Tenant shall continuously maintain in effect during the Term a property insurance policy on a special cause of loss form covering Tenant's personal property, trade fixtures, and improvements to their full replacement cost, without deduction for depreciation. The insurance shall include coverage for loss of profits or business income and reimbursement for extra expenses incurred as the result of damage or destruction to all or a part of the Premises.

All insurance policies that Tenant is required to maintain shall be written by carriers who are authorized to write insurance in Michigan and have an AM Best Company rating of not less than A-VIII. Any commercial general liability policy that Tenant is required to maintain shall: (a) name Landlord and any other parties in interest designated by Landlord as an additional insured using ISO form CG 20 26 11 85 without modification; (b) be endorsed to provide that it shall not be canceled or changed for any reason except on 30 days' prior written notice to Landlord; (c) provide coverage to Landlord whether or not the event giving rise to the claim is alleged to have been caused in whole or in part by the acts, omissions, or negligence of Landlord; (d) all policies shall be primary, with the policies of Landlord and Landlord's Mortgagees being excess, secondary, and noncontributing; and (e) Tenant shall reinstate any aggregate limit that is reduced because of losses paid to below 75 percent of the limit required by this Lease. Landlord and Tenant shall require their property insurance policies to include a clause or an endorsement allowing Landlord and Tenant to release each other from any liability to each other or anyone claiming through or under them by way of subrogation or otherwise, for any loss resulting from risks insured against. Notwithstanding the foregoing, if at any time either party's insurer refuses to permit a waiver of subrogation, then Landlord or Tenant may in each instance revoke any such waiver effective 30 days from the date of notice to the other unless, within that 30 days, the other party is able to secure and furnish, without additional expense, insurance in other companies with such waiver of subrogation. If any policy that Tenant is required to maintain is written on a claims-made insurance form, each policy shall have a retroactive date that is not later than the Commencement Date. Furthermore, if insurance coverage is written on a claims-made basis, Tenant's obligation to provide insurance shall be extended for an additional period equal to the statute of limitations for such claims on the Termination Date, plus one year. Insurance may be provided in the form of blanket insurance policies covering properties in addition to the Premises or entities in addition to Tenant. All blanket policies shall provide that the overall aggregate limit of liability that applies to Landlord or the Premises is independent from any overall or annual aggregate that applies to other entities or properties.

At Landlord's option, Tenant shall deliver either certificates of insurance or the original policies to Landlord before the Commencement Date, together with receipts evidencing

Leasing Fundamentals

payment of the premiums. Tenant shall deliver certificates of renewal for the policies to Landlord not less than 30 days before their expiration dates.

This Lease requires Tenant to obtain insurance to cover any claim for loss resulting from fire or other casualty. Landlord and Tenant shall each look to its own insurance for the recovery of insured claims. Landlord and Tenant release one another from insured claims. Subject to the provisions of this Section 14, Landlord and Tenant waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver remains effective despite either party's failure to obtain insurance in accord with this Lease. If either party fails to obtain insurance, it bears the full risk of its own loss.

19. Fire or Other Casualty. Tenant shall give Landlord notice of fire or other casualty on the Premises. In addition to the written notice, Tenant shall immediately and with all diligence attempt to contact Landlord by all means available, including telephone, pager, fax, and e-mail, to inform Landlord of the casualty. If the Premises are damaged or destroyed by fire or other casualty, Landlord may terminate this Lease by notice to Tenant. The notice of termination shall be given within **[number]** days after the occurrence of the casualty. If the notice of termination is not given within that period, this termination option shall lapse and no longer be effective. Within **[period]** after the notice of termination has been given, Tenant shall surrender the Premises to Landlord. After the surrender, each party is released from any further obligations under this Lease, with the following exceptions: (a) all Rent accruing through the surrender date shall be paid in full; (b) the Security Deposit shall be retained or returned as provided in this Lease; and (c) any provisions of this Lease which expressly survive termination of this Lease shall continue in full force and effect. Tenant has no obligation to pay any Rent accruing after the surrender date. If Landlord does not exercise this option within the designated period, Landlord shall diligently proceed to repair and restore the Premises to its condition before the casualty. In no event shall Landlord be required to repair or replace any merchandise, trade fixtures, furnishings, equipment, plate glass, signs and/or personal property of Tenant (collectively, "Tenant's Property"). If Landlord repairs or rebuilds, Tenant, at Tenant's sole cost, shall repair or replace all of Tenant's property in a manner and to at least a condition equal to that prior to the casualty.

20. Eminent domain. If **[percentage]** or more of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, this Lease shall automatically terminate as of the **[date that title is vested in the condemning agency / date that Landlord or Tenant is notified of the taking / date that the condemning agency takes possession of any portion of the Premises / other date to be agreed upon by the parties]**. Notwithstanding this termination, Tenant is required to pay Rent through the date that it

actually surrenders possession of the Premises. If Landlord is notified in writing by a condemning agency that less than **[percentage]** of the **[useable floor area / Premises / parking area]** **[shall / may]** be taken through eminent domain, Landlord may terminate this Lease by providing written notice to Tenant. Within **[time period]** after Landlord notifies Tenant that Landlord is terminating this Lease, Tenant shall surrender possession of the Premises to Landlord. After Tenant surrenders possession, the parties' obligations under this Lease are terminated, provided that Tenant surrenders possession in accord with this Lease and pays Rent through the date of surrender. **[If Landlord does not exercise its termination option within [time period] after being notified of the taking, then the option to terminate lapses and this Lease continues in full effect.]**

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Landlord and Tenant agree that all compensation paid for the Premises, including any value of Tenant's leasehold interest in the Premises, shall be paid to and be the property of Landlord. Tenant may seek compensation for any of its own trade fixtures, business interruption, going concern, moving expenses, and other items, provided that Tenant's compensation is not in diminution of Landlord's or Landlord's mortgagee's compensation for the Premises.

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Tenant has no claim against Landlord for the value of any unexpired term of this Lease. If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, and this Lease is not terminated, Landlord and Tenant agree that the Annual Base Rent for the Premises shall be reduced based on a ratio of the **[useable floor space]** that remains after the taking to the **[useable floor space]** of the original Premises.

21. Assignment and Subletting. Tenant shall not assign this Lease, sublet the Premises or in any manner transfer this Lease or any estate or interest in this Lease, or allow anyone to conduct business at the Premises (whether as a concessionaire, franchisee, subtenant, permittee, operator or otherwise), either by voluntary or involuntary act of Tenant or by operation of law or otherwise (in each such instance, a "Transfer"), without the prior consent of Landlord, which may be withheld in Landlord's sole discretion. In the event that Tenant, with or without the previous consent of Landlord, does assign, sublet or in any manner transfer this Lease or any estate or interest in this Lease, Tenant shall in no way be released from any of its obligations under this Lease.

22. Subordination and Estoppel Certificates. At Landlord's mortgagee's option: (a) any mortgage or mortgages now or later placed on Landlord's interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof, may be subordinated to this Lease; or (b) this Lease

Leasing Fundamentals

may be subordinated to any mortgage or mortgages now or later placed on Landlord's interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. The mortgagee's option shall be exercised by notice to Tenant. Tenant shall execute and deliver, within [number] days after a request, any further commercially reasonable instruments, in a form acceptable to the mortgagee, confirming subordination as requested by Landlord or Landlord's mortgagee.

In the event of foreclosure or any conveyance by deed in lieu of foreclosure, Tenant shall attorn to Landlord's successor in interest, provided that the successor agrees in writing to recognize Tenant's rights under this Lease if Tenant is not in default beyond any applicable cure periods. Tenant shall execute and deliver, within [number] days after a request, any further commercially reasonable instruments, in a form acceptable to Landlord's successor in interest, attorning to the successor in interest and recognizing it as Landlord under this Lease.

Within [number] days after a written demand by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form acceptable to Landlord, certifying

- a. the Commencement Date;
- b. the Expiration Date;
- c. that this Lease is unmodified and in full force and effect, or is in full force and effect as modified, stating the modifications;
- d. that the Lease is not in default, or a list of any defaults;
- e. that Tenant does not claim any rights of setoff, or a list of rights of setoff;
- f. the amount of Rent due as of the date of the certificate, or the date to which the Rent has been paid in advance;
- g. the amount of any Security Deposit; and
- h. other matters reasonably requested by Landlord.

Landlord and any prospective purchaser or mortgagee of the Premises may rely on this certificate. It is within the contemplation of the parties that Tenant's failure to provide the estoppel certificate in the time and manner required could result in the loss of a prospective sale or loan and that Tenant is liable for all damages resulting from such a loss.

Tenant shall give Landlord's mortgagee, by certified mail, a copy of any notice of default served on Landlord, provided Tenant has been given notice of the mortgagee's address in writing by Landlord's mortgagee. If Landlord fails to cure any default within the time

provided in this Lease, the mortgagee shall have an additional [number] days within which to cure the default, or if the default cannot be cured within that time, then whatever additional time is reasonably necessary if the mortgagee has commenced and is diligently pursuing the remedies necessary to cure the default.

23. Security Deposit. Within [number] days of the Lease Date, Tenant shall deposit the Security Deposit with Landlord. The Security Deposit shall be used to secure Tenant's performance of this Lease. Landlord may commingle the Security Deposit with its own funds. If Tenant fails to pay Rent or otherwise commits a default, Landlord may apply all or part of the Security Deposit to make the payment or cure the default. Landlord's rights under this section are in addition to any other rights or remedies Landlord may have under the terms of this Lease or under Michigan law.

If Landlord uses all or part of the Security Deposit, within [number] days after demand by Landlord, Tenant shall pay Landlord sufficient funds to restore the Security Deposit to its original amount. Any unused portion of the Security Deposit shall be returned to Tenant, [with interest at [percentage]/ without interest], within [number] days of the later of: (a) the termination of the Lease; (b) Tenant's surrender of the Premises; or (c) the return of the keys to Landlord. If Landlord uses the Security Deposit, within [number] days after a demand by Landlord, Tenant shall pay Landlord sufficient funds to restore the Security Deposit to its original amount. Any unused portion of the Security Deposit shall be returned to Tenant, without interest, within [number] days after Tenant's surrender of the Premises in accord with this Lease. Landlord may deliver the Security Deposit to any purchaser of Landlord's interest in the Building containing the Premises, and thereafter, Landlord shall be discharged from any further liability with regard to the Security Deposit.

24. Remedies. Each of the following shall be deemed an event of default: (a) Tenant's failure to make payment of Rent when due as provided in this Lease; or (b) Tenant's failure to perform any of the other covenants of this Lease for a period of 30 days following written demand for performance by Landlord.

Landlord has the power to terminate this Lease and evict Tenant upon the occurrence of a default. Landlord shall exercise this power by the delivery of a notice of termination. The termination is effective [immediately on delivery / on the [number] day following delivery] of the notice to Tenant. If Landlord terminates this Lease, Landlord is entitled to recover all damages suffered as the result of any default. It is within the contemplation of the parties that such damages include: (a) the difference between the contract rent and the market rent through the remainder of the original Term; (b) the unamortized expenditures, calculated on a straight-line basis, undertaken by Landlord to fit the Premises to the needs of Tenant, including expenditures for Landlord Work, interior partitions, doors, floor coverings, wall coverings, paint, plaster, cabinetry, and all other work performed on the Premises; (c) the

Leasing Fundamentals

estimated cost of restoring the Premises to their original condition; (d) any commissions paid to re-lease the Premises; and (e) any other damages identified in this Lease.

Landlord may also evict Tenant without terminating this Lease. Tenant waives any right to possession of the Premises after eviction. Despite eviction, Tenant remains fully obligated for the payment of Rent through the remainder of the Term. Landlord has no obligation to re-lease the Premises, and Landlord's failure or refusal to re-lease does not affect Tenant's obligation to pay Rent.

The remedies provided to Landlord under this Lease are cumulative, regarding both other remedies provided by the Lease and any remedies provided by law. If Landlord commences an action to enforce this Lease, Tenant agrees to pay Landlord's reasonable costs and attorney fees. Landlord and Tenant knowingly and voluntarily waive trial by jury in any action: (a) to enforce this Lease; (b) to evict Tenant from the Premises; or (c) that is in any way related to the Lease, the Premises, or the relationship between Landlord and Tenant.

25. Surrender of Premises. On expiration or earlier termination of the Lease, Tenant shall surrender the Premises broom clean and in the same condition as on the **[Lease Date / Commencement Date]**, reasonable wear and tear excepted, and shall promptly surrender all keys for the Premises to Landlord at the location then designated for the payment of rent. Any damage to the Premises resulting from the removal of trade fixtures or other items of personal property shall be repaired at Tenant's expense. Tenant shall reimburse all expenses paid or incurred by Landlord in connection with repairing or restoring the Premises to the designated condition immediately upon demand. If the Premises have become damaged or destroyed by fire or another casualty, Tenant shall restore them to the required condition, including any modifications required to comply with current codes and regulations. Tenant shall remove its personal property and trade fixtures from the Premises immediately on termination. Tenant represents that it is Tenant's intention that all personal property and trade fixtures remaining on the Premises after termination are abandoned by Tenant. Landlord may sell, discard, or keep such personal property and trade fixtures as it deems appropriate in its sole discretion. Tenant shall reimburse all expenses paid or incurred by Landlord in connection with removing Tenant's personal property and trade fixtures immediately upon demand. Tenant's obligations under this Section shall survive the expiration or other termination of the Lease.

26. Notices. All notices, bills, or statements required or permitted under the Lease shall be in writing and shall be deemed to have been given if either delivered personally or mailed by certified mail, return receipt requested, or sent by national overnight courier service, to the parties at the addresses set forth below. The addresses specified in the notice may from time to time be changed by notice from one party to the other. Notice shall be effective upon

delivery if personally delivered, on the next business day if sent by overnight courier, and upon receipt if sent by certified mail.

Landlord: _____

Tenant: _____

_____.

27. Construction and Interpretation. This Lease shall be construed in accord with Michigan law. This Lease has been negotiated at arm's length and carefully reviewed by both parties. This Lease is not to be construed against Landlord.

The use of the word *may* in describing the right of a party means that the party has the option, but not the obligation, to exercise that right. Furthermore, the exercise of the right is not an election of remedies or a waiver of any other right or claim. The use of the words *include* and *including* is intended to be illustrative, not exhaustive.

The parties shall rely solely on the terms of this Lease to govern their relationship. This Lease merges all proposals, negotiations, representations, agreements, and understandings with respect to the Lease. There are no representations with respect to the condition of the **[Premises / Building / Real Estate Taxes / Operating Expenses,]** or any other matter in any way related to the Premises or this Lease except as expressly set forth in this Lease. There are no damages within the contemplation of the parties except as expressly identified in this Lease. No rights, covenants, easements, or licenses may arise by implication. Reliance on any representation, omission, action, or inaction outside of this Lease is unreasonable and does not establish any rights or obligations on the part of either party. This Lease may only be modified or amended by a written document signed by Landlord and Tenant. There may be no oral modifications or amendments of this Lease, whether or not supported by consideration.

No endorsement or statement on any check or on any letter accompanying any check shall be deemed an accord and satisfaction. Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance of the amount due or to pursue any other remedy. Tenant acknowledges that the Annual Base Rent is a liquidated claim. Tenant

Leasing Fundamentals

waives any requirement that Landlord tender back funds as a condition to bringing an action to collect unpaid Annual Base Rent. No covenant or default is intended to be waived unless a waiver is clearly expressed in a document: (a) signed by the waiving party; (b) specifically identifying the covenant or default; and (c) expressly stating that it is a waiver of the identified covenant or default. The waiver of a covenant or default is not construed as a continuing waiver of the same covenant or of any future default. Consent by Landlord to any act requiring Landlord's consent does not constitute a waiver of the requirement of Landlord's consent with respect to any similar or subsequent act. Tenant is not entitled to surrender the Premises to avoid liability for Rent unless: (a) an acceptance of the surrender is evidenced in a document signed by Landlord; and (b) the document expressly states that it is the acceptance of a surrender. No action or inaction, other than as expressly provided in this section, may be construed as an acceptance of surrender by Landlord.

Notwithstanding anything to the contrary, Tenant's obligation to pay Rent is a material and independent covenant and is not subject to setoff, recoupment, or suspension. Notwithstanding anything to the contrary, Landlord has no obligation to mitigate any claim for Rent.

Time is of the essence with respect to both the definition of a Material Breach and the exercise of options, if any, within the Lease.

If any covenant of this Lease is invalid, illegal, or unenforceable, that covenant shall be enforced to the fullest extent permitted by law, and the validity, legality, and enforceability of the remaining covenants shall not in any way be affected or impaired.

28. Authorized and Binding. Tenant and each person executing this Lease on its behalf warrant and represent to Landlord that: (a) Tenant is validly organized, existing, and authorized to do business under Michigan law; (b) Tenant has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Tenant in accordance with its terms. Landlord and each person executing this Lease on its behalf warrant and represent to Tenant that: (a) Landlord is validly organized, existing, and authorized to do business under Michigan law; (b) Landlord has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Landlord in accordance with its terms. This Lease is binding on successors and assigns.

29. Environmental Compliance. Tenant shall not cause or permit the use, generation, storage, treatment or disposal in, on or about the Premises or the Building of any pollutant, contaminant, waste, or hazardous, toxic or radioactive substance or material (collectively, "Hazardous Materials") subject to regulation under any Federal, state or local laws, rules, regulations and ordinances from time to time in effect. Without limiting the foregoing,

Tenant shall have sole and exclusive liability (including, but not limited to, liability under environmental laws such as, but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act and the Michigan Environmental Response Act) for or related to, in whole or in part, the release or disposal of any substances, materials or wastes (whether Hazardous Materials or otherwise) by Tenant's employees, contractors or agents. Tenant will indemnify the Landlord Parties and save them harmless from and against any and all claims, actions, damages, liability and expense in connection with all losses, including loss of life, personal injury and/or damage to property arising from or out of any Hazardous Materials installed or introduced into the Premises or the Building by Tenant (or by others at Tenant's sufferance or with Tenant's permission) in whole or in part. In case any of the Landlord Parties shall be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold all such Landlord Parties harmless and shall pay all costs, expenses and reasonable attorney fees incurred or paid by the Landlord Parties in connection with such litigation. This paragraph shall survive the termination or expiration of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant, personally or by their duly authorized agents, have executed this Lease as of the day and year first above written.

LANDLORD

By _____

Its _____

Dated: _____

TENANT

By _____

Its _____

Dated: _____

Exhibit D
Percentage Rent Lease, Multitenant Building

PERCENTAGE RENT LEASE, MULTITENANT BUILDING

THIS LEASE (the “Lease”) dated _____, is entered into by and between ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Landlord”) and ***, a **** limited liability company/corporation/limited partnership/co-partnership (“Tenant”):

1. **Basic lease definitions.** The following defined terms shall be used throughout this Lease:
 - A. “Lease Date” means the date of full execution and delivery of this Lease.
 - B. “Landlord Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
 - C. “Tenant Notice Address” means **[address or addresses to which legal notices are to be delivered]**.
 - D. “Premises” means suite **[number]** of the “Shopping Center”, located approximately as shown on the floor plan attached as Exhibit **[number / letter]**.
 - E. “Shopping Center” means **[building description]**.
 - F. “Property” means the Premises, the Shopping Center, and all related land and improvements.
 - G. “Rentable Floor Area” of the Premises means approximately **[number]** rentable square feet and includes an allocated percentage of the “Common Areas”.
 - H. “Term” means a period of **[number]** “Lease Years” beginning on the “Commencement Date”.
 - I. “Lease Year” means each period during the Term which begins on January 1 and ends on the next following December 31, except that if the Commencement Date occurs on a date other than January 1, the first Lease Year shall begin on the Commencement Date and end on the last day of the first full calendar year thereafter.
 - J. “Commencement Date” means **[date on which rent and occupancy begin or the date on which only occupancy begins, if there is a rent-free build-out period]**.
 - K. “Expiration Date” means the last day of the last Lease Year of the Term.
 - L. “Rent” means “Annual Base Rent, “Percentage Rent” and all “Additional Rent.
 - M. “Annual Base Rent” means **[\$amount] [\$___psf]** and is payable in consecutive Monthly Installments of Base Rent.

- N. “Monthly Installment of Base Rent” means \$[amount].
- O. “Additional Rent” means Tenant’s “Proportionate Share” of all expenses paid or incurred by Landlord in connection with the Property, including, without limitation, Real Estate Taxes and Operating Expenses and all other charges that may become due under the terms of this Lease.
- P. “Proportionate Share” means [percentage].
- Q. “Base Year” means [year].
- R. “Real Estate Taxes” means all: (i) real estate taxes; (ii) ad valorem taxes; (iii) general, special, ordinary, or extraordinary assessments; (iv) water and sewer charges; (v) taxes based on the receipt of rent, other than federal, state, and local income taxes; and (vi) any other federal, state, or local charge that may now or later be imposed, levied, or assessed against the Property. In the event that any present or future enactment of the State or any political subdivision thereof or any governmental authority having jurisdiction thereover either: (a) imposes a direct or indirect tax and/or assessment of any kind or nature upon, against or with respect to the rents payable by tenants or occupants in the Shopping Center to Landlord or with respect to Landlord's ownership of any portion of the Property, either in addition to or by way of substitution for all or any part of the taxes and assessments levied or assessed against the Property including, without limitation, the Michigan Business Tax, any net profits tax or any comparable tax imposed on any portion of Landlord's revenues from the Property; and/or (b) imposes a direct or indirect tax or surcharge of any kind or nature, upon, against or with respect to the parking areas of the Property, the same shall be included in Real Estate Taxes, for purposes of this Lease.
- S. “Operating Expenses” means all expenses of every kind or nature paid or incurred by Landlord in in operating, equipping, policing and protecting, lighting, heating, air conditioning, providing sanitation and sewer and other services, insuring (including self-insurance and the payment of deductible amounts under insurance policies), repairing, replacing and maintaining the Property and all portions thereof, including, without limitation, the Common Areas and the Shopping Center, and all other areas, facilities and buildings, including project office, parking facilities, vertical transportation facilities, retention ponds (if applicable),.
- T. “Security Deposit” is \$[amount].
- U. “Percentage Rent” is an amount equal, each Lease Year, to ____% of Gross Sales in excess of the “Breakpoint”.
- V. “Breakpoint” is _____
- W. “Permitted Use” means [use].

Leasing Fundamentals

- X. "Applicable Laws" means the present and future laws, statutes, ordinances and regulations of all governmental authorities having jurisdiction over Tenant, the Property, the Shopping Center and/or the Premises.
- Y. "Shopping Center Rules" means the rules established by Landlord, from time to time, for the Shopping Center, the current version of which is attached as Exhibit [number/letter].
- Z. "Gross Sales" means the entire amount of the actual sales price, whether for cash or otherwise, of all sales of merchandise or services and all other receipts whatsoever of all business conducted in or from the Premises by Tenant, and by all concessionaires or otherwise, including, without limitation, mail, catalogue or telephone orders received or filled at the Premises, all deposits not refunded to purchasers, and orders taken, although said orders may be filled elsewhere. A "sale" shall be deemed to have been consummated for the purposes of this Lease, and the entire amount of the sales price shall be included in Gross Sales, at such time that (i) the transaction is initially reflected in the books or records of Tenant or a concessionaire (if a concessionaire makes the sale), or (ii) Tenant or such concessionaire receives all or any portion of the sales price, or (iii) the applicable goods or services are delivered to the customer, whichever first occurs, irrespective of whether payment is made in installments, the sale is for cash or for credit, or otherwise, or all or any portion of the sales price has actually been paid at the time of inclusion in Gross Sales or at any other time. No deduction shall be allowed for direct or indirect discounts, rebates, or other reductions on sales to employees or others, unless generally offered to the public on a uniform basis. In addition, no deduction shall be allowed for uncollected or uncollectible credit accounts, or for trade-ins or other credits on sales to employees or others. There shall be deductible from Gross Sales the amount of any cash or credit refund made upon any sale made from the Premises, previously included in "Gross Sales" hereunder, not to exceed the sum so previously included, where the merchandise sold is thereafter returned by the purchaser and accepted by Tenant.

2. Premises and Common Areas. Tenant has inspected the Premises and the Shopping Center and is satisfied with their condition. Landlord shall make reasonable efforts to deliver possession of the Premises on the Commencement Date. Landlord is not liable for damages for failure to deliver possession on the Commencement Date, and the validity of the Lease shall not be impaired by such a failure.

Landlord grants Tenant and its agents and invitees a nonexclusive license to use, in common with others, the Common Areas. Tenant's use of the Common Areas is subject to the Shopping Center Rules and Regulations. Landlord may establish from time to time, as the same may be modified or amended in Landlord's sole discretion. Landlord may temporarily close or prohibit use of any Common Area. Landlord may make changes to the Common Areas, including parking areas, parking spaces, location of exits, or the direction of traffic flow. Landlord may increase or decrease the number of parking spaces or change the size and configuration of parking areas or parking spaces. Landlord may increase or decrease the land

size of the **Shopping Center**. All land added to the **Shopping Center** is subject to the terms of this Lease, and all land excluded is thereafter excluded from the terms of this Lease. Landlord may, from time to time, construct additional buildings and structures in the Common Areas or remove buildings (except the Premises) from the **Shopping Center** to create, reduce, enlarge, or restructure the Common Areas. Landlord's rights under this section may be exercised in its sole discretion.

3. **Term.** The Term commences on the Commencement Date and expires on the Termination Date, unless otherwise terminated or extended as provided in this Lease.

4. **Annual Base Rent/Percentage Rent.** Beginning on the Commencement Date, Tenant shall pay Landlord the Annual Base Rent. The Annual Base Rent shall be paid by Monthly Installment of Base Rent, to the order of Landlord, in advance, on the first day of each calendar month, at Landlord's office, or at any other place Landlord designates in writing. Any Rent not received by Landlord within **[number]** days after the due date **[or receipt of the notice from Landlord that Rent is overdue]** shall be assessed a one-time late charge equal to **[number]**% of the late payment. In addition, all Rent due and not paid before the expiration of any applicable grace period shall bear interest at the rate of **[number]**% per annum from the due date (prior to any grace period for payment) until paid. If the Commencement Date is other than the first day of a calendar month, the Monthly Installment of Base Rent for the partial first calendar month of the Term shall be prorated on a daily basis and paid on the Commencement Date.

In addition to the Annual Base Rent and Additional Rent, Tenant agrees to pay Landlord the amount by which **[percentage]** of the Tenant's Gross Sales for a Lease Year exceeds the Breakpoint for that Lease Year ("Percentage Rent"). Tenant shall pay Percentage Rent on a monthly basis during a Lease Year, beginning with the month immediately following the month during which Gross Sales reached the Breakpoint. Within **[number]** days after the end of each calendar month, Tenant shall deliver to the Landlord a written statement, certified by an officer of Tenant to be correct, showing the Gross Sales on the Premises for the preceding calendar month. If the fixed percentage of Gross Sales for the preceding calendar month exceeds the Monthly Installment of Base Rent due that month, Tenant shall pay the Landlord the excess with the statement. If the total Annual Base Rent and Percentage Rent paid by Tenant in a Lease Year exceeds the total Annual Base Rent and Percentage Rent required to be paid by Tenant during that Lease Year, Tenant shall receive a credit for the excess, which Tenant shall deduct from the next payments of Percentage Rent.

Tenant shall keep full and accurate books reflecting Gross Sales in accord with good accounting practices. On or before the **[date]** of each month, Tenant shall furnish Landlord a true and accurate statement of the Gross Sales during the preceding month. On or before **[date]** of each year, Tenant shall furnish a true and accurate statement of the Gross Sales

Leasing Fundamentals

during the preceding calendar year, **[verified / certified]** by an independent certified public accountant. Each month, Tenant shall furnish Landlord a copy of its work sheet used to make the Michigan Sales Tax Return. Tenant grants Landlord permission to examine the sales tax records on file in the office of the Department of Treasury for the State of Michigan, or at any other place where such records are filed, for the sole purpose of verifying the correctness of the report of Gross Sales submitted.

Landlord may audit the books and records pertaining to the business of Tenant, its subtenants or licensees, or any other occupants of the Premises. The audit shall be conducted by a certified public accountant selected by Landlord. If the audit shows that Tenant has correctly reported Gross Sales, Landlord shall bear the expense of the audit. If the audit shows that Tenant failed to report correct Gross Sales for any period, Tenant shall pay the expense of the audit as Additional Rent during the month following the conclusion of the audit. If the audit discloses a deficiency in the amount of Percentage Rent payable by Tenant, the amount of the deficiency shall be promptly paid to Landlord, together with interest at the rate of **[percentage]** per year from the date when the Percentage Rent was payable until the date of actual payment.

5. Real Estate Taxes. During the Term, Tenant shall pay, as Additional Rent, Tenant's Proportionate Share of Real Estate Taxes. Tenant's Proportionate Share of Real Estate Taxes shall be paid in monthly installments on or before the first day of each calendar month, in advance, in an amount reasonably estimated by Landlord; provided that Landlord shall have the right to revise the estimates from time to time, and shall have the right to apply such monthly installments to tax bills according to the formula being utilized by Landlord from time to time. Upon receipt of all tax bills and assessment bills attributable to any calendar or fiscal year during the term hereof, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's Proportionate Share of Real Estate Taxes for such year and (at Tenant's request) a copy of each of the aforementioned tax bills and assessment bills. In the event no tax bill is available, Landlord will compute the amount of such tax. If the total amount paid by Tenant under this Section for any calendar or fiscal year during the Term shall be less than the actual amount due from Tenant for such year, as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within twenty (20) days after demand therefor by Landlord; and if the total amount paid by Tenant hereunder for any such calendar or fiscal year shall exceed such actual amount due from Tenant for such year, such excess shall be credited against the next installment(s) of Real Estate Taxes due from Tenant to Landlord. In the event Landlord contests any taxes levied or assessed during the term hereof upon, against or with respect to the Shopping Center] or any portion thereof or interest therein, or in the event of Landlord's negotiation with respect to assessed valuation for the Shopping Center], or in the event that Landlord shall incur any other expenses with respect to

the evaluation, administration, management or oversight of Real Estate Taxes, Tenant shall pay its Proportionate Share of Landlord's reasonable costs, expenses and attorneys' fees in connection therewith calculated on the same basis as set forth above in this Section. For the calendar or fiscal years in which this Lease commences and terminates, the provisions of this Section shall apply, and Tenant's liability for its Proportionate Share of Real Estate Taxes for such years shall be subject to a pro rata adjustment based on the number of days of said calendar or fiscal years during which the term of this Lease is in effect. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of the taxes and/or assessments assessed or levied against the property to which such bill relates. Prior to or at the commencement of the term of this Lease and from time to time thereafter throughout the term hereof, Landlord shall notify Tenant in writing of Landlord's estimate of Tenant's monthly installments due hereunder. Tenant shall also pay in full to the appropriate taxing authority, before delinquent, all municipal, county, and state taxes assessed, levied, or imposed on Tenant's leasehold interest and all personal property of any kind located on or used in connection with the Premises or its operation.

6. Operating Expenses. During the Term, Tenant shall pay, as Additional Rent, Tenant's Proportionate Share of Operating Expenses. Tenant's Proportionate Share of Operating Expenses shall be paid in monthly installments on the first day of each calendar month, in advance, in an amount estimated by Landlord from time to time. Subsequent to the end of each calendar or fiscal year (at Landlord's option), Landlord shall furnish Tenant with a statement of the actual amount of Tenant's Proportionate Share of Operating Expenses for such period. If the total amount paid by Tenant under this Section for any such year shall be less than the actual amount due from Tenant for such year as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within thirty (30) days after the furnishing of each such statement, and if the total amount paid by Tenant hereunder for any such year shall exceed such actual amount due from Tenant for such year, such excess shall be credited against the next installment due from Tenant to Landlord under this Section or refunded to Tenant following the end of the Term, if any such excess remains uncredited at such time. Landlord may estimate the annual budget and charge the estimated share to the Tenant on a monthly basis, subject to revision by Landlord of the budget from time to time and final annual adjustment based upon actual expenses.

7. Holding Over. If Tenant remains in possession of the Premises after the Termination Date with the consent of Landlord, it shall occupy the Premises as a holdover tenant on a month-to-month basis. Landlord may withhold its consent to hold over in its sole discretion. If Landlord consents to the holdover, Tenant is subject to all the covenants of this Lease to the extent they can be applied to a month-to-month tenancy, except that the Monthly Installment of Base Rent for each month of the holdover shall be [125 / 150 / 200] percent of the

Leasing Fundamentals

Monthly Installment of Base Rent payable during the last month of the Term. This covenant does not preclude Landlord from recovering damages if Tenant fails to timely deliver possession of the Premises after termination of the holdover, nor does it establish any right to extend or renew the Term. If Tenant holds over after the expiration of the Term without Landlord's consent, Tenant is liable for all damages resulting from the holdover. It is expressly within the contemplation of the parties that such damages may include: (a) the reasonable rental value of the Premises; (b) any damages arising from the loss of any sale, lease, or refinancing of the **[Premises / Shopping Center]**; (c) any lost profits incurred by Landlord; and (d) any treble, double, or statutory damages allowed under the applicable laws.

8. Right of Access. Landlord and Landlord's agents shall have the right to enter the Premises at all times **[or during regular business hours]** to examine the Premises, to show the Premises to prospective purchasers, mortgagees, or lessees, and to make such repairs, alterations and improvements or additions as Landlord may deem necessary or desirable. Landlord shall be allowed to take all material into the Premises that may be required for the foregoing purposes, without such activities constituting an eviction of Tenant. Rent shall not abate while the repairs, alterations, improvements or additions are being made. During the **[number]** months prior to the expiration of the term of this Lease or any renewal term, Landlord may place upon the Premises the usual notices "For Rent" or "For Lease". If Tenant is not personally present to open and permit entry into the Premises at any time when entry is necessary or permissible, Landlord or Landlord's agents may enter the Premises by a master key or may forcibly enter the Premises, without rendering Landlord or its agents liable. Nothing in this Section, however, shall be deemed to impose on Landlord any obligation for the maintenance or repair of the Premises, except as otherwise specifically provided in this Lease.

9. Quiet Enjoyment. Unless this Lease is terminated or Tenant is evicted in accord with Michigan law, Landlord shall not disturb Tenant's quiet enjoyment of the Premises or unreasonably interfere with Tenant's Permitted Use of the Premises. Tenant shall permit Landlord to enter the Premises during regular business hours for the purpose of inspection or to show the Premises to prospective purchasers, mortgagees, and tenants.

10. Permitted Use. The Premises shall be used for the Permitted Use and for no other purpose. Tenant shall not use the Premises in any manner that violates the Shopping Center Rules or applicable laws. The Shopping Center Rules may be amended by Landlord in its sole discretion.

11. Repairs and Liens. Tenant shall provide and pay for its own regular janitorial service to maintain the Premises in a neat and clean condition. Tenant shall be responsible for all repairs and replacements to the Premises occasioned by the negligence or willful act of Tenant, its agents, employees, invitees, and licensees. Tenant shall, at Tenant's expense,

comply with Applicable Laws (including the Americans with Disabilities Act of 1990, as amended) to the extent that the Applicable Laws relate to Tenant's specific Permitted Use. In addition, Tenant shall maintain a quarterly maintenance contract for the heating, ventilating and air conditioning system, with a reputable HVAC contractor.

Except as set forth in the preceding paragraph, and subject to Tenant's obligation to reimburse Landlord for Operating Expenses as described in Section ___ of the Lease, Landlord shall maintain and repair the Premises, the Shopping Center, and the Common Areas in good condition and repair, including the heating, ventilating and air conditioning system, and the plumbing and electrical systems. Landlord shall be obligated to make repairs only after Tenant has given Landlord written notice of the need for the repair. Tenant shall keep the Premises free of construction or other liens. Tenant shall hold Landlord harmless against any liens that are placed against the Premises except those attributable to the acts of Landlord. If a lien is filed against the Premises as the result of any action undertaken by Tenant, Tenant shall discharge the lien within **[number]** days after receiving notice of the lien. If Tenant fails to discharge the lien, Landlord may procure discharge at Tenant's expense, which Tenant shall pay immediately on a demand from Landlord.

12. **Utilities.** Tenant shall promptly pay all charges for separately metered utilities used in the Premises during the Term, including, without limitation, gas, electricity, light, heat, power, telephone, or other communication services, Landlord shall not be liable for any interruption of any utility service to the Premises, however caused.

13. **Tenant's Alterations.** Landlord consents to Tenant's leasehold improvements described in Exhibit to the Lease (the "Initial Improvements"). Tenant shall not, without the prior written consent of Landlord, **[such consent not to be unreasonably withheld,]** make or cause to be made any alterations, improvements, additions or installations in or to the Premises (the "**Alterations**"), other than the Initial Improvements. [If Landlord so consents, before commencement of any such work, Tenant shall furnish to Landlord for approval: architectural plans and specifications; names and addresses of all contractors; necessary permits and licenses; and certificates of insurance. All of preceding items shall be in form and amount as may be reasonably satisfactory to landlord.] All Alterations shall be done only by contractors and subcontractors approved in writing by Landlord **[, such approval not to be unreasonably withheld]**, and at such time and in such manner as Landlord may from time to time designate. Tenant shall hold Landlord and its agents harmless from all loss, costs, claims and damages which may arise out of the Alterations. Tenant shall pay the cost of the Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with sworn statements and full lien waivers for the Alterations. All Alterations shall comply with all applicable statutes, ordinances and rules. All Alterations shall be done in a good and workmanlike manner. All Alterations shall become part of the Premises at the time of their

installation and shall remain on the Premises at the expiration of the termination of the term of this Lease.

14. **Signs.** Tenant shall not display any sign, notice, picture or advertising matter in or about the Shopping Center or the Premises at places that are visible from outside the Premises without Landlord's prior written consent [, **such approval not to be unreasonably withheld**]; however, the name of Tenant may be displayed on the entrance door of the Premises in accordance with the Shopping Center standards as established by Landlord. Upon expiration or earlier termination of the Lease, Tenant shall remove any signs or advertising consented to by Landlord and shall repair any damage caused by the removal.

15. **Indemnification.** Tenant shall indemnify, defend and hold harmless Landlord and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents (individually and collectively, the “Landlord Parties”) against all claims, actions, damages, liability and expense in connection with all losses, including for bodily injury, loss of life or property damage relating to the Premises. The claims covered by this indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the Premises; (b) the use or misuse of the Premises by Tenant or its agents, contractors, or invitees; or (c) any event on the Premises, whatever the cause. Tenant’s indemnification does not extend to liability for damages resulting from the sole or gross negligence of Landlord or for Landlord’s intentional misconduct. Landlord shall indemnify, defend and hold harmless Tenant and its partners, officers, directors, stockholders, beneficiaries, representatives, employees and agents against all claims for bodily injury or property damage relating to the common areas of the Property. The claims covered by this indemnification include all claims for bodily injury or property damage relating to: (a) the condition of the common areas; (b) the use or misuse of the common areas by Landlord or its agents, contractors, or invitees; or (c) any event on or within the common areas, whatever the cause. Landlord’s indemnification does not extend to liability for damages resulting from the sole or gross negligence of Tenant or for Tenant’s intentional misconduct.

16. **Limitations on Landlord’s liability.** Landlord, as defined in this Lease, includes successors in interest. The term is intended to refer to the owner of the Premises at the time in question. If the [Premises / Shopping Center] is sold, the new owner shall automatically be substituted as the Landlord. If Landlord fails to perform this Lease and Tenant recovers a money judgment against Landlord, the judgment shall be satisfied out of the execution and sale of Landlord’s interest in the [Premises / Shopping Center] or garnishment against the rent or other income from the [Premises / Shopping Center]. Landlord is not liable for any deficiency. This section constitutes Tenant’s sole and exclusive remedy for default. Conditioned solely on the sale of the [Premises / Shopping Center], Tenant agrees to the following release in favor of its then former landlord. Effective on the first anniversary of the date on which Tenant is given notice of the sale, Tenant releases its former landlord from all

claims except those expressly preserved in this section. This release is intended to be broadly construed for the benefit of the former landlord and includes: (a) all claims with respect to the performance of this Lease; (b) all claims for bodily injury or property damage relating to the Premises; and (c) all claims in any other way relating to the Lease, the **[Premises / Shopping Center]**, or the relationship between Landlord and Tenant. However, this release does not extend to any claim filed in a court of appropriate jurisdiction within one year of receiving notice of the sale or to any claim for bodily injury or property damage resulting from the former landlord's gross negligence.

17. **Insurance.** Tenant shall continuously maintain in effect during the Term a commercial general liability insurance policy providing coverage against claims for bodily injury, personal injury and property damage for the Premises, including without limitation all common areas, and the business operated by Tenant and any other persons and entities conducting business in the Premises, with policy limits of not less than **[\$amount]** per person and **[\$amount]** per occurrence, exclusive of defense costs and without any provision for a deductible or self-insured retention.

Tenant shall continuously maintain in effect during the Term a property insurance policy on a special cause of loss form covering Tenant's personal property, trade fixtures, and improvements to their full replacement cost, without deduction for depreciation. The insurance shall include coverage for loss of profits or business income and reimbursement for extra expenses incurred as the result of damage or destruction to all or a part of the Premises.

All insurance policies that Tenant is required to maintain shall be written by carriers who are authorized to write insurance in Michigan and have an AM Best Company rating of not less than A-VIII. Any commercial general liability policy that Tenant is required to maintain shall: (a) name Landlord and any other parties in interest designated by Landlord as an additional insured using ISO form CG 20 26 11 85 without modification; (b) be endorsed to provide that it shall not be canceled or changed for any reason except on 30 days' prior written notice to Landlord; (c) provide coverage to Landlord whether or not the event giving rise to the claim is alleged to have been caused in whole or in part by the acts, omissions, or negligence of Landlord; (d) all policies shall be primary, with the policies of Landlord and Landlord's Mortgagees being excess, secondary, and noncontributing; and (e) Tenant shall reinstate any aggregate limit that is reduced because of losses paid to below 75 percent of the limit required by this Lease. Landlord and Tenant shall require their property insurance policies to include a clause or an endorsement allowing Landlord and Tenant to release each other from any liability to each other or anyone claiming through or under them by way of subrogation or otherwise, for any loss resulting from risks insured against. Notwithstanding the foregoing, if at any time either party's insurer refuses to permit a waiver of subrogation, then Landlord or Tenant may in each instance revoke any such waiver effective 30 days from the date of notice to the other unless, within that 30 days, the other party is able to secure and

Leasing Fundamentals

furnish, without additional expense, insurance in other companies with such waiver of subrogation. If any policy that Tenant is required to maintain is written on a claims-made insurance form, each policy shall have a retroactive date that is not later than the Commencement Date. Furthermore, if insurance coverage is written on a claims-made basis, Tenant's obligation to provide insurance shall be extended for an additional period equal to the statute of limitations for such claims on the Termination Date, plus one year. Insurance may be provided in the form of blanket insurance policies covering properties in addition to the Premises or entities in addition to Tenant. All blanket policies shall provide that the overall aggregate limit of liability that applies to Landlord or the Premises is independent from any overall or annual aggregate that applies to other entities or properties.

At Landlord's option, Tenant shall deliver either certificates of insurance or the original policies to Landlord before the Commencement Date, together with receipts evidencing payment of the premiums. Tenant shall deliver certificates of renewal for the policies to Landlord not less than 30 days before their expiration dates.

This Lease requires Tenant to obtain insurance to cover any claim for loss resulting from fire or other casualty. Landlord and Tenant shall each look to its own insurance for the recovery of insured claims. Subject to the provisions of this Section 17 Landlord and Tenant release one another from insured claims. Landlord and Tenant waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver remains effective despite either party's failure to obtain insurance in accord with this Lease. If either party fails to obtain insurance, it bears the full risk of its own loss.

18. **Casualty.** Tenant shall give Landlord notice of fire or other casualty on the Premises. In addition to the written notice, Tenant shall immediately and with all diligence attempt to contact Landlord by all means available, including telephone, pager, fax, and e-mail, to inform Landlord of the casualty. If the Premises are damaged or destroyed by fire or other casualty, Landlord may terminate this Lease by notice to Tenant. The notice of termination shall be given within **[number]** days after the occurrence of the casualty. If notice of termination is not given within that period, this termination option lapses and is no longer effective. Within **[period]** after the notice of termination has been given, Tenant shall surrender the Premises to Landlord. After the surrender, each party is released from any further obligations under this Lease, with the following exceptions: (a) all Rent accruing through the surrender date shall be paid in full; (b) the Security Deposit shall be retained or returned as provided in this Lease; and (c) any provisions of this Lease which expressly survive termination of this Lease shall continue in full force and effect. Tenant has no obligation to pay any Rent accruing after the surrender date. If Landlord does not exercise this option within the designated period, Landlord shall diligently proceed to repair and restore the Premises to its condition before the casualty. In no event shall Landlord be

required to repair or replace any merchandise, trade fixtures, furnishings, equipment, plate glass, signs and/or personal property of Tenant (collectively, "Tenant's Property"). If Landlord repairs or rebuilds, Tenant, at Tenant's sole cost, shall repair or replace all of Tenant's property in a manner and to at least a condition equal to that prior to the casualty.

19. Eminent Domain. If [percentage] or more of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, this Lease shall automatically terminate as of the [date that title is vested in the condemning agency / date that Landlord or Tenant is notified of the taking / date that the condemning agency takes possession of any portion of the Premises / other date to be agreed upon by the parties]. Notwithstanding this termination, Tenant is required to pay Rent through the date that it actually surrenders possession of the Premises. If Landlord is notified in writing by a condemning agency that less than [percentage] of the [useable floor area / Premises / parking area][shall / may] be taken through eminent domain, Landlord may terminate this Lease by providing written notice to Tenant. Within [time period] after Landlord notifies Tenant that Landlord is terminating this Lease, Tenant shall surrender possession of the Premises to Landlord. After Tenant surrenders possession, the parties' obligations under this Lease are terminated, provided that Tenant surrenders possession in accord with this Lease and pays Rent through the date of surrender. **[If Landlord does not exercise its termination option within [time period] after being notified of the taking, then the option to terminate lapses and this Lease continues in full effect.]**

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Landlord and Tenant agree that all compensation paid for the Premises, including any value of Tenant's leasehold interest in the Premises, shall be paid to and be the property of Landlord. Tenant may seek compensation for any of its own trade fixtures, business interruption, going concern, moving expenses, and other items, provided that Tenant's compensation is not in diminution of Landlord's or Landlord's mortgagee's compensation for the Premises.

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Tenant has no claim against Landlord for the value of any unexpired term of this Lease. If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, and this Lease is not terminated, Landlord and Tenant agree that the Annual Base Rent for the Premises shall be reduced based on a ratio of the [useable floor space] that remains after the taking to the [useable floor space] of the original Premises.

20. Assignment and Subletting. Tenant shall not assign this Lease, sublet the Premises or in any manner transfer this Lease or any estate or interest in this Lease, or allow anyone to conduct business at the Premises (whether as a concessionaire, franchisee, subtenant,

Leasing Fundamentals

permittee, operator or otherwise), either by voluntary or involuntary act of Tenant or by operation of law or otherwise (in each such instance, a “Transfer”), without the prior consent of Landlord, which may be withheld in Landlord’s sole discretion. In the event that Tenant, with or without the previous consent of Landlord, does assign, sublet or in any manner transfer this Lease or any estate or interest in this Lease, Tenant shall in no way be released from any of its obligations under this Lease.

21. Subordination and Estoppel certificates. At Landlord’s mortgagee’s option: (a) any mortgage or mortgages now or later placed on Landlord’s interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof, may be subordinated to this Lease; or (b) this Lease may be subordinated to any mortgage or mortgages now or later placed on Landlord’s interest in the Premises, and any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. The mortgagee’s option shall be exercised by notice to Tenant. Tenant shall execute and deliver, within **[number]** days after a request, any further commercially reasonable instruments, in a form acceptable to the mortgagee, confirming subordination as requested by Landlord or Landlord’s mortgagee.

In the event of foreclosure or any conveyance by deed in lieu of foreclosure, Tenant shall attorn to Landlord’s successor in interest, provided that the successor agrees in writing to recognize Tenant’s rights under this Lease if Tenant is not in default beyond any applicable cure periods. Tenant shall execute and deliver, within **[number]** days after a request, any further commercially reasonable instruments, in a form acceptable to Landlord’s successor in interest, attorning to the successor in interest and recognizing it as Landlord under this Lease.

Within **[number]** days after a written demand by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form acceptable to Landlord, certifying

- a. the Commencement Date;
- b. the Termination Date;
- c. that this Lease is unmodified and in full force and effect, or is in full force and effect as modified, stating the modifications;
- d. that the Lease is not in default, or listing any defaults;
- e. that Tenant does not claim any rights of setoff, or listing such rights of setoff;
- f. the amount of Annual Base Rent due as of the date of the certificate, or the date to which the Annual Base Rent has been paid in advance;

- g. the amount of any Security Deposit; and
- h. any other matters Landlord reasonably requests.

Landlord and any prospective purchaser or mortgagee of the Premises may rely on this certificate. It is within the contemplation of the parties that Tenant's failure to provide the estoppel certificate in the time and manner required could result in the loss of a prospective sale or loan and that Tenant is liable for all damages resulting from such a loss.

Tenant shall give Landlord's mortgagee, by certified mail, a copy of any notice of default served on Landlord, provided Tenant has been given notice of the mortgagee's address in writing by Landlord's mortgagee. If Landlord fails to cure any default within the time provided in this Lease, the mortgagee shall have an additional **[number]** days within which to cure the default, or if the default cannot be cured within that time, then whatever additional time is reasonably necessary if the mortgagee has commenced and is diligently pursuing the remedies necessary to cure the default.

22. Security Deposit. Within **[number]** days of the Lease Date, Tenant shall deposit the Security Deposit with Landlord. The Security Deposit shall be used to secure Tenant's performance of this Lease. Landlord may commingle the Security Deposit with its own funds. If Tenant fails to pay Rent or otherwise commits a default, Landlord may apply all or part of the Security Deposit to make the payment or cure the default. Landlord's rights under this section are in addition to any other rights or remedies Landlord may have under the terms of this Lease or under Michigan law. If Landlord uses all or part of the Security Deposit, within **[number]** days after demand by Landlord, Tenant shall pay Landlord sufficient funds to restore the Security Deposit to its original amount. Any unused portion of the Security Deposit shall be returned to Tenant, **[with interest at [percentage]/ without interest]**, within **[number]** days of the later of: (a) the termination of the Lease; (b) Tenant's surrender of the Premises; or (c) the return of the keys to Landlord. Landlord may deliver the Security Deposit to any purchaser of Landlord's interest in the Shopping Center containing the Premises, and thereafter, Landlord shall be discharged from any further liability with regard to the Security Deposit.

23. Remedies. Each of the following shall be deemed an event of default: (a) Tenant's failure to make payment of Rent when due as provided in this Lease; or (b) Tenant's failure to perform any of the other covenants of this Lease for a period of 30 days following written demand for performance by Landlord; or (c) Tenant's failure to operate its business when required under this Lease pursuant to Section ___ for the Permitted Use, or if during the Term Tenant shall abandon or vacate the Premises.

Leasing Fundamentals

Landlord has the power to terminate this Lease and evict Tenant upon the occurrence of a default. Landlord shall exercise this power by the delivery of a notice of termination. The termination is effective **[immediately on delivery / on the [number] day following delivery]** of the notice to Tenant. If Landlord terminates this Lease, Landlord is entitled to recover all damages suffered as the result of any default. It is within the contemplation of the parties that such damages include: (a) the difference between the contract rent and the market rent through the remainder of the original Term; (b) the unamortized expenditures, calculated on a straight-line basis, undertaken by Landlord to fit the Premises to the needs of Tenant, including expenditures for Landlord Work, interior partitions, doors, floor coverings, wall coverings, paint, plaster, cabinetry, and all other work performed on the Premises; (c) the estimated cost of restoring the Premises to their original condition; (d) any commissions paid to re-lease the Premises; and (e) any other damages identified in this Lease. In determining the rent which would be payable under this Lease by Tenant subsequent to default, the Percentage Rent for each Lease Year of the unexpired portion of the Term shall be equal to the average Percentage Rent payable by Tenant from the Commencement Date to the time of default, or during the preceding two (2) full Lease Years, whichever period is shorter.

Landlord may also evict Tenant without terminating this Lease. Tenant waives any right to possession of the Premises after eviction. Despite eviction, Tenant remains fully obligated for the payment of **[Annual Base Rent / Rent]** through the remainder of the Term. Landlord has no obligation to re-lease the Premises, and Landlord's failure or refusal to re-lease does not affect Tenant's obligation to pay **[Annual Base Rent / Rent]**.

The remedies provided to Landlord under this Lease are cumulative, regarding both other remedies provided by the Lease and any remedies provided by law. If Landlord commences an action to enforce this Lease, Tenant agrees to pay Landlord's reasonable costs and attorney fees. Landlord and Tenant knowingly and voluntarily waive trial by jury in any action: (a) to enforce this Lease; (b) to evict Tenant from the Premises; or (c) that is in any way related to the Lease, the Premises, or the relationship between Landlord and Tenant.

24. Surrender of Premises. On termination or expiration of the Lease, Tenant shall surrender the Premises broom clean and in the same condition as on the **[Lease Date / Commencement Date]**, reasonable wear and tear excepted, and shall promptly surrender all keys for the Premises to Landlord at the location then designated for the payment of rent. Any damage to the Premises resulting from the removal of trade fixtures or other items of personal property shall be repaired at Tenant's expense. Tenant shall reimburse all expenses paid or incurred by Landlord in connection with repairing or restoring the Premises to the designated condition immediately upon demand. If the Premises have become damaged or destroyed by fire or another casualty, Tenant shall restore them to the required condition, including any modifications required to comply with current codes and regulations. Tenant shall remove its personal property and trade fixtures from the Premises immediately on

termination. Tenant represents that it is Tenant's intention that all personal property and trade fixtures remaining on the Premises after termination are abandoned by Tenant. Landlord may sell, discard, or keep such personal property and trade fixtures as it deems appropriate in its sole discretion. Tenant shall reimburse all expenses paid or incurred by Landlord in connection with removing Tenant's personal property and trade fixtures immediately upon demand. Tenant's obligations under this Section shall survive the expiration or other termination of the Lease.

25. **Notices.** All notices, bills, or statements required or permitted under the Lease shall be in writing and shall be deemed to have been given if either delivered personally or mailed by certified mail, return receipt requested, or sent by national overnight courier service, to the parties at the addresses set forth below. The addresses specified in the notice may from time to time be changed by notice from one party to the other. Notice shall be effective upon delivery if personally delivered, on the next business day if sent by overnight courier, and upon receipt if sent by certified mail.

Landlord: _____

Tenant: _____

26. **Construction and Interpretation.** This Lease shall be construed in accord with Michigan law. This Lease has been negotiated at arms length and carefully reviewed by both parties. This Lease is not to be construed against Landlord.

The use of the word *may* in describing the right of a party means that the party has the option, but not the obligation, to exercise that right. Furthermore, the exercise of the right is not an election of remedies or the waiver of any other right or claim. The words *include* and *including* are intended to be illustrative, not exhaustive.

The parties shall rely solely on the terms of this Lease to govern their relationship. This Lease merges all proposals, negotiations, representations, agreements, and understandings with respect to the Lease. There are no representations with respect to the condition of the

Leasing Fundamentals

Premises or the Shopping Center, or the amount of Real Estate Taxes or Operating Expenses, or any other matter in any way related to the Premises or this Lease except as expressly set forth in this Lease. There are no damages within the contemplation of the parties except as expressly identified in this Lease. No rights, covenants, easements, or licenses may arise by implication. Reliance on any representation, omission, action, or inaction outside of this Lease is unreasonable and does not establish any rights or obligations on the part of either party. This Lease may only be modified or amended by a written document signed by Landlord and Tenant. There may be no oral modifications or amendments of this Lease.

No endorsement or statement on any check or on any letter accompanying any check shall be deemed an accord and satisfaction. Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance of the amount due or to pursue any other remedy. Tenant acknowledges that the Annual Base Rent is a liquidated claim. Tenant waives any requirement that Landlord tender back funds as a condition to bringing an action to collect unpaid Annual Base Rent. No covenant or default is intended to be waived unless a waiver is clearly expressed in a document: (a) signed by the waiving party; (b) specifically identifying the covenant or default; and (c) expressly stating that it is a waiver of the identified covenant or default. The waiver of a covenant or default is not construed as a continuing waiver of the same covenant or of any future default. Consent by Landlord to any act requiring Landlord's consent does not constitute a waiver of the requirement of Landlord's consent with respect to any similar or subsequent act. Tenant is not entitled to surrender the Premises to avoid liability for Rent unless: (a) an acceptance of the surrender is evidenced in a document signed by Landlord; and (b) the document expressly states that it is the acceptance of a surrender. No action or inaction, other than as expressly provided in this section, may be construed as an acceptance of surrender by Landlord.

Notwithstanding anything to the contrary, Tenant's obligation to pay Rent is a material and independent covenant and is not subject to setoff, recoupment, or suspension. Notwithstanding anything to the contrary, Landlord has no obligation to mitigate any claim for Rent.

Time is of the essence with respect to both the definition of a Material Breach and the exercise of options, if any, included in the Lease.

If any covenant of this Lease is determined to be invalid, illegal, or unenforceable, that covenant shall be enforced to the fullest extent permitted by law, and the validity, legality, and enforceability of the remaining covenants shall not in any way be affected or impaired.

27. Authorized and binding. Tenant and each person executing this Lease on its behalf warrant and represent to Landlord that: (a) Tenant is validly organized, existing, and authorized to do business under Michigan law; (b) Tenant has full power and lawful authority

to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Tenant in accordance with its terms. Landlord and each person executing this Lease on its behalf warrant and represent to Tenant that: (a) Landlord is validly organized, existing, and authorized to do business under Michigan law; (b) Landlord has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Landlord in accordance with its terms. This Lease is binding on successors and assigns.

28. Radius. During the Term, in the event Tenant, its parent corporation or subsidiary corporation, or its franchisor or franchisee, or its licensor or licensee, or any person, firm, corporation or other entity who or which controls or is controlled by Tenant, or by any person, firm, corporation or other entity which directly or indirectly controls or is controlled by Tenant, shall, directly or indirectly, either individually or as a partner or stockholder or otherwise, own, operate or become financially interested in any business similar to or in competition with the business of Tenant described in Section 1.W. within a radius of ____ miles of the Premises, then the Gross Sales of any such business or businesses within said radius shall be included in the Gross Sales made from the Premises and the Percentage Rent hereunder shall be computed upon the aggregate of the Gross Sales made from the Premises and by any such other business or businesses then conducted within said radius and Tenant shall report and maintain records of such sales in the manner provided in Section 4 hereof. If Tenant fails to make payments required pursuant to this Section, Landlord or Landlord's authorized representative or agent shall have the right at all reasonable times during the term hereof and for a period of at least three (3) years after the expiration of the term of this Lease, to inspect, audit, copy and/or make extracts of the books, source documents, records and accounts pertaining to such other business or businesses conducted within said radius, in accordance with the provisions of Section 4 hereof, for the purpose of determining or verifying the additional rents due to Landlord pursuant to this Section. Moreover, in the event Tenant fails to supply to Landlord sales records with respect to any such similar or competing business, Landlord shall have the right to estimate the sales for such businesses based upon Tenant's Gross Sales in the Premises, and the additional Percentage Rent generated from the inclusion of such estimated sales and Tenant's Gross Sales shall be deemed Additional Rent to be paid by Tenant in accordance with the provisions of Section 4 of this Lease.

29. Tenant's Operations. Tenant shall continuously use and occupy the entire Premises during the Term, which use and occupancy shall be solely for the purpose of conducting the business specifically set forth in the Permitted Use and for no other purpose or purposes. It is agreed that the Permitted Use has been, and is, a material inducement to Landlord in entering into this Lease with Tenant, and that Landlord would not enter into this Lease without this inducement. If any governmental license or permit shall be required for the proper and

Leasing Fundamentals

lawful conduct of Tenant's business or other activity carried on in the Premises or if a failure to procure such a license or permit might or would in any way affect Landlord, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such license or permit and submit the same for inspection by Landlord. Tenant, at Tenant's expense, shall, at all times, comply with the requirements of each such license or permit. Tenant shall be open for business and operate continuously, during all days and hours established by Landlord, in all of the Premises during the entire Term, and shall conduct its business at all times in a first class and reputable manner, maintaining at all times a full staff of employees and an adequate stock of merchandise. Failure by Tenant so to be open for business and to operate shall entitle Landlord, in addition to other remedies provided in this Lease, to mandatory injunctive relief.

30. Environmental Compliance. Tenant shall not cause or permit the use, generation, storage, treatment or disposal in, on or about the Premises or the Shopping Center of any pollutant, contaminant, waste, or hazardous, toxic or radioactive substance or material (collectively, "Hazardous Materials") subject to regulation under any Federal, state or local laws, rules, regulations and ordinances from time to time in effect. Without limiting the foregoing, Tenant shall have sole and exclusive liability (including, but not limited to, liability under environmental laws such as, but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act and the Michigan Environmental Response Act) for or related to, in whole or in part, the release or disposal of any substances, materials or wastes (whether Hazardous Materials or otherwise) by Tenant's employees, contractors or agents. Tenant will indemnify the Landlord Parties and save them harmless from and against any and all claims, actions, damages, liability and expense in connection with all losses, including loss of life, personal injury and/or damage to property arising from or out of any Hazardous Materials installed or introduced into the Premises or the Shopping Center by Tenant (or by others at Tenant's sufferance or with Tenant's permission) in whole or in part. In case any of the Landlord Parties shall be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold all such Landlord Parties harmless and shall pay all costs, expenses and reasonable attorney fees incurred or paid by the Landlord Parties in connection with such litigation. This paragraph shall survive the termination or expiration of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant, personally or by their duly authorized agents, have executed this Lease as of the day and year first above written.

LANDLORD

By _____

Its _____

Dated: _____

TENANT

By _____

Its _____

Dated: _____

Exhibit E
Alternative Clauses

III. LEASING FUNDAMENTALS: ALTERNATIVE CLAUSES

TENANT-PROPOSED REPAIR CLAUSE

(a) Except as otherwise provided, Tenant will maintain the interior, non-structural portion of the Premises, at its sole cost and expense, in an attractive, clean and sanitary condition.

(b) Landlord warrants and guarantees that all structural portions of the Premises and the roof, utility cables, mains and conduits, the HVAC, electrical, gas, plumbing, sprinkler, and sewer systems are, and will be upon the Delivery Date, in good working order and repair (it is agreed and understood that the floor slab moisture shall not exceed, per ASTM F1869-98, five pounds per 1,000 square feet per 24 hours of moisture) and shall meet ASTM requirements to allow for the installation of resilient flooring, and that the Premises and Common Areas surrounding the Premises are water-tight (for example, there is no standing water outside or inside of the Premises), and there are not, and will not be on the Delivery Date, any violations of any Laws. Landlord, at no cost to Tenant, must promptly correct any code violations subsequently found to exist and promptly replace or repair, in a good and workmanlike manner and using the highest quality materials, any defects in workmanship, material or equipment that may appear in, on or about Landlord's Work during the Term.

(c) Subject to the following subsection (d), and except for damage caused by fire or other casualties or taking by eminent domain or conveyance in lieu thereof: Tenant, at its sole cost and expense, must make all interior nonstructural repairs to the Premises, including doors and windows, and (1) all repairs to the plumbing and gas systems exclusively serving the Premises from their respective meters to and including the plumbing and gas systems in the interior of the Premises, and (2) the electrical system exclusively serving the Premises from Tenant's electrical panel to and including the electrical systems in the remainder of the interior of the Premises. Notwithstanding the foregoing, Tenant is not required to make any: (i) repairs of damage covered by insurance maintained or required to be maintained by Landlord; (ii) repairs necessitated by reason of the negligence, willful misconduct, or default of Landlord, its agents, employees or contractors; (iii) repairs to the plumbing, gas, electrical or other similar units and systems where such repairs would necessitate going through or into the floor slab, structural walls, or roof of the Premises; (iv) replacement of any plumbing, gas, electrical or similar units or systems; or (v) repair or replacement of the sprinkler, life safety or other detection or suppression system. All of the repairs and replacements referred to in the immediately preceding sentence will be performed by Landlord at its sole cost and expense.

(d) Landlord, at its sole cost and expense, must make all repairs to the Premises other than those that Tenant is required to make. Landlord's obligations include, but are not limited to, repairs to the structural portions of the Premises (both interior and exterior), the roof, floor slab, foundation, exterior walls, any interior damage caused by roof leaks or water/sewage backing up into the Premises no matter where from, and all repairs or replacements to the (x) gas and plumbing systems or any portion thereof up to (but not including) their respective meters, and (y) the electrical system up to (but not including) Tenant's electrical panel (and not including HVAC, except as set forth herein). In making any repairs or replacements, Landlord must not unreasonably interfere with Tenant's normal operations and business. Landlord assigns to Tenant all warranties and guarantees, if any, with respect to any and all construction and equipment on the Premises to be maintained by Tenant.

LANDLORD-PROPOSED ALTERATIONS CLAUSE

Post-Commencement Date Alterations.

A. Alterations. Tenant may make such alterations, additions and improvements in and remodeling to the Leased Premises, including Tenant's Work, as may be reasonably necessary to its use thereof, provided that such alterations, additions, improvements and remodeling do not affect the structure of the Building, are done in a good and workmanlike manner and the plans and specifications are approved in advance by Landlord in writing. Tenant shall use Landlord's architect and Landlord's contractor for any such alterations, additions and improvements in and remodeling to the Leased Premises. Tenant shall not make any changes, alterations, or improvements affecting the structure of the Building without Landlord's prior written consent, which Landlord may withhold in its sole discretion. Any such alterations, additions and improvements shall be at Tenant's expense and shall be done in accordance with applicable municipal, state and county laws and ordinances and the building and zoning rules and regulations. Tenant expressly assumes all responsibility for all damages and injuries which may result from any such alterations, additions or improvements made by it, and shall hold Landlord harmless with respect thereto.

B. Trade and Other Fixtures. Tenant may install or cause to be installed such equipment and trade and other fixtures as are reasonably necessary for the operation of its business. No such equipment and trade or other fixtures may be subject to a lien or title retention instrument on the Building of which the Premises are a part.

C. Insurance Costs. Tenant shall reimburse Landlord for any increase in the cost of insurance to Landlord over and above the normal costs of insurance which result from any alteration, addition or improvement of the Leased Premises made by Tenant.

A. Improvements. Except as provided in Section 22.4.C below, title to Tenant's Work, all improvements and alterations made by Tenant or Landlord to the Leased Premises and all fixtures installed at or in the Leased Premises shall remain in Landlord, and, upon the expiration or other termination of this Lease, Tenant shall immediately surrender possession of the Leased Premises to Landlord, in broom-clean condition, together with all improvements or additions in or to the Leased Premises, by whomever made, in the condition as received or first installed, ordinary wear and tear excepted.

B. Fixtures. All fixtures, equipment, improvements and appurtenances attached to or built into the Leased Premises at the commencement or during the term of this

Lease, including floor to ceiling partitions and doors and door hardware, shall be and remain part of the Leased Premises and, at the expiration of the term of this Lease, shall be deemed the property of Landlord and shall not be removed by Tenant. All electric, plumbing, heating, sprinkling, window covering, ventilation, silencing, air conditioning and cooling equipment will be deemed to be included in such fixtures, equipment, improvements and appurtenances, whether or not attached to or built into the Leased Premises.

C. Removable Personal Property. Upon expiration or other termination of this Lease, Tenant, at its expense, shall remove all movable office furnishings and equipment installed by Tenant at its expense and, at Landlord's request, Tenant shall remove all telephone and communication wiring and cabling. Tenant agrees that it will pay the cost of repairing any damage to the Leased Premises, or to the Building, arising from the removal of any property which it is permitted or obligated to remove from the Leased Premises. Any property left on the Leased Premises after the expiration of this Lease shall be deemed conclusively to have been abandoned and to be the property of Landlord to dispose of as Landlord deems most expedient. If Tenant caused the lighting layout or heating, ventilating or air conditioning systems to be altered from building standard layouts, then, unless Landlord shall otherwise agree in writing, at the expiration or termination of this Lease. Tenant shall pay to Landlord an amount equal to the cost to replace such nonstandard layouts to building standard layouts.

TENANT-PROPOSED OPERATING COST EXCLUSIONS

(a) Notwithstanding anything to the contrary, the following are excluded from Common Area Costs:

- (1) the original cost, or depreciation of the original cost, of constructing, erecting and installing the Property, the Common Areas, common facilities and related services;
- (2) principal and interest payments pursuant to any mortgage that encumbers the Premises or Property;
- (3) Taxes;
- (4) administrative charges, management fees, fees based upon a percentage calculation, leasing commissions or any other fee or charge regardless of the name (including, without limitation, salaries of all kinds, social security, taxes, insurance, part-time or full-time labor, any fees paid to manage the Property including those paid to a third party management company, and similar costs and expenses) that is related to the management and operation of the Property;
- (5) expenses incurred due to the negligence or willful misconduct of Landlord or any occupant of the Property or their respective agents or employees;
- (6) costs and expenses incurred for repairs or replacements due to faulty construction, faulty workmanship or structural defects;
- (7) expenses related to an individual occupants of the Property or to a particular tenant space, or to buildings;
- (8) any cost, fees, fines or penalties, or interest thereon, related to violations by Landlord or any occupant of any Law; and the cost of compliance with Laws enacted after the date hereof;
- (9) capital expenditures (a capital expenditure is defined as an item or items costing \$1,000 or more and having a useful life of at least one year); other than a "Permitted Capital Expenditure." A Permitted Capital Expenditure is limited to the following: repaving of the parking lot(s) not more frequently than once every 10 years; provided, however, that each Permitted Capital Expenditure must be amortized on a straight-line basis over the useful life of the related improvement based on federal income tax guidelines, but in no event less than seven years, and only the amount of the annual amortization shall be included in Common Area Costs for any Lease Year within the useful life so determined;
- (10) reserves for replacement;

- (11) costs for insuring the Common Areas, but this exclusion does not limit Landlord's rights of reimbursement, if any, under Section 21;
- (12) cost of advertising, marketing, decorating, redecorating, or special cleaning or other services not provided on a regular basis;
- (13) all costs and expenses relative to the solicitation and execution of leases for space in the Property;
- (14) all costs and expenses related to the operation, maintenance and repair of any garage space in the Property;
- (15) the cost of any repair or replacement made by Landlord because of the total or partial destruction of the Property or the condemnation of a portion of the Property or the Property;
- (16) any operating expense paid to a related corporation, entity or person that is in excess of that amount that would have been paid absent such relationship;
- (17) the cost of overtime or other expenses incurred by or on behalf of Landlord to correct any default of Landlord or for work performed by or on behalf of Landlord where such work is expressly provided in this Lease or any other lease the cost of which was/is to be borne at Landlord's expense;
- (18) any cost that is paid or reimbursed by third parties, including warranties and guarantees and including any cost that is paid or reimbursed by insurance (or would have been covered by insurance required to be maintained by Landlord);
- (19) the amount of any insurance deductible or self-insured retentions; and
- (20) payments made under any easement, operating agreement, license, restrictive covenant, or any instrument relating to the payment or sharing of costs among property owners;
- (21) costs disproportionately incurred by or on behalf of one or more tenants, including, without limitation, all costs relating to a food court area; and
- (22) costs and expenses incurred with respect to the correction, disposal, investigation, removal, transportation, or treatment of Hazardous Material.

ASSIGNMENT CLAUSE

Alternative #1

Tenant agrees not to assign or in any manner transfer this Lease or any estate or interest therein, and not to lease or sublet the Premises or any part or parts thereof or any right or privilege appurtenant thereto, and not to allow anyone to conduct business at, upon or from the Premises (whether as concessionaire, franchisee, licensee, permittee, subtenant or otherwise), either by voluntary or involuntary act of Tenant or by operation of law or otherwise, without obtaining Landlord's prior written consent thereto, which shall not be withheld unreasonably. In the event that Tenant, with or without the previous consent of Landlord, does assign, sublet or in any manner transfer this Lease or any estate or interest therein, Tenant shall in no way be released from any of its obligations under this Lease.

The sale, issuance or transfer of any voting capital stock of Tenant or Tenant's Guarantor, if any, or any voting capital stock of any corporate entity which directly or indirectly controls Tenant (if Tenant or Tenant's Guarantor, if any, or any such controlling corporate entity is a corporation the stock of which is not traded on the New York Stock Exchange, NASDAQ or the American Stock Exchange), or any interests in any noncorporate entity which directly or indirectly controls Tenant or Tenant's Guarantor, if any, which results in a change in the direct or indirect voting control of Tenant, or Tenant's Guarantor, if any, shall be deemed to be an assignment of this Lease within the meaning of this Section. If Tenant is a partnership, trust or an unincorporated association, then the sale, issuance or transfer of a controlling interest therein, or the transfer of a majority interest in or a change in the voting control of any partnership, trust, unincorporated association, or corporation which directly or indirectly controls Tenant, or the transfer of any portion of any general partnership or managing interest in Tenant or in any such entity, shall be deemed to be an assignment of this Lease within the meaning of this Section. In no event shall this Lease be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings.

In the event Tenant shall request the consent of Landlord to any assignment or subletting, then Tenant shall pay Landlord's reasonable attorneys' fees and processing fees incurred in connection therewith. In the event Tenant shall sublet any part of the Premises or assign this Lease, all sums or other economic consideration received by Tenant as a result of such subletting or assignment, whether denominated rental or otherwise under the sublease or assignment, which exceed the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to that portion of the Premises subject to such sublease) shall be payable to Landlord as additional rental under this Lease without affecting or reducing any other obligation of Tenant hereunder.

Alternative #2:

Tenant shall not, either voluntarily or by operation of law, assign, encumber, or otherwise transfer this Lease or any interest herein, or sublet the Premises or any part thereof, or permit the Premises to be occupied by anyone other than Tenant or Tenant's employees (any such assignment, encumbrance, subletting, occupation or transfer is hereinafter referred to as a "Transfer") unless Tenant receives the prior written consent of Landlord, which consent shall not be unreasonably withheld. For purposes of this Lease, the term "Transfer" shall also include (A) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of a majority of the partners, or a transfer of a majority of partnership interests, within a twelve month period, or the dissolution of the partnership, and (B) if Tenant is a closely held corporation (i.e. whose stock is not publicly held and not traded through an exchange or over the counter), or a limited liability company, the dissolution, merger, consolidation, division, liquidation or other reorganization of Tenant, or (i) the sale or other transfer of more than an aggregate of 50% of the voting securities of Tenant (other than to immediate family members by reason of gift or death) or (ii) the sale, mortgage, hypothecation or pledge of more than an aggregate of 50% of Tenant's net worth. A Transfer or other action in violation of the foregoing, at Landlord's option, shall be void and/or shall constitute a material breach of this Lease. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to assign this Lease or sublease the Premises, or any part thereof, to an "Affiliate" upon at least twenty (20) days prior written notice to Landlord. For purposes hereof, the term "Affiliate" shall mean any corporation or other entity controlling, controlled by, or under common control with (directly or indirectly) Tenant. The term "control", as used herein, shall mean the power to direct or cause the direction of the management and policies of the controlled entity through the ownership of more than fifty percent (50%) of the voting securities in such controlled entity.

If Tenant desires to Transfer this Lease or any interest herein, then at least thirty (30) days prior to the effective date of the proposed Transfer, Tenant shall submit to Landlord in connection with Tenant's request for Landlord's consent: (A) a statement containing the name and address of the proposed assignee or subtenant; (B) such financial information with respect to the proposed assignee or subtenant as Landlord shall reasonably require; (C) the type of use proposed for the Premises; (D) all of the principal terms of the proposed assignment or subletting; (E) four (4) originals of the assignment or sublease on a form approved by Landlord; and (F) four (4) executed originals of the Landlord's form of Consent to Sublease or Assignment and Assumption of Lease and Consent.

Landlord's consent to a proposed assignment or subletting shall not be unreasonably withheld; but, in addition to any other grounds for denial, Landlord's consent shall be deemed reasonably withheld if, in Landlord's good faith judgment: (A) the proposed assignee or subtenant does not have the financial strength to perform its obligations under this Lease or any proposed sublease; (B) the business and operations of the proposed assignee or subtenant are not of comparable quality or type to the business and operations being conducted by other tenants in the Building; (C) either the proposed assignee or subtenant, or any person which directly or indirectly controls, is controlled by, or is under common control with the proposed assignee or

Leasing Fundamentals

subtenant occupies space in the Building, or is negotiating with Landlord to lease space in the Building; (D) the proposed assignee or subtenant is disreputable; (E) the subject space is not regular in shape with appropriate means of ingress and egress suitable for normal leasing purposes; (F) the transferee is a government (or agency or instrumentality thereof) or (G) Tenant is in default at the time Tenant requests consent to the proposed Transfer.

In the event of any Transfer, all sums or other economic consideration received by Tenant in connection with such assignment or subletting, whether denominated as rental or otherwise, which exceed in the aggregate, the total sum which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to less than all of the Premises under a sublease) shall be paid to Landlord promptly after receipt without affecting or reducing any other obligation of Tenant hereunder. If Tenant shall Transfer this Lease for all or any part of the Premises or shall request the consent of Landlord to any Transfer, Tenant shall pay to Landlord Landlord's costs related thereto, including Landlord's reasonable attorneys' fees and a minimum administrative fee to Landlord of Five Hundred Dollars (\$500.00). Notwithstanding any Transfer, Tenant shall remain fully and primarily liable for the payment of Rent and for the performance of all other obligations of Tenant contained in this Lease.

Alternative #3:

Tenant covenants not to, either voluntarily or by operation of law, assign or otherwise transfer this Lease or any interest herein or hypothecate, or mortgage the same or sublet the Premises or any part thereof or permit the Premises to be occupied by anyone other than Tenant or its employees or use or permit them to be used for any purpose other than above-mentioned, except with the advanced written consent of Landlord, which consent shall not be unreasonably withheld. For purposes of this Lease, an assignment shall also occur in the event that: (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of any partner, or (B) if Tenant is a professional corporation or a professional limited liability company, the dissolution, merger, consolidation, division, liquidation or other reorganization of Tenant. Any action in violation of the foregoing, at Landlord's option, shall be void and/or shall constitute a material breach of this Lease.

SUBORDINATION AND ESTOPPEL CLAUSE

Alternative #1:

This Lease, and the rights of Tenant hereunder, shall be subject and subordinate to the interests of (A) all present and future ground leases and master leases of all or any part of the Property; (B) present and future mortgages encumbering all or any part of the Property; (C) all past and future advances made under any such mortgages; and (D) all renewals, modifications, replacements and extensions of any such ground leases, master leases and mortgages; provided, however, that any lessor under any such ground lease or master lease or any mortgagee under any such mortgage (any such lessor or mortgagee is herein referred to as a "Mortgagee") may elect, by written notice given to Tenant, to have this Lease made superior in whole or in part to any such ground lease, master lease or mortgage. Within ten (10) business days after written request from Landlord, Tenant shall execute, acknowledge and deliver any instruments reasonably requested by Landlord or any such Mortgagee to affect the purposes of this Section. Any obligations of Mortgagee shall be non-recourse as to any assets of such Mortgagee other than its interest in the Premises. Notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to cause its present Mortgage, if any, to provide Tenant with a subordination, non-disturbance and attornment agreement (an "SNDA") on Mortgagee's standard form promptly following full execution and delivery of this Lease.

If requested, Tenant shall attorn to and recognize as Tenant's landlord under this Lease any Mortgagee or purchaser taking title to the Building by reason of the termination of any superior lease or the foreclosure of any superior mortgage or deed of trust or sale of property or any other reason, and Tenant shall, within two (2) days of demand, execute any documents reasonably requested by any such person to evidence the foregoing.

Tenant shall give any Mortgagee or ground lessor, by certified mail, a copy of any notice of default served upon Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing of the address of such Mortgagee. If Landlord shall fail to cure such default within thirty (30) days after such notice to Landlord (or if such default cannot be cured within that time, then such additional time as may be reasonably necessary), then the Mortgagee shall have an additional thirty (30) days within which to cure such default (or if such default cannot be cured within that time, then such additional time as may be reasonably necessary).

Tenant shall, from time to time, within ten (10) business days of written request from Landlord deliver to Landlord and any other party designated by Landlord an estoppel certificate acknowledged and executed by Tenant and any Guarantor of this Lease. Any such certificate given to any Mortgagee or prospective Mortgagee may contain certifications of such other matters, customarily required by such Mortgagee. If Tenant does not deliver to Landlord the certificate as required herein, then Landlord is granted an irrevocable power-of-attorney, coupled with an interest, to execute such certificate on Tenant's behalf, which statement shall be binding on Tenant (and such grant shall not be in limitation of Landlord's other remedies for such failure by Tenant).

CASUALTY CLAUSE

Alternative #1:

In the event the Premises shall be partially or totally destroyed by fire or other casualty insured under the insurance carried by Landlord so as to become partially or totally untenable, then the damage to the Premises shall be promptly repaired by Landlord (unless Landlord shall elect not to rebuild as hereinafter provided), and the fixed minimum annual rental and other charges shall be abated in proportion to the floor area of the Premises rendered untenable. Payment of full rental so abated shall commence and Tenant shall be obligated to reopen for business on the 30th day following the date that Landlord delivers the Premises to Tenant in tenantable condition, unless Tenant opens at an earlier time in the damaged area or remains open in such area following destruction or damage, in which event there shall be no abatement or any such abatement shall terminate as of the date of Tenant's earlier reopening. To the extent applicable, Landlord shall reconstruct the Premises in accordance with the working drawings originally approved by Landlord or with new drawings prepared by Tenant and acceptable to Landlord and Tenant, and in all other respects consistent with Landlord's then applicable standards for the Building. In no event shall Landlord be required to repair or replace any of Tenant's merchandise, trade fixtures, furnishings, equipment, plate glass, signs and/or personal property (including but not limited to wall coverings, carpeting and drapes). If Landlord repairs or rebuilds, Tenant, at Tenant's sole cost, shall repair or replace all merchandise, trade fixtures, furnishings, equipment, plate glass, signs and personal property (including but not limited to wall coverings, carpeting and drapes) in a manner and to at least a condition equal to that prior to the damage or destruction thereof. Notwithstanding the foregoing, if (i) more than 35% of the floor area of the Building shall be damaged or destroyed by fire or other casualty, or (ii) during the last 2 years of the term hereof more than 25% of the floor area of the Premises or of the Building shall be damaged or destroyed by fire or other casualty, or (iii) all or any part of the Building or the Premises are damaged or destroyed at any time by the occurrence of any risk not insured under the insurance carried by Landlord, then Landlord may terminate this Lease by giving written notice to Tenant within 90 days after the occurrence of such damage or destruction.

Alternative #2 (Single-Tenant Building):

In the event of damage to, or destruction of, any portion of the Premises or of the fixtures and equipment therein, by fire or other casualty, Tenant shall have the option to terminate the Lease with immediate effect or, subject to the payment of insurance proceeds as provided below, promptly repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty. If Tenant does not terminate this Lease then Tenant shall restore as set forth in this article. If Tenant so terminates this Lease, then all available insurance proceeds for the Building shall be paid to Landlord. Before Tenant commences such repairing, restoration or rebuilding involving an estimated cost of more than Fifty Thousand Dollars (\$50,000), plans and specifications therefor, prepared by a licensed architect satisfactory to Landlord shall be submitted to Landlord for approval and Tenant shall furnish to Landlord (a) an estimate of the cost of the proposed work, certified to by said architect; (b) satisfactory evidence of sufficient contractor's comprehensive general liability insurance covering Landlord, builder's risk

insurance, and workers' compensation insurance; (c) a performance and payment bond issued by an institution reasonably satisfactory to Landlord; and (d) such other security as Landlord may reasonably require to insure payment for the completion of all work free and clear of liens.

Provided that the insurer does not deny liability as to the insureds, and provided Tenant is not then in default hereunder, all sums arising by reason of loss under the insurance referred to in Article ____ herein (the "Building Insurance Proceeds") shall be deposited with the Depository (as hereinafter defined) to be available to Tenant for the work. Tenant shall diligently pursue the repair or rebuilding of the improvements to the Building in a good and workmanlike manner using only high quality workers and materials. The Depository shall pay out construction funds from time to time on the written direction of the architect provided that the Depository and Landlord shall first be furnished with waivers of lien, contractors and subcontractors sworn statements and other evidence of cost and payments so that the Depository can verify that the amounts disbursed from time to time are represented by completed and in-place work, and that said work is free and clear of possible mechanics liens. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work completed and in place from time to time. The "Depository," as used herein, shall be a title insurer selected and directed by Landlord. Any excess of Building Insurance Proceeds remaining with the Depository after the repair or rebuilding of improvements, if there be no default by Tenant in the performance of the Tenant's covenants and agreements hereunder, shall be paid to Tenant.

If Tenant has not terminated the Lease and shall not enter upon the repair or rebuilding of the Premises within a period of sixty (60) days after damage or destruction by fire or otherwise, and prosecute the same thereafter with such dispatch as may be necessary to complete the same within a reasonable period after said damage or destruction occurs, not to exceed two hundred ten (210) days from the date of commencement of such repair or rebuilding, then in addition to whatever other remedies Landlord may have either under this Lease, at law or in equity, Landlord may, after providing written notice of default to Tenant and failure of Tenant to cure within fifteen (15) days of said notice, terminate this Lease. If such damage or destruction occurs within the last eighteen (18) months of the Term, Landlord may terminate this Lease upon thirty (30) days' written notice to Tenant, in which event all Building Insurance Proceeds shall be paid directly to and retained by Landlord, and all other property insurance for which Tenant is responsible hereunder shall be paid directly to and retained by Tenant.

Alternative #3:

In the event the Premises or the Building are damaged by fire or other insured casualty and the insurance proceeds have been made available therefor by the holder or holders of any mortgages or deeds of trust covering the Building, the damage shall be repaired by and at the expense of Landlord to the extent of such insurance proceeds available therefor, provided such repairs and restoration can, in Landlord's reasonable opinion, be made within two hundred seventy (270) days after the occurrence of such damage without the payment of overtime or other premiums, and until such repairs and restoration are completed the rent due hereunder shall be abated in proportion to the part of the Premises which is unusable by Tenant in the conduct of its business (but there shall be no abatement of rent by reason of any portion of the Premises

Leasing Fundamentals

being unusable for a period equal to five (5) days or less or in the event that Tenant, its employees, agents or contractors are in whole or in part, responsible for the damage or destruction). Landlord agrees to notify Tenant within thirty (30) days after such casualty if it estimates that it will be unable to repair and restore the Premises within said two hundred seventy (270) day period. Such notice shall set forth the approximate length of time Landlord estimates will be required to complete such repairs and restoration. Notwithstanding anything to the contrary contained herein, if Landlord cannot or estimates it cannot make such repairs and restoration within said two hundred seventy (270) day period, then Tenant may, by written notice to Landlord, cancel this Lease as of the date of the occurrence of such damage, provided such notice is given to Landlord within fifteen (15) days after Landlord notifies Tenant of the estimated time for completion of such repairs and restoration. Except as provided in this Paragraph 15, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business or property arising from the making of any such repairs, alterations or improvements in or to fixtures, appurtenances and equipment. Tenant understands that Landlord will not carry insurance of any kind on Tenant's improvements, furniture and furnishings or on any fixtures or equipment removable by Tenant under the provisions of this Lease, and that Landlord shall not be obligated to repair any damage thereto or replace the same. Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of improvements installed in the Premises by or for Tenant.

In case the Building throughout shall be so injured or damaged, whether by fire or otherwise (though the Premises may not be affected, or if affected, can be repaired within said two hundred seventy [270] days) that Landlord, within sixty (60) days after the happening of such injury, shall decide not to reconstruct or rebuild the Building, then notwithstanding anything contained herein to the contrary, upon notice in writing to that effect given by Landlord to Tenant within said sixty (60) days, Tenant shall pay the rent, properly apportioned up to date of such occurrence, this Lease shall terminate from the date of delivery of said written notice, and both parties hereto shall be freed and discharged from all further obligations hereunder.

Notwithstanding the foregoing, in no event shall Landlord have an obligation to repair the Premises if either: (a) the Building is so damaged as to require costs of repairs exceeding ten percent (10%) of the full insurable value of the Building; or (b) the damage or destruction occurs during the last two (2) years of the Lease Term (without regard to un-exercised options, if any). Landlord's repair obligation hereunder shall be limited to the extent of insurance proceeds made available to Landlord.

CONDEMNATION CLAUSE

Alternative #1:

If the entire Premises shall be taken by any public authority under the power of eminent domain, or by deed in lieu thereof, then the term of this Lease shall cease as of the day possession shall be taken by such public authority and the rent shall be paid up to that day with a proportionate refund by Landlord of such rent as may have been paid in advance for a period subsequent to the date of the taking. If less than the whole but more than 25% of the Premises or more than 25% of the common areas shall be taken under eminent domain, Tenant shall have the right either to terminate this Lease, or, subject to Landlord's right of termination as set forth below, to continue in the possession of the remainder of the Premises, and shall notify Landlord in writing within 10 days after such taking of Tenant's intention. In the event Tenant elects to remain in possession, all of the terms herein provided shall continue in effect, except that the fixed minimum annual rental shall be reduced in proportion to the amount of the Premises, if any, taken and Landlord shall, at its own cost and expense, make all the necessary repairs or alterations to the basic Building, as originally installed by Landlord, so as to constitute the remaining Premises a complete architectural unit. If 25% or less of the Premises shall be so taken, the Term shall cease only on the part so taken as of the day possession shall be taken by such public authority and Tenant shall pay rent up to that day, with an appropriate refund by Landlord of such rent as may have been paid in advance for a period subsequent to the date of the taking, and thereafter the fixed minimum annual rental shall be reduced in proportion to the amount of the Premises taken. Landlord shall make all necessary repairs or alterations to the basic Building, as originally installed by Landlord, so as to constitute the remaining Premises a complete architectural unit. If more than 50% of the Building or more than 50% of the Premises shall be taken under power of eminent domain, Landlord may, by written notice to Tenant delivered on or before the date of surrendering possession to the public authority, terminate this Lease.

All damages awarded for such taking, whether for the whole or a part of the Premises, shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Premises, provided that Landlord shall not be entitled to the award made for depreciation to or cost of removal of Tenant's stock and fixtures.

Alternative #2:

If the whole of the Premises shall be taken or condemned for a public or quasipublic use or purpose by a competent authority, or if such a portion of the Premises shall be so taken that, as a result thereof, the balance cannot be used for the same purpose and with substantially the same utility to Tenant as immediately prior to such taking, or if a portion of the available parking field is taken so as to reduce the remaining area available for parking to a level which is below the minimum level required by applicable law, or if any portion of the access drives or loading docks is taken so that the Premises no longer complies with applicable zoning ordinances or

Leasing Fundamentals

regulations, then in any such event Tenant shall have the right to terminate this Lease, which election shall be made by giving written notice thereof to Landlord within thirty (30) days after delivery of possession to the condemning authority, then in any of such events, the Term shall terminate upon delivery of possession to the condemning authority, and any award, compensation or damages (hereinafter sometimes called the "Award") shall be paid to and be the sole property of Landlord, whether the Award shall be made as compensation for diminution of the value of the leasehold estate or the fee of the Premises or otherwise and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all of the Award.

If only a part of the Premises shall be so taken or condemned, but this Lease is not terminated pursuant to the terms hereof, and remains in full force and effect, on the date of such taking or condemnation the Base Rent shall be reduced by an amount that is the same ratio to monthly Base Rent as the total number of square feet in the Premises taken is to the total number of square feet in the Premises immediately before the taking. Landlord shall promptly and diligently proceed to restore the Premises and make a complete architectural unit of the remainder of the improvements, utilizing the Award for such purposes. If Landlord does not make a complete architectural unit of the remainder of the Premises within a reasonable period after such taking or condemnation, not to exceed two hundred ten (210) days, then, in addition to whatever other remedies Tenant may have either under this Lease, at law or in equity, Tenant shall have the right to terminate this Lease. Any portion of the Award as may not have to be expended for such repairing or restoration shall be retained by Landlord.

HAZARDOUS MATERIALS CLAUSE

Alternative #1:

For purposes hereof, the following definitions shall apply: (i) “Environmental Laws” means all now and hereafter existing statutes, laws, ordinances, codes, regulations, rules, rulings, orders, decrees, directives, policies and requirements by any Regulatory Authority; (ii) “Hazardous Materials” means any material or substance: (a) which is defined or becomes defined as a “hazardous substance,” “hazardous waste,” “infectious waste,” “chemical mixture or substance,” “dangerous,” “toxic” or “air pollutant” under Environmental Laws, or any like or similar term or terms; (b) contains petroleum, crude oil or any fraction thereof; (c) containing polychlorinated biphenyls (PCB’s); (d) contains asbestos; (e) which is radioactive; (f) which displays toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by Environmental Laws; or (g) which cause a nuisance upon or waste to any portion of the Property; (iii) “Handle” (or variations of such term) means any installation, handling, generation, storage, treatment, use, disposal, discharge, release, manufacture, refinement, emission, abatement, removal, transportation, or any other activity of any type in connection with or involving Hazardous Materials; and (iv) “Regulatory Authority” means any federal, state or local governmental agency, commission, board or political subdivision, or any industry organization which may impose liability or standards of conduct concerning public health and safety, the environment, or the Handling of Hazardous Materials.

Landlord represents and warrants to Tenant that, to the best of Landlord’s actual knowledge, there are no Hazardous Materials on, under or within the Premises as of the date of this Lease. No Hazardous Materials shall be Handled upon, about, above or beneath the Property, by or on behalf of Tenant’s Parties, unless the Hazardous Materials are: (i) listed in Exhibit C hereto and then only in the quantities listed in said exhibit; (ii) normal quantities of copier fluids and cleaning supplies containing Hazardous Materials which are customarily used in the conduct of general administrative and executive office activities so long as same are handled strictly in accordance with applicable Environmental Laws; or (iii) Handled as specified in Section _____. Any such Hazardous Materials so Handled, or the presence or migration of which is a result of the act or omission of Tenant’s Parties, shall be known as Tenant’s Hazardous Materials. Tenant shall cause Tenant’s Hazardous Materials to be Handled at all times in compliance with the manufacturer’s instructions therefor and all applicable Environmental Laws. Tenant shall ensure that all of Tenant’s employees who Handle Tenant’s Hazardous Materials are properly trained and licensed in accordance with Environmental Laws. Tenant shall not cause or permit Tenant’s Hazardous Materials to be disposed of, released, discharged or permitted to spill, leak or migrate upon, on, above or beneath any the Property.

Tenant shall, at its sole cost, promptly take all actions required by any Regulatory Authority, or necessary in Landlord’s reasonable estimation, which requirements or necessity arises from the Handling, presence or migration of Tenant’s Hazardous Materials on or about the Premises or any portion of the Property, (i) such that Landlord can make full economic use of the Premises and all other portions of the Property, and (ii) to restore the Premises and any affected

Leasing Fundamentals

portions of the Property to the condition existing prior to the introduction of Tenant's Hazardous Materials, irrespective of any less stringent standards or remediation allowable under applicable Environmental Laws. Such actions shall include, without limitation, the investigation of the environmental condition of the Premises or any portion of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Tenant shall nevertheless obtain Landlord's written approval prior to undertaking any actions required by this Section.

Tenant shall immediately notify Landlord and Mortgagee, if any, of: (i) its knowledge of any disposal, release, discharge, migration, spill, or leak of Tenant's Hazardous Materials; (ii) any inspection, enforcement, cleanup or other regulatory action taken or threatened by any Regulatory Authority with respect to any Hazardous Materials on, about, above, beneath or from the Property or the migration thereof from or to other property; (iii) any demands or claims made or threatened by any party relating to any loss or injury claimed to have resulted from any Hazardous Materials on, about, above, beneath or from the Property; and (iv) any matters where Tenant is required by any Environmental Laws to give a notice to any Regulatory Authority concerning Hazardous Materials on or from the Property.

Tenant agrees that the damages to Landlord which are the result of the release, spill, disposal, discharge, leakage or migration of Tenant's Hazardous Materials at the Property and are recoverable by Landlord from Tenant, include, but are not limited to, the following (collectively, "Environmental Damages"): (i) costs incurred by Landlord (including attorney's and consultant's fees and testing) for investigation and remediation; (ii) the diminution in the value of the Property or any portion thereof; (iii) damages for the loss or restriction on the use of space or of any amenity of the Property, including, but not limited to, any loss of rent or other charges from other tenants or users of the Property; and (iv) damages arising from any adverse impact on the marketing of space in the Property.

Alternative #2:

Tenant agrees that neither Tenant, any of Tenant's agents nor any other person will store, place, generate, manufacture, refine, handle or locate on, in or around the Premises, the Building or the Building Complex any Hazardous Substance except for storage, handling and use of reasonable quantities and types of cleaning fluids, office supplies and medical waste in the Premises in the ordinary course and the prudent conduct of Tenant's business in the Premises, provided that, (a) the storage, handling and use of such permitted Hazardous Substances must at all times conform to all Governmental Requirements and to applicable fire, safety and insurance requirements; (b) the types and quantities of permitted Hazardous Substances which are stored in the Premises must be reasonable and appropriate to the nature and size of Tenant's operation in the Premises and reasonable and appropriate for a first-class medical office building of the same or similar use and in the same market area as the Building; (c) no Hazardous Substance shall be spilled or disposed of on, in, under or around the Building or Building Complex or otherwise discharged from the Premises or any area adjacent the Building or Building Complex; and (d) in no event will Tenant be permitted to store, handle or use on, in under or around the Premises any Hazardous Substance which will increase the rate of fire or extended coverage insurance on the Building or Building Complex.

Tenant shall indemnify, defend and hold harmless Landlord and Landlord's agents from and against any and all claims arising out of any breach of any provisions of this Paragraph, which expenses shall also include laboratory testing fees, personal injury claims, clean-up costs and environmental consultants' fees. Tenant agrees that Landlord may be irreparably harmed by Tenant's breach of this Paragraph and that a specific performance action may appropriately be brought by Landlord; provided that, Landlord's election to bring or not bring any such specific performance action shall in no way limit, waive, impair or hinder Landlord's other remedies against Tenant.

As of the execution date of this Lease, Tenant represents and warrants to Landlord, that except as otherwise disclosed by Tenant to Landlord, Tenant has no intent to bring any Hazardous Substances on, in or under the Premises except of the type and quantities authorized in the first paragraph of this Paragraph.

For purposes hereof, Environmental Laws shall include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, as amended, Part 201 of the Michigan National Resources Environmental Protection Act, and all federal, state and local laws, rules and regulations that pertain to the environment and/or the health and safety of the public. Hazardous Substances, Hazardous Materials and contaminants shall have the meaning set forth in the Environmental Laws.

Alternative #3:

For purposes hereof, (A) "Claim" shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (iii) the costs and expenses of enforcing insurance, contribution or indemnification agreements; (B) "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental quality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C.

Leasing Fundamentals

Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*, and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal, and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined); (C) "Hazardous Materials" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law; (D) "Manage" or "Management" means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials; (E) "Release" or "Released" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA; and (F) "Response" or "Respond" shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

During the term of this Lease: (i) Tenant shall comply at its sole cost and expense with all Environmental Laws and due care requirements established by Landlord, (ii) Tenant shall not Manage, or authorize the Management of, any Hazardous Materials on the Premises, except in the ordinary course of Tenant's business and accordance with all Environmental Laws and provided a written disclosure to Landlord of any Hazardous Substances used, handled or stored by Tenant, its employees, agents, or invitees has been made; (iii) Tenant shall not use or install any underground storage tanks, without prior written approval by Landlord, which approval may be withheld at Landlord's sole discretion; (iv) Tenant shall not take any action that would subject the Premises to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (v) Tenant shall not discharge Hazardous Materials into drains or sewers serving the Premises except in the ordinary course of Tenant's business and accordance with all Environmental Laws and provided a written disclosure to Landlord has been made; (vi) Tenant shall not cause or allow the Release of any Hazardous Materials on, to or from the Premises or surrounding land; and (vi i) Tenant shall arrange at its sole cost and expense for the lawful transportation and off-site disposal at permitted landfills or other permitted disposal facilities and otherwise in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the above and without limiting Tenant's covenants and obligations as set forth above and in this Lease, a non intentional release of Hazardous Substance or noncompliance with applicable Environmental Law that is promptly remedied in accordance

with such applicable Environmental Law or as required by any applicable regulatory authority, shall not be an event of default pursuant to this Lease.

During the term of this Lease, Tenant shall provide Landlord promptly with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, or other federal, state, or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Premises; (ii) the imposition of any lien on the Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability, or ultrahazardous activity.

Landlord and Landlord's employees shall have the right, during normal business hours, to enter the Premises, and conduct appropriate inspections or tests for the purpose of determining (i) Tenant's compliance with Environmental Laws, and (ii) the type, kind and quantity of all products, materials and substances brought onto the Premises, or made or produced thereon. Landlord and its agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Premises by Tenant or its agents, employees, contractors or invitees. Tenant agrees to cooperate with such investigations by providing any relevant information requested by Landlord.

Within thirty (30) days of Tenant's receipt of a written request by Landlord, Tenant shall provide Landlord with (i) copies of all environmental reports and tests obtained by Tenant; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports, and other information) entered into or obtained by Tenant with respect to any Hazardous Materials; (iii) copies of any permits issued to Tenant under Environmental Laws with respect to the Premises; (iv) copies of any and all reports, notifications, and other filings made by Tenant to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Premises. Tenant shall provide Landlord with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that Tenant complies with all Environmental Laws relating to the Premises.

If Tenant's Management of Hazardous Materials at the Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, Tenant shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

Leasing Fundamentals

In the event that Tenant shall fail to comply with any of its obligations under this Article as and when required hereunder, Landlord shall have the right (but not the obligation) to take such action as is required to be taken by Tenant hereunder and in such event, Tenant shall be liable and responsible to Landlord for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by Landlord in connection with such matters. Tenant shall reimburse Landlord immediately upon demand for all such amounts for which Tenant is liable.

Notwithstanding anything contained in this Lease to the contrary, and except as set forth in the Stock Purchase Agreement, Tenant shall reimburse, defend, indemnify and hold Landlord, and its officers, directors, shareholders, partners, members, employees, and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any or all of the following:

- any Hazardous Materials which, at any time from and after the Effective Date, are or were actually or allegedly Managed, gener-ated, stored, treated, released, disposed of or otherwise located on or at the Premises (regardless of the location at which such Hazardous Materials are now or may in the future be located or disposed of) by Tenant or its employee, agents or contractors, including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Materials; (2) liability arising out of exacerbation of existing conditions and/or failure to comply with due care measures required by Environmental Laws; and (3) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transporta-tion, incineration, or disposal of any of the foregoing; and
- any actual or alleged illness, disability, injury, or death of any person, in any manner arising out of or allegedly arisen out of exposure to Hazardous Materials or other substances or conditions present at the Premises from and after the Effective Date, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and
- any actual or alleged failure of Tenant to comply with all applicable Environmental Laws, from and after the Effective Date; and
- any failure by tenant to comply with its obligations under this Article

In the event any Claims or other assertion of liability shall be made against Landlord for which Landlord is entitled to indemnity hereunder, Landlord shall notify Tenant of such Claim or assertion of liability and thereupon Tenant shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of Tenant under this Article shall survive any termi-nation or expiration of this Lease for three (3) years. Landlord agrees to indemnify and hold Tenant

harmless from any and all liabilities resulting from the environmental condition of the Premises prior to the Effective Date.

INSURANCE CLAUSE

Alternative #1:

At all times during the Term, Tenant shall procure and maintain, at its sole expense, “all-risk” or causes of loss-special form property insurance, for damage or other loss caused by fire or other casualty or cause including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting of pipes or explosion, earthquake, in an amount not less than one hundred percent (100%) of the replacement cost covering (i) leasehold improvements made at the expense of Tenant; (ii) Tenant’s trade fixtures, equipment, contents, bailed property, inventory, business records and other personal property from time to time situated in the Premises, including, without limitation, all floor and wall coverings (collectively, “Tenant’s Personal Property”); and (iii) all components of the Landlord’s Work. The proceeds of such insurance shall be used for the repair or replacement of the property so insured, except that if not so applied or if this Lease is terminated following a casualty, the proceeds applicable to the leasehold improvements shall be paid to Landlord and the proceeds applicable to Tenant’s Personal Property shall be paid to Tenant. At all times during the Lease Term, Tenant shall procure and maintain business income and extra expense coverage in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against herein.

Landlord shall at all times during the Term procure and maintain “all-risk” or causes of loss-special form property insurance in the amount not less than ninety percent (90%) of the insurable replacement cost covering the Building and such other insurance as may be required by a Mortgagee or otherwise desired by Landlord.

At all times during the Term, Tenant shall procure and maintain, at its sole expense, commercial general liability insurance with a Broad Form endorsement written on a per occurrence basis applying to the use and occupancy of the Premises and the business operated by Tenant. Such insurance shall have a minimum combined single limit of liability of at least Two Million Dollars (\$2,000,000) per occurrence and a general aggregate limit of at least Two Million Dollars (\$2,000,000). Such insurance limits may be met by maintaining a minimum primary coverage of One Million Dollars (\$1,000,000) and a so-called “umbrella” policy or coverage for the additional coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury losses and shall be endorsed to include, as additional insureds, Landlord and Mortgagee and their respective members, managers, agents and employees, and/or such other parties as Landlord may reasonably designate from time to time. Except as provided above, such liability insurance shall be written as primary coverage, not excess or contributing with or secondary to any other insurance as may be available to the Landlord or additional insureds.

At all times during the Term, Tenant shall procure and maintain Workers' Compensation Insurance in accordance with the laws of the State of Michigan, and Employers' Liability insurance with a limit not less than One Million Dollars (\$1,000,000) Bodily Injury Each

Accident; One Million Dollars (\$1,000,000) Bodily Injury By Disease - Each Person; and One Million Dollars (\$1,000,000) Bodily Injury by Disease - Policy Limit.

At all times during the Term, Tenant shall provide and maintain, at its sole expense, commercial automobile liability insurance including owned, non-owned and hired vehicles, applying to the use of any vehicles arising out of the operations of Tenant. Such insurance shall apply to bodily injury and property damage in a combined single limit of not less than One Million Dollars (\$1,000,000) per accident.

All insurance required to be maintained by Tenant shall be issued by insurance companies authorized to do insurance business in the state in which the Property is located and rated not less than A-VIII in Best's Insurance Guide or a Standard and Poor's claims paying ability rating of not less than AA and Landlord shall approve the policy form and deductible. A certificate of insurance (or, at Landlord's option, copies of the applicable policies) evidencing the insurance required under this Lease shall be delivered to Landlord not less than thirty (30) days prior to the Commencement Date. No such policy shall be subject to cancellation or material modification without thirty (30) days prior written notice to Landlord and to any other party designated by Landlord to Tenant. Tenant shall furnish Landlord with a replacement certificate with respect to any insurance not less than thirty (30) days prior to the expiration of the current policy. Tenant shall have the right to provide the insurance required by this Lease pursuant to blanket policies, but only if such blanket policies expressly provide coverage to the Premises and the Landlord as required by this Lease. Tenant may not self-insure without the prior written consent of Landlord that may be withheld in Landlord's sole and absolute discretion. For purposes of this Lease, self-insurance shall include any self-insured retention or deductible programs. Tenant shall be responsible to Landlord for any costs incurred by Landlord that arise out of Tenant's failure to maintain any of the insurance required to be maintained hereunder.

Except to the extent caused by the gross negligence of Landlord's Parties, Tenant waives all claims against Landlord for injury or death to persons, damage to property, loss of income and additional expenses or to any other interest of Tenant sustained by Tenant or any party claiming through Tenant resulting from: (A) any occurrence in or upon the Premises or Property; (B) leaking of roofs, bursting, stoppage or leaking of water, gas, sewer or steam pipes or equipment, including sprinklers; (C) wind, rain, snow, ice, flooding, freezing, fire, explosion, earthquake, excessive heat or cold, fire or other casualty; (D) any system or equipment serving the Premises or Building being defective, out of repair or failing; and (E) vandalism, malicious mischief, theft or other acts or omissions of any other parties including, without limitation, other tenants, contractors and invitees. Tenant waives any right it might otherwise have to terminate this Lease for any reason pursuant to this Section .

Alternative #2 (Single-Tenant Building):

Landlord and Tenant agree to have all fire and extended coverage and other property damage insurance which may be carried by either of them endorsed with a clause providing that any release from liability of, or waiver of claim for, recovery from the other party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder and providing further that the insurer waives all rights of subrogation which such insurer might have against the other party. Without

Leasing Fundamentals

limiting any release or waiver of liability or recovery set forth elsewhere in this Lease, and notwithstanding anything in this Lease which may appear to be to the contrary, each of the parties hereto waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies. Notwithstanding the foregoing or anything contained in this Lease to the contrary, any release or any waiver of claims shall not be operative, nor shall the foregoing endorsements be required, in any case where the effect of such release or waiver is to invalidate insurance coverage or invalidate the right of the insured to recover thereunder or to increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within ten (10) days following written notice, to pay such increased cost keeping such release or waiver in full force and effect).

Tenant shall procure and maintain the following policies of insurance, at its sole cost and expense, during the entire Term hereof with companies satisfactory to Landlord:

Commercial general liability insurance written on a per occurrence basis covering all claims, demands or actions made by, or on behalf of, any person or persons, firm or corporation and arising from, related to or connected with the Premises, for injury to or death of any person in an amount of not less than Three Million Dollars (\$3,000,000.00), for injury to or death of more than one person in any one occurrence in an amount of not less than Five Million Dollars (\$5,000,000.00), and for damage to property in an amount of not less than Three Million Dollars (\$3,000,000.00). Tenant's insurance will include contractual liability coverage recognizing this Lease and products and completed operations liability.

Insurance against loss or damage from external explosion or breakdown of boilers, air conditioning equipment and miscellaneous electrical apparatus, if any, in the Premises, in an amount not less than Three Million (\$3,000,000.00), with loss or damage payable to Landlord and Tenant as their interests may appear.

Full coverage for breakage of all plate glass, including, but not limited to, doors, windows, transoms and all lettering applied thereon.

Insurance against all worker's compensation claims.

All leasehold improvements, contents and Tenant's trade fixtures, machinery, equipment, furniture and furnishings, in the Premises to the extent of at least one hundred per-cent (100%) of their replacement cost against loss or damage by fire, lightning, wind storm, aircraft, vehicles, smoke, explosion, riot or civil commotion as provided by the standard fire and extended cover-age insurance, including, without limitation, vandalism and malicious mischief, special extended coverage and sprinkler leakage endorsements.

Business interruption insurance (which will insure payment of Tenant's Rent obligations hereunder for at least twelve (12) months).

All-risk physical damage insurance covering the Building, excluding all improvements and fixtures required to be insured by Tenant, in an amount not less than one hundred percent (100%) of the full replacement cost (exclusive of the cost of excavations, foundations and footings) providing protection against perils that are covered under standard insurance industry practices within the classification of all-risk insurance, including, but not limited to, loss or damage from fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, domestic water damage, collapse, sprinkler damage, vandalism, malicious mischief.

Prior to the Commencement Date, Tenant shall furnish to Landlord insurance policies evidencing such coverage, which policies shall state that such insurance coverage may not be reduced, cancelled or not renewed without at least thirty (30) days' prior written notice to Landlord and Tenant (unless such cancellation is due to non-payment of premium, and, in that case, only ten (10) days' prior written notice shall be sufficient). Each insurance policy required to be carried by Tenant shall name Tenant as named insured and name Landlord and any mortgagees as additional insureds as their respective interests may appear. Tenant's insurance shall be primary and non-contributory.

Landlord and Tenant shall comply with all applicable laws and ordinances, all orders and decrees of court and all requirements of other governmental authority, and shall not, directly or indirectly, make any use of the Premises which may thereby be prohibited or be dangerous to person or property or which may jeopardize any insurance coverage, increase the cost of such insurance or require additional insurance coverage.

INDEMNIFICATION CLAUSE

Alternative #1:

To the extent not expressly prohibited by law, Tenant agrees to hold Landlord and its beneficiaries, if any, and their agents, servants and employees, harmless and to indemnify each of them against claims and liabilities, including reasonable attorneys' fees, for injuries to all persons and damage to property occurring in or about the Premises arising from Tenant's occupancy of the Premises on or after the Effective Date, or the conduct of its business on or after the Effective Date, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease on or after the Effective Date, or due to any other act or omission of Tenant, its agents, contractors, invitees, licensees or employees on or after the Effective Date, but only to the extent of Landlord's liability, if any, in excess of amounts, if any, paid to Landlord under insurance covering such claims or liabilities. Tenant's obligation to indemnify Landlord hereunder shall include the duty to defend against any claims asserted by reason of any such claims or liabilities and to pay any judgments, settlements, costs, fees and expenses, including attorneys' fees, incurred in connection therewith.

To the extent not expressly prohibited by law, Landlord agrees to hold Tenant and its beneficiaries, if any, and their agents, servants and employees, harmless and to indemnify each of them against claims and liabilities, including reasonable attorneys' fees, for injuries to all persons and damage to property occurring in or about the Premises arising from Landlord's entry onto the Premises on or after the Effective Date, or from any activity, work or thing done, permitted or suffered by Landlord in or about the Premises or from any breach or default on the part of Landlord in the performance of any covenant or agreement on the part of Landlord to be performed pursuant to the terms of this Lease on or after the Effective Date, or due to any other act or omission of Landlord, its agents, contractors, invitees, licensees or employees on or after the Effective Date, but only to the extent of Tenant's liability, if any, in excess of amounts, if any, paid to Tenant under insurance covering such claims or liabilities. Landlord's obligation to indemnify Tenant hereunder shall include the duty to defend against any claims asserted by reason of any such claims or liabilities and to pay any judgments, settlements, costs, fees and expenses, including attorneys' fees, incurred in connection therewith.

Exhibit F
Leasing Fundamentals Checklist

IV. LEASING FUNDAMENTALS: CHECKLIST

IN GENERAL

- Is the agreement a lease or an agreement to lease in the future?
- Does the lease or agreement to lease include the four basic requirements for a commercial lease (parties, property, rent, and duration)?
- If the lease or agreement to lease is for more than a year, is it evidenced by a written memorandum?
- If the lease or agreement to lease is for more than a year, has the written memorandum been executed or authenticated by the party against whom the agreement will be enforced?
- Has there been a present lease of the premises?

DEFINITIONS

- Does the lease properly identify the landlord and tenant?
- If the landlord or tenant is a legal entity (corporation, partnership, limited liability company, etc.), is it properly identified as such and does the person signing on behalf of the entity have proper authority to sign?
- Does the lease clearly identify the addresses to which legal notices should be sent?
- Does the lease state a lease date (the effective date of the agreement)?
- Does the tenant understand the difference between a net lease and a gross lease?

THE PREMISES AND COMMON AREAS

Location of the premises

- Does the lease identify a specific location for the premises? (If not, the lease is probably not enforceable.)
- If the premises consist of a building identified by street address, does the lease specify what areas of the surrounding real property are included with the building?
- Are the premises part of a larger multitenant property?

- Does the lease provide a graphic depiction of the location of the premises within the larger multitenant property?

Relocation of the premises

- Does the lease allow the landlord to relocate the tenant? (If not, no right exists.)
- What are the restrictions on relocation? Notice? Payment? Comparable space?
- Does the lease expressly address what constitutes comparable space? Finishes? Location? Size?
- If the landlord has agreed to pay the costs associated with relocation, what is included? Movers? Announcements? Stationery? Cards? Phone lines?
- May the tenant terminate rather than relocate?
- Is the tenant allowed to remain in its current location before the relocated space is available? If not, does the tenant receive any rent abatement?

Expansion of the premises

- Does the lease expressly grant the tenant an option to expand its premises? (If not, no right exists.)
- Does the lease give the tenant the right to make a first offer on contiguous space that becomes available? (If not, no right exists.)
- If any expansion rights exist, what are the requirements regarding notice?
- Is there any obligation for the landlord to build-out the expanded area?

Reduction of the premises

- Does the lease expressly grant the tenant an option to reduce the size of the premises? (If not, no right exists.)
- If any reduction right exists, what are the requirements regarding notice?
- What are the conditions for reduction?

Condition of the premises

- Are the premises conveyed as is?

Leasing Fundamentals

- Does the lease provide that the tenant has inspected the premises and is satisfied with their condition?
- Who is responsible for build-out work?
- Is the build-out work clearly identified in the lease or an attached work letter?
- Is substantial completion sufficient?
- Has the landlord undertaken any express commitments regarding the quality of the build-out, fitness for use, or compliance with laws?

Related areas

- Does the lease define what is included in the common areas?
- Does the lease impose an obligation on the landlord to maintain the common areas?
- What standard, if any, does the lease impose on the landlord concerning maintenance of the common areas?
- Who pays for maintenance of the common areas?
- What are the tenant's rights with respect to use of the common areas?
- What are the landlord's rights with respect to changing common areas?
- How important is parking to the tenant?
- Is there an associated parking garage or surface lot?
- Does the lease address parking?
- How many parking spaces are included?
- Is there a charge imposed for the use of parking, and how is it determined?
- May the charge be increased and under what circumstances?
- Is there designated reserve parking available?
- May the landlord change the parking situation by reconfiguring the structure or lot?

THE TERM AND HOLDOVER

The initial term

- Does the lease establish an express term? (If not, typically the tenancy is month to month.)
- Does the lease relieve the landlord from any liability for failure to deliver the premises on the agreed date?
- Does the lease remain in effect despite the landlord's failure to deliver the premises on the agreed date?
- Does the lease provide for rent abatement in the event of delay?
- Does the lease compensate the tenant for costs incurred as the result of a delay in the delivery of the premises?
- Does the lease compensate the tenant for holdover rent incurred as the result of the delay?
- Does the lease preclude abatement or compensation if the tenant causes the delay?
- May the tenant terminate the lease if the delay exceeds a specified duration?
- Does the lease employ a floating commencement date?
- If the lease uses a floating commencement date, does it provide that the tenant must confirm the actual date in writing once the lease has in fact commenced?

Extending and renewing the term

- Do the parties understand the distinction between extension and renewal?
- Does the lease provide the tenant with the right to extend or renew the term? (If not, no right exists.)
- How is the right to be exercised?
- What is the duration of the extension?
- Is the tenant entitled to additional extensions?
- How is rent to be determined during the extended term?

Leasing Fundamentals

- If there is a dispute over the determination of rent during the extended term, what are the mechanisms for resolution? Appraisal? Arbitration? Litigation?
- If the rent during the extended term is to be determined by arbitration, does the lease employ the statutory language required to establish binding statutory arbitration rather than revocable common-law arbitration?

Early termination

- Does the lease give the tenant a right of early termination? (If not, no right exists.)
- What are the requirements to exercise the option?

Holdover

- Does the lease expressly address the rights and obligations of the parties in the event of a holdover?
- Does the lease impose the general obligations of the lease on the tenant during the holdover?
- Does the lease adjust or otherwise address the issue of the rent due during the holdover?

RENT

- Is the lease a gross or net lease?
- Does the lease require that rent payments must be made in advance on the first day of each month? (If not, rent payments are not due until the end of the month.)
- Does the lease preclude setoffs against rent?
- If the lease is a net lease, what expense items does the tenant assume?
- If the lease is a net lease, what expense items have been expressly carved out by the parties?
- May the landlord “gross up” the expenses if vacancies arise?
- What is the procedure for estimating expenses?
- What is the verification process for expenses?
- What information regarding the expenses is the landlord required to give to the tenant?
- Can the tenant obtain copies of the original invoices and payment records?

- Does the tenant have the right to audit the landlord's books to verify expenses?
- What is the scope of the audit right?
- Does the lease have a percentage rent provision?
- What is the definition of *gross sales*?
- What items have been carved out of the definition of gross sales?
- What is the verification process for gross sales?
- What information is the tenant required to give to the landlord?
- Can the landlord obtain copies of the original sales records?
- Does the landlord have the right to audit to verify sales?
- What is the scope of the audit right?

LANDLORD OBLIGATIONS

Quiet enjoyment

- Does the lease include an express covenant of quiet enjoyment? (If not, then none probably exists.)
- Does the covenant prevent interference by the landlord with the tenant's designated use for the premises?
- Is the covenant of quiet enjoyment conditioned on performance by the tenant?

Landlord services

- What services has the landlord agreed to provide? (Absent an agreement, none are required.)
- Are the services clearly set forth in the lease?
- May the landlord delegate performance to agents and contractors?
- Has the landlord insulated itself against liability for interruption in services?
- What recourse does the tenant have if the services are interrupted?

Leasing Fundamentals

- How long must the interruption continue before the tenant has recourse?
- Does the lease address whether an interruption of services will result in a suspension of rent payments?

USE AND OCCUPANCY

Use of the premises

- Does the lease expressly restrict the use of the premises? (Otherwise, there are no restrictions other than waste.)
- Does the lease provide that the landlord must not unreasonably withhold its consent to other uses?
- Does the lease require that all uses must comply with applicable laws?
- Does the lease apply special use restrictions regarding hazardous substances?
- Does the lease impose use restrictions concerning floor strength?
- Does the lease impose use restrictions concerning insurance?

Exclusive uses

- Does the lease impose restrictions on the landlord's right to lease to other tenants based on their intended use of the property?
- Does the restriction carve out existing tenants and their uses?
- Does the lease allow the landlord to recover its enforcement costs?
- Has the restriction been carefully drawn so that it is not overly broad and unduly restrictive on the landlord's future efforts to lease space?

Occupancy requirements

- Does the lease require the tenant to occupy the premises?
- Does the lease require the tenant to operate its designated business on the premises?
- How explicit are the requirements?
- What are the remedies for failing to perform the covenant?

Building rules

- Does the lease require compliance with building rules?
- May the landlord modify the rules?
- What is the procedure?
- Are there any limits on modification to the rules?

MAINTENANCE, REPAIR, ALTERATIONS, AND CONDITION ON SURRENDER

Maintenance and repair

- Does the lease address repairs? (If not, the tenant must make basic repairs.)
- If the lease imposes an obligation to make repairs on either party, does it condition the obligation on prior notice?
- Is the notice period reasonable?
- Must the notice be given in writing?
- Does the lease place the entire obligation on the tenant?
- Does the lease impose a standard for repair on the tenant (“landlord’s reasonable satisfaction,” “Class A Buildings,” “in accord with law”)?
- Does the tenant’s obligation extend to heating, ventilating, air-conditioning, plumbing, or electrical systems?
- Does the tenant’s obligation extend to common areas (hallways, parking lots, elevators)?
- Does the tenant’s obligation extend to structural repairs?
- Does the tenant’s obligation extend to alterations required by the ADA?
- Is the tenant required to keep the premises free of liens?
- What are the landlord’s options if a lien is imposed against the premises?
- Does the lease impose any repair obligations on the landlord?
- Does the lease impose a standard for repair on the landlord (“tenant’s reasonable satisfaction,” “Class A Buildings,” “in accord with law”)?

Leasing Fundamentals

- Does the landlord's obligation extend to heating, ventilating, air-conditioning, plumbing, or electrical systems?
- Does the landlord's obligation extend to common areas (hallways, parking lots, elevators)?
- Does the landlord's obligation extend to structural repairs?
- Does the landlord's obligation extend to alterations required by the ADA?
- Does the lease extend any remedy to the tenant if landlord fails to perform its obligation to repair?
- Does exercise of the remedy require prior notice to the landlord?

Alterations to the premises

- May the tenant make alterations to the premises?
- Is the landlord's consent required?
- What are the conditions for the landlord's consent to alterations?

Condition on surrender

- Does the lease address whether the alterations become part of the landlord's property at the end of the lease term?
- Does the lease address the tenant's obligations concerning the condition of the premises at the end of the lease? (If not, ordinary wear and tear are allowed.)
- Does the tenant have an obligation to rebuild or restore the premises at the end of the lease?
- Does the lease require the tenant to rebuild or restore in the event of fire or another casualty?
- What is the standard for repair or restoration under the lease ("reasonable wear and tear" or "good as new")?
- Does the lease address damage to the premises as the result of the removal of the tenant's personal property and trade fixtures?
- Does the lease address the status of personal property and fixtures left behind by the tenant?
- Can the landlord recover the cost of performing the work required to repair, restore, or remove if the tenant fails to perform?

Construction of Tenant Improvements

- What improvements are to be performed prior to commencement of the lease?
- Who is responsible to perform the leasehold improvements?
- Who is responsible to pay for the leasehold improvements?
- How is the size of the premises to be established?
- What is the procedure for the preparation and approval of plans and specifications?
- When are the improvements deemed to be completed?
- What types of delays are excusable?
- Is there a specific budget for the improvements?
- How is the budget determined?
- What is the procedure for changes?
- What if the costs go over or under budget?
- How are bids handled?
- Can the tenant take possession before the work is completed?
- How are uncompleted “punch list” items to be handled?
- What types of warranties are included with the work?
- How are disputes over workmanship to be handled?
- How are disputes over the time of “delivery” of the premises to be handled?
- How are construction liens to be addressed?

INDEMNIFICATION, RELEASE, AND LANDLORD EXCULPATION

Indemnification and release (tort claims)

- How does the lease apportion responsibility for claims by third parties?

Leasing Fundamentals

- Does the lease include an indemnification clause?
- Has the indemnification clause been carefully drafted to withstand strict scrutiny?
- Who is indemnified under the indemnification clause?
- Does the indemnification clause have a separate provision for claims occurring in the common areas?
- Who is indemnified for common area claims?
- What is the scope of the indemnifications?
- Does the indemnification clause potentially violate public policy?
- Does the indemnification clause improperly indemnify the landlord or the tenant against its own gross negligence?
- Does the indemnification clause improperly indemnify the landlord or the tenant against its sole negligence relative to the construction, alteration, repair, or maintenance of the premises?
- How does the indemnification clause interrelate with the insurance clauses in the lease?
- Does the landlord's insurance adequately cover the additional liability created by the indemnification clause?
- Does the tenant's insurance adequately cover the additional liability created by the indemnification clause?
- Does the release clause release the landlord or the tenant from its ordinary negligence?
- Does the release clause improperly release the landlord or the tenant from its gross negligence?
- How does the release clause interrelate with the insurance clauses in the lease?
- How does the release clause interrelate with the landlord and the tenant's insurance coverage?
- Does the landlord's insurance coverage provide for waiver of subrogation?
- Does the tenant's insurance coverage provide for waiver of subrogation?

Landlord exculpation

- Does the lease include a landlord exculpation clause?
- What is the scope of the exculpation clause?
- Does the exculpation clause include a contractual statute of limitations that extends to claims for breach of lease?
- Is the period of limitation in the exculpation clause reasonable?
- Will the tenant have sufficient time to investigate and file an action?
- Is the time so short that it works a practical abrogation of a right of action for breach of lease?
- Will the action be barred before the loss or damage can be ascertained?
- What is the value of the premises and their rent stream as security?
- Are the premises mortgaged, and how much is the debt secured by the premises?

INSURANCE

- Does the lease require the tenant to obtain commercial general liability insurance to cover personal injuries and other liabilities arising out of the premises or common areas?
- What is the extent (dollar amounts) of the required coverage?
- Does the lease require the tenant to obtain a special cause of loss policy to cover casualties that would result in damage to the landlord's property?
- Does the lease require the tenant to pay or reimburse landlord to acquire a special cause of loss policy to cover damage to the landlord's property?
- Does the lease require the tenant to obtain a special cause of loss policy to cover casualty damage to its own property?
- Does the lease require the tenant to obtain business interruption coverage?
- Does the lease require coverage for environmental hazards?
- Does the lease require coverage for terrorism, if needed?
- Does the insurance coverage include personal property?

Leasing Fundamentals

- What are the policy and coverage requirements within the lease?
- When must coverage begin and end?
- If the policies are written on a claims-made basis, is the retroactive date no later than the commencement date of the lease?
- Does the tenant's existing insurance coverage meet the minimum levels required by the lease?
- Does the lease require the tenant to take out too much insurance?
- Does the lease require that all insurance policies be written by carriers authorized to write insurance in the state of Michigan and having an AM Best rating of not less than A-VIII?
- Does the lease require that the landlord be named as an additional named insured, or only as an additional insured?
- Does the lease require that all insurance policies be endorsed to provide that they may not be canceled or materially changed for any reason except on 30 days' prior written notice to the landlord?
- Does the lease require that the commercial general liability insurance policies provide coverage to the landlord whether or not the event giving rise to the claim is alleged to have been caused in whole or in part by the acts, omissions, or negligence of the landlord?
- Is the tenant required to provide an original copy of the insurance policy to the landlord before the commencement date?
- May the tenant use a blanket insurance policy that covers property in addition to the premises?
- Does the lease preclude deductibles with respect to the required coverage? If not, does the lease limit deductibles?
- Does the lease preclude self-insurance by the tenant?
- Is the landlord required to obtain insurance?
- Is the landlord required to insure the building and its personal property?
- Is the landlord required to take out a commercial general liability policy?
- Is the landlord's insurance required to be in a specified amount?

- Must the landlord's insurance meet the same general criteria as the tenant's insurance?
- Must the landlord provide insurance certificates or original policies to the tenant?
- Is the insurance certificate requirement an ongoing obligation?
- Must the certificate state all of the essential elements of the insurance obligation, such as the amounts, type of coverage, and additional insured?
- Is the landlord required to use casualty insurance proceeds to rebuild?
- Is the landlord's insurance coverage adequate to permit rebuilding?

CASUALTY AND CONDEMNATION

Destruction of the premises by fire or other casualty

- Does the lease address the rights of the parties in the event of a fire or other casualty?
- Does the lease require the tenant to promptly notify the landlord of fire or other casualty?
- Does the lease require either party to repair the damage?
- If required to rebuild, does the lease specify the standard of reconstruction (to the original condition, to the condition immediately prior to the damage, etc.)?
- May the landlord terminate the lease if the premises are damaged by fire or other casualty?
- Is there a standard imposed that restricts the exercise of the termination right (material damage, percentage of floor area, tenantability, lack of sufficient insurance proceeds, etc.)?
- What notice is required for the landlord to terminate?
- Is a reasonable time period provided for the tenant to vacate the premises?
- Does the lease give the tenant any right to terminate the lease if the premises have been rendered untenable by fire or other casualty (if a certain percentage of the floor area is damaged, if there is only a short period of time remaining on the lease term, if the repairs will take longer than a specified period of time, etc.)?
- Is the tenant required to repair and restore its trade fixtures and tenant improvements if the landlord repairs the premises?
- Does the lease provide for rent adjustments based on the loss of the usage of a portion of the premises?

Leasing Fundamentals

- Is the rent suspended during periods of untenantability resulting from fire or other casualty?
- Does the lease exculpate the landlord for delays in making repairs?
- May the tenant terminate the lease if the delay in restoration becomes prolonged?
- Does the lease restrict the parties to recourse against their insurers?

Condemnation

- Does the lease address the possibility of condemnation?
- Does the lease include a condemnation termination provision?
- What type of notice activates the termination option?
- May the landlord, the tenant, or either one terminate the lease?
- What portion of the premises must be lost to a partial taking to activate the termination option?
- Is the portion of the premises that must be lost to a partial taking to activate the termination option tailored to the property, the landlord, and the tenant?
- Does the lease provide for a rent-adjustment mechanism if part of the premises is taken through eminent domain?
- Does the lease specify that any award for the premises' value will be paid to the landlord?
- Does the lease preserve the tenant's right to seek compensation for its leasehold interest, business interruption or moving expenses?
- Does the lease exculpate the landlord and tenant from any further liability if the premises are taken?
- Does the lease contain a condemnation notification provision?

ASSIGNMENT AND SUBLETTING

- Does the lease expressly address assignment or sublease? (If not, it is fully transferable.)
- Does the lease expressly prohibit assignment or sublease?

- Does the lease prohibit conveyance “without the consent of the landlord” without stating that consent “may not be unreasonably withheld” (in which case the landlord will probably be entitled to arbitrarily withhold its consent)?
- Does the lease simply restrict, rather than prohibit, assignment or sublease?
- What are the restrictions, and are they reasonable?
- Can the tenant live with the restrictions?
- Can the tenant assign the lease to affiliated entities without the landlord’s consent?
- Does the lease require the tenant to provide information concerning proposed transferees?
- Does the lease allow the landlord to receive all or some of any “profit” tenant receives from an assignment or sublease?
- Does the lease relieve the tenant from future liability in the event of an assignment (if not, then the original tenant will remain liable for the remainder of the term)?
- Does the lease clearly delineate the grounds on which the landlord may withhold its consent or how much time the landlord has to withhold or grant its consent?
- Can the landlord terminate the lease if the tenant seeks consent?
- Can the tenant terminate the lease if the landlord withholds consent?
- Does the lease address changes in ownership at the tenant’s entity level? (If not, transfers in ownership will not be treated as a conveyance.)
- Does the lease limit the tenant’s remedies for breach of the landlord’s consent obligations?

LIENS AND SECURITY

Mortgage-related clauses

- Does the lease allow the mortgagee to alter priorities by subordinating the lease or mortgage?
- Does the lease require the tenant to attorn to the landlord’s successor in interest in the event of foreclosure and, if so, is that conditioned on non-disturbance?
- Does the lease require the landlord’s successor to recognize the tenant’s rights under the lease and, if so, is that conditioned upon the tenant not being in default?

Leasing Fundamentals

- Does the lease require the tenant to execute estoppel certificates?
- What information must be reflected in the estoppel certificate and how soon after request must tenant provide the certificate?
- Does the lease require the tenant to provide the landlord's mortgagee with notice of any default?
- Does the landlord's mortgagee have the right to cure defaults?

Security deposits

- Does the lease require the tenant to post a security deposit?
- Is the security deposit "evergreen" (does it require the tenant to replenish the security deposit if any portion is applied by landlord)?
- When is the security deposit to be returned?

Landlord liens

- Does the lease establish a consensual lien against the tenant's personal property or trade fixtures?

Construction liens

- Is the tenant required to discharge construction liens imposed against the premises?

Guaranties

- Are the tenant's obligations guaranteed by any third parties?
- What is the scope of the guaranty?

BANKRUPTCY OR INSOLVENCY

- Given their questionable enforceability and value, is the bankruptcy clause desirable?
- If so, is the bankruptcy clause narrowly drawn so it does not inadvertently extend a party's beyond existing law?
- Is the bankruptcy clause in accord with current bankruptcy law?

REMEDIES

- Does the lease include an express power of termination?
- Does the lease define those events that justify termination?
- Is the power of termination reasonable?
- Does the lease preserve the landlord's right to pursue post-termination rent claims?
- Does the lease incorporate all the elements of damage that are within the landlord's contemplation (commissions, build-out, etc.)?
- Does the lease provide that the landlord's remedies are cumulative?
- Does the lease provide for the recovery of attorney fees in the event of litigation to enforce the lease?
- Does the lease provide for the waiver of trial by jury?

AFFIRMATIVE DEFENSES

Waiver of termination

- Does the lease address waiver of termination based on acceptance of money?
- Does the lease provide that a post-termination acceptance of money will not reinstate the lease?
- Does the lease provide that acceptance of money does not waive any notice of termination?

Accord and satisfaction

- Does the lease address accord and satisfaction?
- Does the lease establish the base rent as a liquidated claim?
- Does the lease waive the application of the tender back rule?

Estoppel and fraud

- Does the lease prohibit reliance on representations outside the lease?

General waiver restrictions

- Does the lease require that all waivers must be in writing?
- Does the lease provide that waiver of one failure or default does not constitute a waiver of future failures or defaults of the same kind?

Setoff, mitigation, and independent covenants

- Does the lease provide that the covenant to pay rent is an independent covenant?
- Does the lease prohibit setoff against rent?
- Does the lease relieve the landlord of any obligation to mitigate?

Surrender

- Does the lease require written acceptance of any purported surrender?

ENVIRONMENTAL CLAUSES

- What does the landlord know about the past use of the property?
- If the property is known to be contaminated, is that required to be disclosed to the tenant prior to occupancy?
- What does the landlord know about the past inclusion of asbestos and lead in the building?
- What does the landlord know about the tenant's planned use of the premises?
- Is a phase I or phase II environmental site assessment appropriate at the outset of the lease to establish the current condition? If the lease terms provide the burden of proof is on the tenant and if tenant does not agree, is a site assessment necessary to establish the pre-tenancy condition?
- Is the tenant required to indemnify the landlord for the environmental condition of the premises during the term?
- Schedule landlord's periodic requests for reports and other information.
- Schedule landlord's periodic inspection of the premises for compliance and for environmental releases.
- Conduct periodic mold/water inspections.

- Verify upon termination the condition of the premises including evaluating a phase I or phase II environmental site assessment.

GENERAL CLAUSES

Inspection

- Does the lease provide the landlord with a right to enter the premises to make inspections and repairs?
- Does the lease allow the landlord to show the premises to prospective purchasers and tenants?
- Does the lease condition the landlord's entry on notice to the tenant?
- How much notice is required?
- Is the landlord restricted regarding when it may enter or inspect, or when it may show the premises to prospective tenants?
- Does the lease allow the landlord to enter the premises without notice to make emergency repairs?

Notice

- Does the lease require that notices, consents, and demands be in writing?
- Does the lease establish clear guidelines with respect to how such notices, consents, and demands are to be given?
- Does the lease establish any presumptions regarding mailing and receipt?

Time/essence

- Does the lease have an express provision making time of the essence?
- If the time/essence provision focused on material terms?

Optional performance

- Does the lease allow the landlord the right to perform tenant's lease obligations, at tenant's cost, in the event of the tenant's default?

Merger and amendment

- Does the lease merge all prior representations and agreements?
- Does the lease restrict amendments to writing?
- Does the lease prohibit reliance on representations?
- Does the lease prohibit rights arising by implication?

Lease construction

- Does the lease provide that it is to be construed in accord with the laws of any particular jurisdiction?
- Does the lease address the drafting presumption?
- Does the lease address the presumption against the landlord?
- Does the lease address general issues regarding interpretation?

Authorization and effect

- Does the lease expressly bind successors and assigns?
- Does the lease include representations regarding authority?
- Does the lease include representations regarding entity status?

Severability

- Does the lease provide that unenforceable covenants will be severed?

Brokers

- Does the lease require the disclosure of broker commissions?
- Does the lease provide for indemnification?

Questions and Answers

NOTES

NOTES

THE PARTNERSHIP

> Put the Wisdom of Michigan's Top Practitioners to Work for You

The ICLE Partnership is a rich collection of Michigan-specific practice resources. Get step-by-step guidance through hundreds of common transactions, and access to thousands of attorney-drafted forms, seminar handbooks, seminars, on-demand webcasts, SCAO forms, and more—at a price that fits the budget of any size firm.

You Get:

- Michigan-specific legal information
- Thousands of attorney-drafted forms
- FREE Partnership seminars and webcasts
- Hundreds of seminar materials
- Step-by-step guidance with hundreds of How-To Kits
- Editable SCAO forms that allow you to save your changes
- Accessible 24 hours a day
- Fully searchable
- Updates on law changes
- Significant savings on ICLE products and major seminars



ICLE

THE INSTITUTE OF CONTINUING LEGAL EDUCATION

The education provider of the State Bar of Michigan

The State Bar of Michigan • The University of Michigan Law School • Wayne State University Law School • University of Detroit Mercy School of Law • The Thomas M. Cooley Law School • Michigan State University College of Law

TRY IT TODAY!

www.icle.org/demo

877-229-4350



THE ONLINE LIBRARY

> 48 Books for Less Than a Cup of Coffee a Day

You've relied on ICLE books for years—now they're even better online. One affordable subscription gives you instant access to 48 of ICLE's books.

Why better online?

The Online Books Are:

- **Continually updated**—we monitor changes and update books each week
- **Always available**—wherever you have Internet access
- **A powerful research tool**—citations link to full text primary law, and you get full access to MI Law Online (caselaw from 1942)*
- **A powerful practice tool**—includes complete criminal and civil jury instructions, and hundreds of downloadable forms
- **The best value**—all members of your firm have access. And, you automatically get new books and new editions as they're published—no extra charge!

*MI Law Online is now included in your subscription to the Online Library and online books.



THE INSTITUTE OF CONTINUING LEGAL EDUCATION
The education provider of the State Bar of Michigan

The State Bar of Michigan • The University of Michigan Law School • Wayne State University Law School • University of Detroit Mercy School of Law • The Thomas M. Cooley Law School • Michigan State University College of Law

BUY TODAY!

www.icle.org/library

877-229-4350

