

Commercial Leasing

John D. Gaber

Williams Williams Rattner & Plunkett, P.C.
380 North Old Woodward Ave., Suite 300
Birmingham, Michigan 48009
(248)642-0333.

Mark P. Krynski

Jaffe, Raitt, Heuer & Weiss, P.C.
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034
(248) 351-3000

COMMERCIAL LEASING

I. Legal Requirements.

A. Statutory Regulations: Only five Statutes regulating Leases in Michigan –

1. Landlord Tenant Relations Act – Security Deposit.
2. Truth in Renting – Prohibited Clauses.
3. Michigan Consumer Protection Act – Unfair and Deceptive Practices.
4. Forcible Entry and Detainer – self-help/no lock out.
5. Summary Proceedings Landlord Tenant Court and Evictions.

The first three only apply to residential leases. The last two apply to all leases. Thus, commercial leasing is generally unregulated.

B. Common Law Requirements.

1. Required Terms. “In order for an agreement to be a valid lease, it must contain the names of the parties, an adequate description of the leased premises, the length of the lease term, and the amount of the rent.” *De Bruyn Produce Co v Romero*, 202 Mich App 92, 98-99 (1993).

2. Writing Requirements. The general rule, which is established under three separate statutes (collectively, the “Statute of Frauds”), is that oral promises involving leaseholds are not enforceable. MCL 566.1; MCL 566.106; MCL 566.108. MCL 566.1 provides, “[a]n agreement hereafter made to change or modify, or to discharge in whole or in part, any contract, obligation, or lease, or any mortgage or other security interest in personal or real property, shall not be invalid because of the absence of consideration: Provided, That the agreement changing, modifying, or discharging such contract, obligation, lease, mortgage or security interest shall not be valid or binding unless it shall be in writing and signed by the party against whom it is sought to enforce the change, modification, or discharge.” MCL 566.106 provides that, “[n]o estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning

lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.” MCL 566.108 provides that, “[e]very contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing.”

3. General Common Law Rules. Under Michigan common law, a lease is considered the equivalent of a sale of the premises for the duration of the lease term. *McCurtis v Detroit Hilton*, 68 Mich App 253, 255; 242 NW2d 541 (1976). Because a lease is considered a conveyance of real estate, in a commercial lease, there are generally no implied terms regarding its condition. *Walker & Co v Davis*, 257 Mich 316, 317-318; 241 NW 169 (1932); MCL 565.5 (prohibiting implied covenants in “any conveyance of real estate, except oil and gas leases). Of course, one may draft around this presumption. The Michigan Court of Appeals has held that the specific language of an agreement to lease may imply that the tenant improvements to be constructed by the landlord must be reasonably suited to the tenant's needs. *Brodsky v Allen Hayosh Industries, Inc* 1 Mich App 591, 596, 137 NW2d 771 (1965).

4. Under Michigan law there are no implied covenants in commercial leases. MCL 565.5; *Walker & Co v Davis*, 257 Mich 316 (1932). If you want or need a right or remedy, you must put it in writing. Unclear portions of a lease are construed against the landlord, unless the tenant drafted the lease. *Schuberg, Inc v Kroger Co.*, 113 Mich App 310 (1982). Redemption rights may not be waived. *Birzniaks v Cooper*, 405 Mich 319 (1979); *In re O H Holding Co.*, 132 BR 568 (Bankr ED Mich, 1991). Termination provisions are strictly construed. *Steinberg v Fine*, 225 Mich 281 (1923).

II. Leases, Users and Types.

A. 1. Users: Retail Leases have specific issues due to retailer needs, such as location, tenant mix, parking and tenant mix issues. Retail leases also are dominated by tenant form leases for national tenants and large tenants. In small retail tenant and industrial and office tenants, landlord forms dominate the marketplace.

2. Industrial. Typically single users, single tenant, single building.

3. Office. Typically multiple users, single building.

B. Economic Lease Types: Triple Net, Gross Leases, Gross to a Base (Gross with Expense Stop).

1. Triple Net. A triple net lease is a lease which passes through all of the expenses of the ownership, management and operation of the Property of which the Leased Premises is a part to the tenant. In a triple net lease, the tenant pays base rent, its share of real estate taxes, operating expenses, and insurance together with the direct cost of electricity and, on occasion, other utilities which it consumes in the premises.

2. Gross Lease. A gross lease is a lease where the tenant pays base rent (possible percentage rent as well in a retail lease) but is not responsible for any reimbursement of any part of operating expenses or real estate taxes as these amounts are included in the base rent. Thus, instead of guarantying a minimum net return to the landlord, it guaranties a guaranteed maximum expense to the tenant. In the gross lease, the tenant also usually pays the cost of electricity and, on occasion, some other utilities consumed on the premises.

3. Gross to Base Lease/Expense Stop. These are leases where the tenant pays real estate taxes, operating expenses and insurance expenses only in excess of a stated amount or the amount in effect at a specific time (either the calendar year the lease is signed or the first twelve months of the year of the lease). Many office leases are designed around this economic model.

4. In both the triple net and the expense stop leases, the landlord and, in the expense stop lease, the tenant, will want to make sure that the operating expenses for the base year and the current year are "grossed up" to reflect a fully occupied and assessed building. If the building expenses are artificially low in the first year of the lease because the building is partially vacant or because it has not yet been fully assessed (due to new construction), the tenant will want to make sure that the lease provides that for measuring the expenses incurred in the base year they will be grossed up to take into account the expenses which would have been incurred had the building been fully occupied and assessed. Similarly, in all subsequent years, the landlord will want to make sure that both real estate taxes and operating expenses are grossed up to reflect a fully occupied intact building so the tenant does not get a windfall based on its proportionate share of a lowered operating expense due to a partially vacant building. In all cases, grossing up should only apply to those expenses which vary with occupancy. Fixed expenses require no adjustment.

C. The typical Lease has three parts – Summary, Body, Exhibits.

1. The summary section tends to mimic the letter of intent and lists, in summary fashion, the base business terms of the transaction so they can be reviewed and checked without having to read the entire lease.

2. The body of the lease incorporates the summary section and defines, in detail, the rights and obligations of the landlord and the tenant.

3. The exhibits usually consist of a depiction or description of the demised premises, rent schedules [work letter/construction requirements, and any guaranty if part of the transaction] (if not found on the front page), rules and regulations for the property that are general applicable to all tenants, lists of exclusive rights of others, prohibited second restricted uses pre-approved forms such as subordination, non-disturbance and attornments agreements and estoppel certificates.

III. Summary.

A. Who is Who and What is What (Sections 1.1 – 1.6).

1. Landlord. The landlord may or may not be the owner of the property and if it is not the owner of the property (i.e., has a ground lease or other interest) a non-disturbance agreement from the ultimate owner should be obtained.

2. Tenant. Who is liable. Most leases only authorize the tenant to be in possession of the property. If others are going to be in possession, they need to be specifically authorized.

3. Premises/Leased Premises/Demised Premises. Typically, the premises is the defined area within a lease to which the tenant will be given exclusive use and control. This could just be interior office space in an office suite or an entire floor of a building, exclusive of the vertical shafts which are used in common by all tenants. It may consist of the entire interior space of a building for a single tenant lease or the entire building plus all of the land and parking areas surrounding the building. The definition of the premises becomes important for defining the tenant's rights as well as its obligations for insurance, maintenance and repair. The tenant will typically also be given rights to use the hallways, elevators, parking areas, sidewalks, ingress and egress and other parts of the project as "common areas" in common with the landlord and other tenants and occupants of the project. If there are specific amenities which the tenant desires to use, it must make sure that it secures those rights in the granting clause or elsewhere in the lease.

4. Building/Project/Property. (See Section 2.1) Project is typically defined as the unified land and improvements in which the premises exist. Taxes and operating expenses will typically be determined on a project basis and the tenant will pay its proportionate share of the expenses. Attention should be paid to whether the tenant's share will be based on a portion of the total leasable/rentable area or a portion of the area that is actually leased and occupied by others. See Sections B1 and B2 below.

B. Square footage. Rentable vs. usable space (Section 1.7).

1. Most multi-tenant commercial buildings contain space which is used only by individual tenants (i.e., their demised premises) as well as entryways, hallways, vertical shafts and other areas of the building which are not rent producing. The “rentable space” usually consists of the measured space for the demises premises, plus a share of the common area space which is attributed to all the usable space on a percentage basis. The percentage of the common areas attributable to usable space is typically called the load factor. Rent and proportionate share are typically determined by the rentable space. Thus, the higher the load factor, the higher the rentable space and the higher the rent. A high load factor may indicate a luxurious lobby and atrium or merely an inefficient floor plan. Some buildings have so high load areas that the landlords cannot, as a matter of competition, charge a full load area for fear of having unrealistic rents.

2. Landlords typically want the size of the premises, determined in square footage, established at the outset of the lease, and assurance that such determination cannot be challenged in a later dispute over rent. If the space does not yet exist, some mechanism for measuring the space must be provided. Surprisingly, there are many ways to measure space in a commercial building. For most office and other non-retail space the “BOMA” standard will commonly be used to determine both the usable and rentable square footage of the space. BOMA is an acronym for the Building Owners and Managers Association, a trade group of owners and property managers which has promulgated standards for the uniform measuring of space in certain types of buildings. Typically, BOMA measures interior space from the interior surface of the demising walls to the exterior surfaces of the exterior walls, and it excludes major vertical shafts (such as stairwells and elevators). BOMA measures common areas of the building (i.e., entryways, lobbies and hallways) in the same way and applies a load factor to the usable square footage to arrive at the rentable square footage. Thus, the rentable square footage contains, in effect, some allocated portion of the common areas of the building. Common areas vary widely from building to building, and so the load factor can also vary widely. Rent is typically based on the rentable square footage and thus the total economic costs to a tenant will vary significantly depending on the size of the common areas and the allocation method used by the landlord. Thus at the early stage of the relationship the tenant and its counsel should strive to understand how the usable square footage was determined so it can make an apples to apples comparison of the cost of leasing space in one building versus another.

3. The gross area of a building is typically not used for leasing purposes except when a building is leased to a single tenant. In this case, the building area is measured from the exterior surface of the exterior walls. The rentable area for an entire floor is typically measured from the exterior surface of an exterior wall excluding the major vertical penetrations (typically the elevators and staircases). The usable floor area is typically measured from the exterior surface of the exterior walls to the finished surface of

the interior wall in the office area and excludes major vertical shafts. Between premises suites for different tenants, the measurement is usually made to the centerline of a demising wall.

4. For space that already has an existing demising wall constructed, the usable and rentable square footage of the space should be determined before the lease is signed. For space which is to be constructed, well informed tenants will negotiate some measurement process for determining both the rentable and usable floor area of the premises shortly after the demising walls are constructed. All or most landlords will insist that once determined the rentable and usable floor area of the square footage should not be revisited absent a change in the physical structure of the building so as to avoid contrived disputes and rent collection actions.

C. Terms and Option Terms. (Section 1.8). In addition to the initial term of any lease, there are different kinds of options: options to extend, options to expand (specific space, fixed rent, right of first refusal, right of first offer), options to terminate early, and options to purchase (set price, right of first refusal, right of first offer).

1. Term/Initial Term/Option Term. (see Section 2). The term of a lease is usually defined as the period of time where the tenant has exclusive possession of the premises. This usually coincides with the time for which it pays rent. A lease may start on the day it is signed or provide for the construction of the space and the commencement of the term sometime thereafter. Defining the commencement date of the lease involves a division of risk and responsibility between the landlord and the tenant. There may or may not be legal and economic consequences from the failure of the construction work in the leased premises to be finished by a particular date. Most landlords will not take responsibility for a previous tenant holding over and delaying the construction process. In addition, many landlords will not take on the risk of delays incurred as a result of government permitting or other third party causes. However, tenants with significant bargaining power may be able to negotiate whole or partial rent abatements, liquidated damages clauses, rent abatements and termination rights if the construction is not completed within set parameters.

2. After the initial term, a lease may have one or more option terms. Option terms will almost always require some notice by or from the tenant, although tenants with significant negotiating power will negotiate clauses requiring the landlord to give the tenant notice of the option and an opportunity to exercise it before it expires. Calculation of the option term rent may vary from a fixed schedule with fixed increases to a CPI determination to a negotiated process or a good faith statement of fair market value.

3. Option terms, early termination options, rights of first refusal, rights to lease additional space and rights to expand – what all these have in common is they are options

granted by the landlord to the tenant. By definition an option is a one-way street; The tenant has rights, the landlord has obligations. Rights of first refusal impose the obligation to present the proposed transaction to the tenant for consideration. If when the time comes to exercise the option, the market suggests the terms of the option are too expensive, then tenant may elect not to exercise the option and negotiate with the landlord. The landlord will then need to decide whether to negotiate to terms less favorable than the option terms or to simply allow the tenant to leave in which event, the landlord will face the expense of releasing at the market rate. But remember the law of options. Options are offers which are not specifically enforceable unless accepted strictly in accordance with their terms.

a. Renewal Options.

1. Conditions to Exercise:

- Timeliness.
- Not in default or no prior defaults.
- Occupancy.
- Assignment.

2. Determination of Rent:

- Landlord wants to control.
- Tenant may desire to fix rents for certainty.
- Fair market rent determination.

b. Early Termination Rights.

1. Conditions to Exercise:

- No default.
- Occupancy.
- Assignment.
- Timeliness

2. Termination Fee:

- Unamortized cost of landlord's work and brokerage fees.
- Fixed (if fixed termination date).

c. Expansion Rights: For additional space, Right of First Offer, or Right of First Refusal.

1. Conditions to Exercise – same as above:

- Change in tenant's economic condition.

2. Determination of Rent/Terms:

- Landlord wants flexibility to capture market increases.
- Tenant wants existing lease terms and rent to apply.

3. Some common themes are:

a. Conditions to exercise: no default, continued occupancy, no assignment, net worth, other changes and circumstances.

b. Is the process fair so that an outcome is capable of being realized? If not, the option may not be a true option - rather just an agreement to negotiate at a later date.

c. Fixed numbers vs. a fixed process to determine the numbers. For an option term, it may be for a fixed rent or for fair market value. For an expansion option, the rent might be the same or may change, tenant improvement allowances may differ over time, construction costs will certainly change over time, and resulting economics may change.

d. As a general proposition, the tenant is looking for some degree of certainty as to the terms which will govern its option. The landlord, on the other hand, often wants to preserve flexibility so that it can leave room to negotiate material terms in the future.

D. Built vs. not built. (Section 1.9).

1. The time line horizons for the commencement and expiration of the term of the lease where the premises is an existing office space (that does not require any improvements, is vacant and ready for use and does not contain any options terms) are relatively simple and unimportant. However, if construction is to be done, if moves need to take place, if any existing tenants need to be evicted or permits obtained, then the commencement of the term can become critical and complex. Similarly, time lines and defining the expiration of a term of the lease which is specifically defined should go smoothly and not be complex to the landlord or the tenant. However, if a holdover is a strong possibility, then short-term extension options become critical.

2. In almost all cases, the time between the commencement date and the termination date is defined in terms of lease years. Typically, a lease year is defined as 12 consecutive calendar months beginning on the first day of the first full calendar month following the commencement date, if the commencement date is not the first of the month. Alternatively, some landlords attempt to keep all of their tenants on the same schedule such as operating their lease years on a calendar-year basis. The interaction between the lease year and the base year is important if the tenant is to receive a full 12 months without paying for any increase in real estate taxes and operating expenses.

3. Most leases require that the premises be delivered to the Tenant in the condition required under the lease on the commencement date. If construction is to be done, and the commencement date is a given calendar date, the landlord has taken the risk that landlord must do whatever work needs to be done in order to put the tenant in exclusive possession of the premises in the condition required in the lease. Thus, a holdover tenant, a strike or delay in requiring materials, difficulties in obtaining a building permit, or an inattentive tenant who does not timely review and approve construction drawings, can all delay delivery of the premises and put the landlord in breach. Thus, the risk of the cost, and the timing of construction are of critical importance in defining the commencement date. A broader but common definition of the commencement date is the sooner of (i) the date the landlord's work is complete; (ii) the date tenant takes possession of the premises (or, in the case of a retail lease, opens its store for business with the public); or (iii) the date these events would have occurred in the absence of a tenant delay. It is common for a lease to require the landlord and tenant to sign a memorandum, at the request of either, memorializing the exact calendar date the commencement date occurs, so that the termination date can be determined to avoid future disputes.

E. Rent (Section 1.1 – 1.12). The term “Rent” usually encompasses “Base Rent” plus the other payments due landlord under the lease which are usually, collectively defined as "Additional Rent."

1. Base Rent is usually a set amount with set increases or with a formula for increases. Generally, the lawyer's job in drafting the rent schedule is a simple matter of accurately recording the rent numbers given to him or her by the landlord, and having them proofread twice to avoid significant malpractice claims. However, this process can become more complicated if unknown factors at the time of lease execution cause rent to increase. If the transaction is structured with a tenant improvement allowance (i.e. the landlord agrees to pay some portion of tenant's finishing costs), many landlords will retain the right, or grant their tenants the right, to pay additional rent in lieu of a full cash payment upon completion to amortize the excess cost of the tenant improvements. Although this sounds simple, the formula becomes complex. First, the lawyer must describe the allowance and what counts against the allowance, describing both the base building and what improvements the tenant will be charged for. Then, each of the costs for which it will be charged must be identified, as well as the method by which the excess costs will be amortized, together with any fees or amortization charges necessary to calculate the rental charge. Typically, landlords will want tenants to pay some portion of improvement costs before the landlord advances the allowance.

2. In addition to Base Rent, some retail leases call for the payment of percentage rent whereby the tenant agrees to pay a set percentage of its gross sales for each year to landlord as rent. In almost all circumstances, the tenant will only pay percentage rent in excess of the "natural break." The natural break is that amount of gross sales, which

when multiplied by the percentage rent factor would equal the base rent. Thus, a tenant will only pay percentage rent to the extent the percentage rent exceeds the base rent. For instance, if the base rent was \$60,000 per year and the gross rent percentage was 6%, the natural break for gross sales would be \$1,000,000 ($\$1,000,000 \times 6\% = \$60,000$). If, in this situation, gross sales totaled \$1,500,000 the tenant would pay \$90,000 in rent - \$60,000 base rent plus \$30,000 in percentage rent. Percentage rent clauses, although simple in concept, become complex in the details – which discounts count, which discounts don't, which internet sales count, which telephone sales don't, which employee discounts don't – they all add a level of complexity to the definition of gross sales itself. Periodic reporting and verification may be problematic, and gross sales may be habitually underreported. Finally, proving damages for leases based on percentage rent can be difficult.

3. In addition to base rent and percentage rate, some leases call for increases in rent based on changes in the Consumer Price Index. Practitioners should know that there is more than one Consumer Price Index. Consult the Department of Labor and Statistics website to help find the index which most closely reflects the cost of living in their area. The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. Besides monthly publication of the national (or U.S. City Average) CPI, monthly indexes are also published for the four regions; Northeast, Midwest, South and West. Indexes are available within each region, cross-classified by area population size. For more information about the CPI, visit the U.S. Department of Labor's Bureau of Labor Statistic Website at <http://www.bls.gov/cpi>. Consumer price rent increases typically are formulated by determining the change in the index over a given period of time, usually from the commencement date of the lease to the rent change date and then multiplying it by the rent to come up with the preceding terms for rent. A compounding of CPI can take place depending upon how the formula is structured.

4. Free rent or a period during which no rent is due is popular during economically difficult times and seems to become a customary request of tenants event in good times as an inducement. Free rent is typically frontloaded so that the free rent period occurs in the beginning of the term. This may be appealing to a tenant but problematic to many landlords. The landlord bears the credit risk of amortizing the free rent over the entire term of the lease [increases]. If the tenant defaults in year two of a five-year lease, landlord will not receive the proportional benefit of the six months free rent it gave at the beginning of the term. In order to avoid these problems, some landlords are stretching out free rent over longer periods of time or spacing it as a proportion for each lease (such as the 12th month free so long as there have been no defaults in late payments in preceding months). In addition, to help assure the financability of the lease, some landlords will commonly extend the term by the length of the free-rent period (i.e., a five-year lease with a six-months-free period will turn into a five-year-six-month lease, so a full five years of

rent is available to support the mortgage). Free rent may or may not include the “Net Charges” such is important to carefully describe acting what is “free”.

5. In addition to Base Rent, the other major economic components of rent are typically operating expenses and real estate taxes. Operating expenses and real estate taxes are discussed below. In addition to operating expenses and real estate taxes, Additional Rent will encompass the payment for (or reimbursement of) utilities consumed by the tenant in the premises. In almost all cases, this will consist of suite electricity. Gas is also usually directly billed but water is rarely directly billed. Gas is typically billed through at-cost and electricity may be billed through at-cost or required to be marked-up by landlord to the secondary rate if the landlord owns the transformer.

6. Additional rent will also include late fees, interest, attorneys’ fees and costs incurred by the landlord on the tenant's behalf. Most leases provide for the payment of attorneys’ fees in the event of a default or enforcement action by landlord. Well informed tenants will negotiate for a mutual payment of attorneys’ fees in the event of litigation (non-prevailing party, landlord or tenant pays). Late fees typically range from 5% to 10% of the amount that was paid late. Cure periods may vary from 5 to 10 days and may or may not require written notice. Interest may be a fixed amount or a spread in excess of a particular prime rate. If the tenant is an entity, landlord can safely charge up to 25% simple interest per annum without incurring usury risks. Interest in excess of 25% without an exception from the usury statute will give rise to a usury defense. If the tenant is an individual, closer inspection of the interest clause and lease documentation should be reviewed to assure compliance with the various exceptions afforded to individual debtors. Finally, most leases call for the reimbursement to landlord of costs incurred on behalf of the landlord either in enforcing a lease or in curing the tenant's default. The characterization of these payments as rent versus other sums due under the lease may have consequences in both the landlord/tenant and bankruptcy setting.

F. Proportionate share. (Section 1.3).

1. Proportionate Share/Percentage Share/Tenant Share. Tenant's proportionate share is usually a percentage based upon the ratio between the square footage in the premises to the square footage in the building or development where the premises is located. However, the calculation is made (gross leasable area, leased area, usable square footage, rentable square footage), it needs to be used identically for both the numerator and the denominator so that an apples to apples comparison is made. In shopping centers, the use of gross leasable area is typical, although some significant landlords may successfully get smaller tenants with little negotiating power to accept the use of gross leased area or even gross lease and “occupied” area. When gross leased area is used, only the area which is actually leased is included in the denominator. In this way, the landlord does not bear the risk of unleased space and is guaranteed that at least 100% reimbursement at all times

(assuming the same formula is used for all leases in the center). In most office buildings, rentable area is used for both the rent as well as the proportionate share. In the event there is a possibility the project may expand or contract, provisions for recalculating proportionate shares should be made in the lease.

G. Security Deposit. (Section 1.4).

1. The security deposit is the property held by the landlord which may apply to satisfy costs of a default by tenant (i.e. unpaid rent, additional rent or damages). Security deposits for commercial leases are largely unregulated – they need not be held in a separate account, need not accrue interest and need not be returned at a specific point in time, unless the lease so specifies. The security deposit may consist of cash or a letter of credit. Regardless of the form of the security deposit, landlords will commonly want clauses in the security deposit provision that provide that if the security deposit is used, it must be replaced by the tenant. The amount of the security deposit is usually a fixed amount for the entire term or might decrease (burn off) over time.

2. Letters of credit are often suggested as a substitute for a cash security deposit. Letters of credit are generally for use by a tenant with a strong banking relationship but a weak cash position. They may also be used by a parent company in lieu of a guaranty for the benefit of a tenant/subsidiary/affiliate where the tenant alone does not have adequate financial backing to support the lease from a credit perspective. From a landlord’s perspective, letters of credit are never the same as cash, and never as good as cash, although they may be acceptable. There may be significant procedural and legal difficulties in collecting on the letter of credit. The letter of credit is an instrument issued by a bank for the benefit of the account party (the tenant), to the beneficiary (the landlord). The issuer of the letter of credit (the bank) extends its full faith and credit up to the amount of the letter of credit. Under the circumstances described in the letter of credit, upon presentation by the beneficiary, the issuer will pay the beneficiary up to the face amount of the letter of credit. Drawing upon a letter of credit typically requires (at a minimum) the presentation of a draft (a document described in the Uniform Commercial Code which looks much like a check) and is, in substance, demand for payment. The letter of credit may require the presentation of other documents as a drawing condition as well. A “site draft” is a letter of credit that should be payable on demand without additional documentation. Typically, however, most letters of credit are structured so they require additional documentation (usually a certification to the effect that a default has occurred, and notice and cure rights have lapsed), signed by an authorized representative of the landlord. Upon presentation of the required documents, the bank does not have to pay immediately; it may take some number of days (typically 3 business days) under the Uniform Commercial Code in order to determine if a proper draw request has been made. Letter of credit draw requests are supposed to be strictly adhered-to. Punctuation variance and misspelled words may be sufficient to deny payment. During the waiting period, the

landlord can be sure that the bank has contacted its customer (the tenant or the guarantor) to provide notice of the draw request, thus enabling that party time to attempt to obtain an injunction to stop payment on the letter of credit. Although the circumstances under which an injunction will be issued are in most jurisdictions extremely limited (actual fraud or similar acts), many local judges are not familiar with these limits and injunctions are sometimes issued. Thus, with a letter of credit, timing and litigation is a significant risk; generally these risks are absent from cash security deposits.

H. Use. Use is generally not a big issue in office and industrial leases. Exceptions would be environmental concerns. Use clauses are more heavily negotiated in retail settings.

When planning and operating a shopping center, the landlord wants to maintain a diverse tenant mix which targets specific consumers. A center may be upper end or discount; some centers may be food or service oriented to site a few examples. The landlord satisfies this goal by carefully drafting the use clause and by restricting the tenant's use to that which is set forth in the lease. The tenant, on the other hand, does not want to invest in leased premises where its primary competitor opens next door two years into the lease term. The tenant satisfies this goal by drafting an exclusive clause which restricts the ability of the landlord to lease to its competitors. There are other concerns that may surface when the use clause is negotiated as well. A family retailer will not want to be located next to a tattoo parlor; sports clubs and athletic facilities saturate parking facilities with cars owned by patrons who are extremely unlikely to stop to shop or eat after working out. The tenant has to keep in mind that without some clear contractual obligation on the landlord, there is a risk that the nature and character of the center and the adjacent tenants may change.

I. Rules and Regulations. The rules and regulations are considered part of the lease and can change over time. Sophisticated tenants will want to assure that rules are applied uniformly to all tenants, that no changes can be made without notice and that the rules and regulations can't modify (or be deemed to modify) the expressed terms of the lease.

J. Guaranty Types. Will the guaranty be in effect for the entire term of the lease or only part, will it have a capped amount (plus costs of collection), and if there is more than one guarantor will it be joint and several?

IV. Construction of the Premises.

A. General issues. Regardless of how the financial risk is managed, the landlord is usually responsible for performing the construction. The landlord will agree to complete some level of improvements to the premises, i.e., base build out standards (some limited level of completion, insufficient for occupancy without further work to be conducted by the tenant), or turnkey (completion of the premises to a point where the tenant can turn the

key, take occupancy and start operating). Negotiating the construction requirements of each party and the payment of costs as part of construction can be heavily negotiated.

B. Turnkey vs. allowance.

1. White Box Retail Construction. When a landlord provides only a base build out, the tenant will have to complete the premises. The tenant will be required to install finishes – paint, wallpaper and trade fixtures. The allocation of construction responsibilities is specified, generally, in an exhibit to the lease and can be set forth in what has become known as the tenant work letter. This document will identify the landlord’s work and the tenant’s work. To attract a tenant, a landlord may agree to absorb a portion of the cost of the tenant’s work by providing a “Tenant Improvement Allowance”.

2. Tenant Improvement Allowance. The Tenant Improvement Allowance is an amount of money provided by the landlord to finance the construction of the tenant improvements. Well informed tenants will make sure that the lease or the tenant work letter contains a careful definition of the base building requirements (landlord’s work). A tenant does not want to pay for improvements which it believed (perhaps erroneously) the landlord would pay for. When providing the Tenant Allowance, the landlord and tenant will negotiate the timing of each of their contributions to payment for the improvements. The landlord does not want to put its money into the improvements, allow the tenant to escape any “skin in the game” and find out as construction progresses, the tenant cannot fund its share of the construction costs. There is tension between the landlord and the tenant here in that neither party wants to invest a lot of time and money to develop final plans and work on a detailed budget unless the lease is signed. At the same time, neither party wants to sign a lease if they are not assured that the leased premises can be completed for an expected cost. Sophisticated parties will usually have an idea of what construction costs will be, but until the plans are final, permits are obtained and construction contracts are bid and let, there will be uncertainty. The tenant generally takes the risk of increased costs as the tenant improvement allowance provided by the landlord is a fixed amount.

3. Turnkey. “Turnkey” refers to a lease where the landlord agrees to construct the tenant improvements without regard to cost. In this situation, landlord has the entire construction costs risk, but well informed tenants should be concerned about the quality of the materials and the design they will be getting. In a turnkey build-out, the tenant will require a detailed construction plan and specification list to be negotiated at the same time the lease is signed. Tenants will want to make sure that they will be receiving the quality of the build out they expected when they signed the lease. In a turnkey situation, the landlord has an incentive to save as much money as possible, so the tenants will want to make sure that detailed plans and specifications are agreed to and that internal costs paid to landlord are minimized in the form of construction management or similar fees. From the landlord’s point of view, the landlord does not want to give the tenant carte blanche to

specify unreasonable improvements when less expensive alternatives are acceptable. Competitive bidding or other checks on costs with review by both parties may be necessary. Again, some check on the landlord's internal fee structure may also be appropriate. The parties may also overcome this problem by agreeing on a construction cost estimate and then provide that if the construction can be completed for less, the savings will be shared. In such a situation, some portion of the savings would reduce the tenant improvement allowance provided by the landlord.

C. Process.

1. Under Michigan common law, a lease is considered the equivalent of a sale of the premises for the duration of the lease term. *McCurtis v Detroit Hilton*, 68 Mich App 253, 255; 242 NW2d 541 (1976). Because a lease is considered a conveyance of real estate, in a commercial lease, there are generally no implied terms regarding its condition. *Walker & Co v Davis*, 257 Mich 316, 318; 241 NW 169 (1932); MCL 565.5 (prohibiting implied covenants in "any conveyance of real estate, except oil and gas leases). Of course you can draft around this presumption. The Michigan Court of Appeals has held that the specific language of an agreement to lease may imply that the tenant improvements to be constructed by the landlord must be reasonably suited to the tenant's needs. *Brodsky v Allen Hayosh Industries, Inc.* 1 Mich App 591, 596; 137 NW2d 771 (1965). In *Brodsky*, the parties entered into an agreement to lease in which the landlord agreed to construct a commercial building containing a specified number of square feet of factory space and air-conditioned offices, both according to plans and specifications to be attached to lease. The plans and specifications were never actually agreed upon. The tenant sought to avoid the agreement on the grounds that the lease failed to address a material term, specifically the tenant improvement plans. The *Brodsky* Court stated that the agreement did not leave anything to speculation, but specified the amount of factory and air-conditioned office floor space. The court held that "[t]his agreement would imply a physical plant reasonably suited to defendant's manufacturing and office needs" and that "[n]o more certain specifications are needed for purposes of enforcing this lease agreement." *Id.*

2. Do the plans exist? Most commercial premises require some work to make them ready for the tenant's use. In most instances, the landlord will be responsible for construction. The challenge in such provisions is describing in sufficient detail the improvements to be performed and the method of their execution. The degree of specificity established by the parties with respect to tenant improvements can impact the issue of basic contract formation. See *Hansen v Catsman*, 371 Mich 79; 123 NW2d 265 (1963) (holding held that an agreement to lease which left the tenant improvement plans for future negotiations negated the existence of an enforceable contract).

3. When a lease calls for the construction of tenant improvements by the landlord before the commencement of the lease, the issue of substantial performance or

substantial completion becomes an important consideration. In the absence of an agreement to the contrary, rent begins to accrue upon substantial performance by the landlord. *Gordon v Great Lakes Bowling Corp*, 18 Mich App 358, 171 NW2d 225 (1969). “Substantial performance means not doing the exact thing promised, but doing something else that is just as good, or good enough for both obligor and obligee.” It requires a good-faith attempt to perform the contract without intentional or material departures. *Rogers Plaza, Inc v SS Kresge Co*, 32 Mich App 724, 745, 189 NW2d 346 (1971). Such imperfections may, however, provide a basis for recovery of damages. The landlord and tenant can try to avoid these disputes by providing that, if there is a dispute, the tenant improvements will be deemed complete when an independent architect so certifies to the parties. Of course, defining what is and who selects the “independent architect” then becomes an issue.

4. For most commercial leases, the building containing the premises already exists at the time the lease is executed and thus construction of the building does not need to be addressed in the lease. However, the demising walls of the premises may not yet exist and detailed plans and specifications for the improvements to the premises may not have been developed at the time the lease is signed. Thus, some procedure for developing the tenant improvement plans and specifications, as well as for payment for the construction costs incurred, must be provided in the lease. The sample clauses in Section C are generally more detailed than those found in most commercial leases.

5. In many instances, the lease simply provides that the landlord will construct the improvements as described in a sentence or two without any level of detail. There is obvious risk in this approach.

6. Even if sufficient for purposes of contract formation, a “Landlord’s Work” clause without a meaningful description of the work may be too vague to show damages. For example, in *Brookside Mills, Inc. v Specialty Retail Concepts*, 1987 WL 26206 (Tenn. Ct. App. Dec. 8, 1987), the build out clause only required the landlord to “recondition the parking lot” and even though the tenant was shown an architect’s rendition which may have implied additional improvements, because the landlord did not commit to repave the entire lot and add new lights, the landlord was not obligated to make such improvements.

7. Specificity is important, particularly from the tenant's perspective.

8. From a landlord’s perspective, one of the most frustrating events during construction is to have a non-responsive tenant. There are numerous approvals and selections which must be made to complete plans to a point where the work can be bid and construction contracts let –color, style, quality, substitutes for unavailable materials. A tenant who delays making these decisions should be responsible if the landlord cannot deliver the premises on time, on budget. But without specific turnaround times for

approvals or “deemed approval” language if the tenant is non-responsive after a reasonable period of time, the landlord faces the risk that it will not be able to default the tenant and will have a delayed opening with delayed rent commencement.

9. Some process for determining what must be built and if the project is done on a tenant improvement allowance basis, when allowance dollars will start to be spent should be set forth in the lease. These sections of the lease can become very complex and failure to pay attention to detail can result in significant litigation if the tenant simply stops responding to requests for approval and as a result the space is not built. See *Capital Centre, LLC v. Wilkinson*, 2006 WL 827375, (D Md, March 27, 2006) (the tenant (a Washington Redskins player) did not submit his plans for improvements and under the express terms of the lease, this placed the tenant in default, the lease further required the tenant to accept the premises as is. Subsequently he was traded to the Detroit Lions (things going from bad to worse) and wanted to avoid his lease obligations entirely. His failure to submit plans was deemed a breach and made him liable for damages).

D. Delivery dates/Late delivery and remedies. On the date the lease is signed, “plans and specs” may not yet been negotiated, tenant finishes may have not been chosen, budgets may have not been determined and bids have not been sought. In short, there is a lot of uncertainty. From the landlord’s perspective, it wants to maintain the integrity of the construction process and make sure that the tenant cannot perpetually delay the construction as a pretext for not having to take possession of the premises. The Tenant, on the other hand, may have significant business concerns about (a) the amount by which the cost of the improvements may exceed the allowance, including the procedures by which such cost will be determined and (b) the timely delivery of the premises, including specific deadlines to be met and incentives/penalties in order to ensure that such deadlines are met. The usual result is a three step process: a targeted delivery date, rent abatement if delivery does not occur by an outside date (other than reason by force majeure or tenant delay) and finally, a termination right in the event that delivery does not occur by a final outside date, other than a result of tenant delay.

1. The definition of when the project is done is also important because it usually ties in with the commencement date of the lease. Inevitably, the construction will not be completely finished and some minor items will be required to be completed after possession. Hence, the necessity for arriving at a punch list should be spelled out in the lease.

2. Most tenants will want completion to be defined as the issuance of a certificate of occupancy for the property;

3. Landlords will argue that a temporary certificate of occupancy is sufficient if the conditions of the temporary certificate do not materially interfere with tenant's use and enjoyment of the premises and its operation of the business.

4. Once completion is defined, the cost and risk of delays caused by the landlord or tenant and delays caused beyond the control of either must be allocated. A landlord will typically take on the risk of the landlord delay and will require the tenant to assume the risk of the tenant delay, both in terms of delaying the time when landlord is required to complete the project, as well as accelerating the rent commencement date if the delays become unreasonable. The risk beyond the control of both parties (typically defined as the force majeure risk or excusable delays) will usually not be assumed by the landlord. However, tenants with significant bargaining power may be able to argue for termination or other rights even if a force majeure risk delays a completion date beyond a specified period. This gives the tenant certainty that if a project is not finished in a reasonable period of time, the tenant can move on and find other space necessary to conduct its business.

5. Early Entry. Many tenants will wish to enter the space prior to construction to begin their fixturing, cabling of data and telephone systems, and move-in. This enables the tenant to lower cost of occupancy and to open for business with less downtime while the rent clock is ticking. Landlords generally will permit this, provided the tenant is prohibited from interfering with the landlord's work and that the tenant takes the risk for any damage to its property. Regardless of what the lease says, a tenant may expect that whatever damage the tenant does in this process will be repaired at the expense of landlord or prior to completion. Inevitably, the rush to finish the work and the rush to install the built-in furniture and cubicles clash with each other, and friction arises early in the relationship. In order to resolve these problems, some landlords will grant short periods of free rent (7 to 10) days over and above that negotiated, as part of the economics of the transaction in order to insure a clean move-in. This also helps avoid problems with the finishing of construction and damage to partially finished improvements, and aids in a cleaner transition of control of the premises between landlord and tenant.

V. Pass Through of Taxes and Operating Expenses/CAM. CAM stands for Common Area Maintenance. CAM expenses and operating expenses are usually those costs and expenses incurred in operating a particular project exclusive of real estate taxes. CAM expenses and real estate taxes are typically dealt with in separate provisions of a lease.

A. Operating Expenses and Real Estate Taxes.

1. Operating expenses usually include maintenance, repair, and janitorial as well as insurance costs (though insurance costs may also be treated separately in the Lease as well). Most Operating Expense clauses define expenses in very broad terms. They will permit the landlord to pass through all expenses paid or incurred by the landlord for

owning, operating, equipping, policing, protecting, lighting, heating, cooling, insuring, replacing, repairing and maintaining the project. Tenants will push back and attempt to carve out whatever expenses it can from the definition of operating expenses. Carveouts are discussed more fully below.

2. Real estate taxes in most leases will include both general ad valorem real estate taxes as well as special assessments. Carved out from the definition will be special assessments which were incurred by landlord as part of the development expense of the project. Some tenants will argue (usually unsuccessfully) that real estate taxes should not include increases in real estate taxes due to the sale or transfer of the project which results in an uncapping of the property's assessed value (a particular issue in Michigan). In addition, well informed tenants will require that they pay only their proportionate share of only those installments of special assessments which become due during the term of the lease. Most real estate tax definitions will broadly include other types of taxes which may be imposed upon the real estate or the income derived from the property in an effort to capture changes in the tax laws. All along these lines, landlords will typically include a "in lieu of clause" which will provide that real estate taxes will include taxes which are imposed in addition to "normal" real estate taxes in the event of a change in the tax laws. Well-informed tenants will limit in lieu of taxes to only those which are in substitution of and not in addition to real estate taxes.

B. Capital. Many tenants will argue, some successfully, that operating expenses should not include any pass through of expenditures for improvements or repairs which are capital in nature. If there is an exclusion for capital expenditures or if they are otherwise treated differently than other expenses, the parties must negotiate what constitutes a capital expenditure and how such capital expenditures will be amortized, as applicable. Tenants often want to limit liability for capital expenditures to those required to comply with a change in laws and those incurred to improve operating efficiency (to the extent of actual cost savings). However, in a triple-net lease, the landlord will argue that the rent was quoted on a net basis and therefore all expenditures, whether they be capital or ordinary annual expenses, must be passed through in order to maintain the integrity of the rental rate. The first thing to note is that there is no universally accepted definition of what constitutes a capital expenditure. Some leases will use "generally accepted accounting principles" as the governing definition; others will use tax accounting; others will use generally accepted real estate, accounting and management practices; and most will leave the term completely undefined. Assuming a definition can be negotiated, the types of expenditures to be excluded may vary depending upon the circumstances. Many tenants will argue successfully that completely new improvements should not be passed through as opposed to capital expenditures where it is in the nature of repair. Secondly, many tenants will request, and some landlords will grant, exclusion for capital expenditures to the extent they do not result in expense saving or required by a change in the laws after the

date of the lease. Last, even if capital expenditures are to be passed through, most tenants will request, and landlords will grant, that specific capital expenditure will be amortized over its useful life with or without an interest factor which may or may not be negotiated at the time the lease is signed.

C. **Audit.** Audit rights may be granted to the landlord or the tenant. From the tenant's perspective, it will want an audit to be sure that the operating expense and real estate taxes are charged in accordance with the term of the lease. From the landlord's perspective, he may want an audit to insure compliance with the percentage rent clause. Many landlords will grant audit rights but impose a number of conditions; typically that the tenant is not in default, makes the request within a limited period of time after the applicable year, cannot look back more than one, two or three years, agrees to keep the results confidential and does not engage a professional who charges on a percentage-of-recovery basis. Most tenants will successfully argue that in the event the audit shows an error in excess of a given percentage (2% to 5%), the landlord will bear the cost of the audit. Interest may or may not be due on any overpaid amounts. Credits may be applied or paid in cash, especially after a lease has expired.

D. **Carveouts.** Common exclusions are amounts reimbursed or reimbursable from warranties or insurance, ground lease rental payments and mortgage principal and interest, improvements to the leaseable space, depreciation and amortization, fines and penalties incurred by the landlord, interest on debt, landlord's overhead or expenses in excess of the management fee, and the cost of amenities which are not available to the tenant.

E. **Payment in Installments.** Operating expenses and real estate taxes are typically estimated on a monthly basis determine annual basis and reconciled within a defined period of time after the expiration of each 12-month period. The 12-month period may be a lease year or a calendar year depending upon how the landlord runs a particular project. Landlords typically will reserve the right to increase the amount of operating expenses estimated during the year and some tenants will successfully limit their right to not more than two or three increases per year. Some tenants will successfully negotiate for caps on operating expenses and even when granted, landlords will typically only agree to caps of those expenses over which it has control.

VI Use.

A. Permitted, Exclusive and Prohibited.

1. The permitted use is the use that the lease permits the tenant to engage in at the demised premises. It may be general office use for an office building, limited to the operation of a specific type of store under a specific name for an inline space in a shopping center, or may be "any lawful use" for a "big box" tenant

in a major retail development. Use clauses do not, in and of themselves, constitute covenants by the tenant to open and operate. If the landlord expects the tenant to be open and operating (which all shopping center landlords do) an "operating clause" must be negotiated into the lease. Alternatively, if an operating clause is not a reasonable possibility, the landlord may try to negotiate a recapture clause whereby it has the right to terminate the lease in the event the store is not operated for a defined period of time (i.e., three consecutive months other than by reason of casualty, condemnation or refurbishment). In more situations than one would expect, a tenant may be willing to close its store ("go dark"), continue paying rent, and make sure it is otherwise in full compliance of the lease to prevent the landlord from taking its space and leasing to a competitor.

2. Exclusive uses are rights granted to tenants for the exclusive right to engage in a particular area of commerce within a defined area. Historically, these were found almost exclusively in retail developments where major retailers had both the economic power and a level of investment to demand that their territory be protected by the landlord both in the shopping center and in any other area the landlord or its affiliates owned or controlled in the vicinity of the shopping center. Landlords also, occasionally, negotiated for some exclusive use clauses in percentage of rent leases (in the form of radius restrictions) so as to maintain the integrity of their percentage rent clause. Exclusive use clauses have become slightly more prevalent in recent years in office building leases as financial institutions, brokerage firms, accounting firms and similar financial service organizations seek to protect their turf. Negotiating these clauses in an office lease can be very difficult, given the limited number of tenants that can reasonably be expected to populate a particular office building and the difficulty in defining the protected financial services.
3. Prohibited uses are those which the lease specifically prohibits in the defined area. From the landlord's perspective, the prohibited uses will usually limit the tenant from engaging in noxious uses or infringing upon the exclusive use rights the landlord may have granted other tenants. From a tenant's perspective, the prohibited uses will limit the uses a landlord can grant other tenants so as to protect the dominant tenant's parking area or to prohibit undesirable neighbors and/or customers in a shopping center or other building.

VII Services.

A. Generally. Except in the case of credit tenants who will occupy all or a substantial portion of a building, most office leases are drafted by the landlord. Not surprisingly, while such leases include a plethora of tenant responsibilities, they contain few, if any, express obligations to be performed by the landlord (other than granting quiet enjoyment of the premises to the tenant). For example, many lease forms will provide that the tenant must reimburse landlord for all of the operating expenses, but will remain silent as to landlord's obligation to actually perform the maintenance and repairs, maintain the insurance, pay the taxes, and provide the services giving rise to such expenses. Astute tenants (those which actually read the lease before it is signed) will require that the lease include express obligations of landlord to provide:

1. Normal services - heat, water, utilities, access to elevators.
2. Standards for the quality of the service and remedies if the standards are not met, including self-help.
3. Insurance obligations, including specified liability limits.
4. Janitorial Services, including the attachment of detailed specifications.
5. Maintenance/Repair/Replacement Obligations – including express obligations for landlord to maintain and repair in good condition consistent with other first-class office buildings in the area (or other mutually acceptable standard) the roof, structure, exterior walls, building systems and common areas, (including patching, paving, striping, sweeping, snow and ice removal and landscape maintenance).

Landlords, for the most part, will not resist reasonable obligations to operate, maintain and provide services to the building and common areas consistent with landlord's current standards, including the services provided by landlord for janitorial, heating, air conditioning, parking and other services. Landlords will also provide for some level of insurance, although they will usually ask for some degree of flexibility because insurance requirements may vary depending upon the nature of the owner. What the landlord will want to fight, however, is being required to manage a building to a standard other than their own. The landlord does not want the tenant to be the final arbiter of management responsibilities.

B. Landlord's Insurance – no express obligation (all-risk, commercial liability, rent interruption).

1. Limit amount of, and make landlord responsible for, deductibles
2. Specify limits

- C. Waiver of Subrogation. Subrogation is the legal right of one party to step into the shoes and acquire the rights of another. In a lease, subrogation typically refers to the right of the property insurer to step into the shoes of its insured, typically the landlord, in the event of a casualty which is covered by the insurance policy. Thus, the insurance company would step into the shoes of the landlord and have the right to sue the tenant if it caused the fire absent other lease language to the contrary. The waiver of subrogation is a clause by which the landlord and tenant both release each other of liability covered by the insurance policy and they covenant to each other to obtain insurance which permits the waiver of the claim so that the risk of loss is shifted to the insurance company and the insurance company may not seek recovery from the landlord or the tenant, regardless of who caused the accident.
- D. Waiver of subrogation. Landlord may resist or try to limit to insurance proceeds; Tenant wants unconditional and complete waiver. It is important to have your client review specific insurance provisions and have them reviewed with its insurance provider.

VIII Assignment and Subletting.

- A. Prohibited. Most landlord leases will prohibit assignment and subletting and will further buttress the clause by providing landlord approval rights if the lease is transferred by virtue of a change in the ownership of the tenant, be it by an asset sale, a merger or a transfer of the equity. Many leases will also have recapture rights so that if there is proposed subletting or assignment, the landlord will have the right to terminate the lease and take the space back. Last, if it turns out that the lease has below market rent and there is profit on the sublease, the landlord will seek to recapture the increased rent on the theory that profits from the real estate belong to the landlord, not the tenant.
- B. What assignments will be permitted without landlord's consent – usually to affiliates of the tenant without a release of the existing tenant.
- C. Sale of business - Tenants also look for flexibility in terms of the sale of the business as a way of hedging the future business plans so that a single lease cannot hold up a large corporate transaction.
- D. Will the landlord be required to be reasonable in reviewing an assignment request?
- E. Sale of company – exit strategies. Larger companies will demand that no landlord consent is required in the event of the sale of the company. Landlords will need to be concerned with the creditworthiness and financability of the buyer/assignee. The consent of the landlord's lender may also need to be considered.

F. Recapture Right - Completely negate or provide a process to pull back from a recapture clause.

G. Excess Rents - Split the profits on any excess rent (after expenses).

H. Franchisors will frequently require more extensive rights to allow assignment to themselves or qualified assignees.

IX Default.

A. Will the landlord grant a notice (one is always required by Michigan law anyways before you can go to court) and an opportunity to cure (2/5/10 days for monetary, 10/15/30 days for non-monetary with a capped (90 days) extension if the tenant commences the cure of the non-monetary default within the initial time period and diligently pursues the cure to completion.

B. General defaults – note abandonment and failure to operate.

C. Remedies - will there be a right to rent acceleration?

D. Landlord defaults/Tenant rights - self-help and offset. Nearly all landlords will insist on the absence of offset rights. The landlord has given possession of the premises to a tenant and can only regain possession through court action. Thus, in all circumstances, for a landlord to exercise a remedy, there must be a determination by an unbiased third party that the landlord's claim is correct, and that the tenant will get notice and an opportunity to be heard before remedies are imposed. Most tenants will argue for offset rights in the event of a default by landlord, (e.g. that a repair was not properly done or timely finished and that the tenant had to spend its own money to do the job right). Tenants will argue that they should not have to sue the landlord to recoup these funds, rather they should be to offset the amount due from the next installment of rent. Most landlords will successfully argue that this is fundamentally unfair. The tenant should not have the right to interrupt the landlord's cash flow absent a third party deciding that, in fact, the tenant's claim is correct and that the landlord had notice and an opportunity to be heard before the remedy was imposed. Taken to extremes, some tenants may successfully argue that offset rights are certainly appropriate once a final, un-appealable judgment is issued. More importantly, tenants with significant economic bargaining power will have the ability to negotiate limited offset rights. However, typically the landlord will limit the right to the base rent, not to the pass through expenses, and will limit the amount of the offset to some percentage of the base rent then due (such as 25%) in order to maintain the financeability of the lease. Most lenders will not accept a lease as collateral if the cash flow can be interrupted as a result of default by landlord.

X Miscellaneous.

A. SNDA or Subordination, Nondisturbance and Attornment Agreement. A subordination, nondisturbance and attornment agreement is a document typically required by a clause in a lease in order to assure the lender of the property that the lease will be subordinate to the mortgage, regardless of which document came into existence or was recorded first, that the tenant will attorn to and recognize the validity of the purchaser of the property at a foreclosure sale or the validity of the person who obtains a deed in lieu of foreclosure and provides that, absent a default by the tenant of the lease, the lender will agree not to disturb the tenancy of the tenant in the event of the foreclosure of the mortgage. In the absence of a non-disturbance clause, the foreclosure of a senior mortgage extinguishes all junior interests, including subordinate leases. *Dolese v Bellows-Claude Neon Co*, 261 Mich 57, 245 N.W. 569 (1932).

B. Estoppel Certificate. Most leases have clauses which require a tenant to certify, that the lease is in full force and effect, not in default, the rent is paid, and there are generally no other problems unless otherwise specified in the certificate. This certificate can then be given to and relied upon by a lender or purchaser of the building. Care should be taken not to pre-approve a form "as is" and to preserve the right to limit statements based on actual known facts. Savvy tenants may limit the number of requests for certificates that can be made, require a fee if extra requests are made, and should delete language authorizing a landlord to submit an estoppel on the Tenant's behalf in case of delay.

C. Quiet Enjoyment. Most leases contain a covenant of quiet enjoyment whereby the landlord agrees not to disturb the use and enjoyment of the leased premises by the tenant during the term of the lease absent a default by tenant. The quiet enjoyment paragraph may be absolute (i.e., a covenant against disturbance by anyone) or limited (i.e., the covenant that the tenant will not be disturbed by any person or entity claiming by, through or under the landlord).

D. Relocation. Many office leases will contain a clause which permits the landlord to relocate the tenant to another space in the building or, in some instances, to another project in an office park under unlimited or a given set of circumstances. Well-informed tenants will limit or pre-approve relocations, assure that the landlord is obligated for all costs including client customer obligation and will limit rent even if the relocation is to a larger space.

E. Recapture. A clause by which upon the occurrence of a given event the landlord has a right to terminate the lease. The event may be the tenant "going dark" (i.e., no longer operating business at the premises) or an attempt to assign or sublease the premises so that the landlord can enter into a direct lease with the propose new user and reap the benefits of any changed economic circumstances.

F. Memorandum of Lease. The memorandum of lease is a document which typically refers to the existence of the lease, is in recordable form and is meant to be recorded in the real property records in the county where the leased premises is located so as to set the priority of the lease and to impart notice to third parties of the existence of the lease and certain key rights such as exclusives, option to purchase or right of first refusal. Many landlords will resist the recordation of the memorandum of lease given the difficulty of having it removed after a default and eviction of the tenant. Many landlords will argue that since the tenant is in actual possession recordation is unnecessary as a matter of law and potentially harmful to the landlord. In Michigan, occupancy by the tenant prior to the recording of the mortgage has the same effect as recording the lease, even if the lease or memorandum of lease has not been recorded. *American Cedar & Lumber Co. v. Gustin*, 236 Mich 351, 358, 210 NW 300 (1926); *Fraser v. Fleming*, 190 Mich.238, 244, 157 NW 269, 271 (1916). “It is elementary that, as a general rule, possession of real estate is constructive notice of title in the possessor.” *American Cedar*, at 358; *Fraser v. Fleming*, 190 Mich 238, 244 157 NW 269, 271 (1916). Notice in such cases is a legal deduction from the fact of possession. *Delosh v. Delosh*, 171 Mich 175, 137 NW 81 (1912). However, Michigan courts have consistently held that “[t]here must be such a use or occupancy as would indicate to a reasonably prudent person visiting the land that the occupant or possessor claimed rights therein.” *American Cedar & Lumber Co. v. Gustin*, 236 Mich 351, 358, 210 NW 300 (1926). For example, “[t]he possession of wild, uncultivated land may not be evidenced in the same way as improved land.” *Id.* If a tenant insists for a memorandum of lease, many landlords will request a quick claim deed or a termination memorandum of lease be placed in escrow so it can be recorded upon the termination or expiration of the lease.

G. Tenant Alterations – Liens. The landlord and the premises may be bound by a construction lien for tenant improvements performed by the tenant's contractor if the improvements are required by the lease. *Rowen & Blair Electric Co v Flushing Operating Corp.*, 399 Mich 593; 250 NW2d 481 (1977). By requiring the tenant to make the improvements, some courts have held the landlord has appointed the tenant as its agent. *Rowen*, *Id* at 600-601.

H. Mortgage Financing. When negotiating a lease, the landlord has to be cognizant of the terms of any financing which might encumber the development. Lenders will generally insist on rights of approval for leases over a specific size, leases which do not satisfy certain economic terms or which include free rent or other tenant incentives. Additionally, it is not unusual for loan documents to limit rights to terminate, amend or extend leases.

STANDARD LEASE FORM

THIS LEASE is made by and between Landlord and Tenant, who agree as follows:

1. **Basic Lease Provisions**

1.1 Landlord: _____, a Michigan limited liability company

1.2 Landlord's Office: _____

1.3 Tenant: _____

1.4 Lease Date: _____

1.5 Building: Building ____ of _____ Center, _____, Michigan
48____; see Exhibit A-1

1.6 Premises: Suite _____, see Exhibit A-1

1.7 Rentable Floor Area of Premises: _____ Useable / _____ Rentable Square Feet

1.8 Term: _____ (__) full Lease Years after the Commencement Date
_____ (__) Option Term of _____ (__) full Lease Years

1.9 Scheduled Occupancy Date: _____ (see §2.5)

1.10 Termination Date: _____ (__) full Lease Years after the Commencement Date, unless the
Option Term is exercised in accordance with the terms hereof

1.11 Annual Base Rent: \$_____ for the first Lease Year*. See Exhibit A-2

1.12 Monthly Installment of Base Rent: \$_____ for the first Lease Year*. See Exhibit A-
2

*Subject to adjustment in accordance with Sections 2.3-2.4

1.13 Proportionate Share: ____%

1.14 **Base Operating Expenses and Real Estate Taxes:**

(a) **Base Operating Expenses:** \$ _____
(b) **Base Real Estate Taxes:** \$ _____

1.15 ~~4.14~~ **Security Deposit:** \$ _____

1.16 ~~4.15~~ **Designated Use:** Office, high technology and combined office –research-production
uses

1.17 ~~4.16~~ **Rules & Regulations:** Exhibit D

1.18 ~~4.17~~ **Guarantor:** _____

2. **Premises**

2.1 Landlord leases to Tenant, and Tenant leases from Landlord, the Premises described in Section 1.6 as depicted on the Floor and Site Plan attached hereto as Exhibit A-1. The Premises is located in the building described in Section 1.5 (the "Building"). The Building and other improvements are located on and about the land shown on the Site Plan attached hereto as Exhibit A-1 (the "Land"). The Building, the other improvements and the Land are collectively referred to as the "Property"). Tenant agrees that the Premises shall be deemed to include the number of rentable square feet set forth in Section 1.7 and in no event shall Tenant have the right to challenge, demand, request or receive any change as a result of any claimed or actual error or omission in the square footage of the Premises, the Building or the Proportionate Share. Landlord reserves the right at any time and from time to time to make alterations or additions to the Building or the common areas, and to demolish improvements on and to build additional improvements on the land surrounding the Building and to add or change the name of the Building from time to time, in its sole discretion without the consent of Tenant and the same shall not be construed as a breach of this Lease.

2.2 Landlord shall perform the necessary demolition and construct the interior build-out, finish and other improvements to the Premises described in Exhibit B (the "Concept Specifications") and the exterior building sign as depicted on Exhibit C (collectively the "Tenant Improvements") in accordance with the provisions of this Section 2. Landlord shall provide all the Construction Costs (as defined below) in order to complete the design and construction of the Tenant Improvements up to a maximum total charge of \$_____ (the "Tenant Improvement Allowance"). "Construction Costs" shall be all hard costs and soft costs of design, demolition and construction including all labor and materials, all planning, architectural and engineering costs, the cost (including all governmental fees) of obtaining site plan approval, building permits and other permits and licenses, costs due to winter conditions, financing and interest costs for the improvements during design and construction, legal expenses, developer's/general contractor's fee (10% of total costs) and other costs paid or incurred by Landlord to plan, design, permit and build the improvement in question, plus a 2.50% surcharge of all such costs. Landlord will engage an architect (the "Landlord's Architect"), who shall work with Tenant to prepare the design, engineering, construction drawings and specifications required for the construction of the Tenant Improvements (as they may be amended by approved change orders, the "Tenant Improvement Plans and Specifications"). The Tenant Improvement Plans and Specifications are subject to Landlord's approval. In connection with the development of the Tenant Improvement Plans and Specifications by Landlord's Architect and Tenant, Landlord and Tenant shall be furnished copies of the Tenant Improvements Plans and Specifications on an ongoing basis for review, comment approval by Landlord and Tenant, and shall be completed and agreed to by Tenant on or before _____, 20___. In the event Tenant has not approved the Tenant Plans Specification on or before this date, the period of time from such date until the Tenant Improvement Plans and Specifications are approved by Tenant shall be considered a Tenant Delay. Unless otherwise approved by Landlord in writing, the Tenant Improvement Plans and Specifications must conform to the Concept Specifications and all local building code requirements and in Landlord's judgment, be capable of being contracted so that the Tenant Improvements can be delivered to Tenant "ready for occupancy", as defined below, on or before the Scheduled Occupancy Date in the ordinary course of business and without working on an overtime basis. If Landlord determines that the Tenant Improvements cannot be constructed in the ordinary course of business on or before the Scheduled Occupancy Date, then any resulting delay shall be considered a Tenant Delay. Once approved by Tenant or deemed to have been approved as set for above, all material changes from the Tenant Improvement Plans and Specifications which Landlord determines may be necessary during construction shall be submitted to Tenant for Tenant's approval or rejection. If Tenant fails to notify Landlord of Tenant's approval or rejection of such changes within five (5) days of receipt thereof, Tenant shall be conclusively deemed to have approved such changes. Landlord shall construct the Tenant Improvements in accordance with all applicable laws, rules or regulations of any governmental authority.

2.3 Landlord shall not be required to expend any amounts in excess of the Tenant Improvement Allowance in order to construct the Tenant Improvements. The charges for the Tenant Improvements shall include all Construction Costs, but shall exclude any financing costs. In connection with the development of the Tenant Improvement Plans and Specifications, Landlord shall develop a line item budget estimating the cost of the Tenant Improvements. In the event the estimated Construction Costs of completing the Tenant Improvements in accordance with the Tenant Improvement Plans and Specifications shall exceed the Tenant Improvement Allowance as determined by Landlord from time to

time, Tenant shall pay Landlord, within five (5) days of request for such payment (which request will come no more than monthly), the difference by which the estimated Construction Costs of the Tenant Improvements exceed the Tenant Improvement Allowance or, at Landlord's option upon completion of the Tenant Improvements, Landlord may increase the Annual Base Rent to amortize all or a portion of the actual excess cost over the Initial Term of this Lease at the rate of 9.5% per annum, plus a 2.5% annual surcharge of the excess cost. Within a reasonable time after the completion of construction, Landlord shall determine actual Construction Costs for completing the Tenant Improvements in accordance with the Tenant Improvement Plans and Specifications and the amount, if any, by which they exceeded the Tenant Improvement Allowance. Any underpayment which Landlord does not elect to amortize through increase in the Annual Base Rent as described in this Lease shall be paid by Tenant to Landlord, within five (5) days of request for such payment, and any resulting over payment shall be promptly refunded to Tenant or, at Landlord's option, credited against the next due installments of Rent hereunder.

2.4 Any change to the approved Tenant Improvement Plans and Specifications desired by Tenant will be subject to Landlord consent which will not be unreasonably withheld, and must be set forth in a written change order signed by Landlord and Tenant that describes in detail the change, an estimate of the additional construction time, if any, that will be required to complete the Tenant Improvements as a result of the change, and an estimate of the Construction Costs to be incurred as a result of such change order. Once submitted, the change order must be approved by Tenant in writing (including Tenant's agreement to pay the actual excess Construction Costs or, at Landlord's option, Landlord may increase the Annual Base Rent to amortize all or a portion of the actual excess Construction Costs over the Initial Term of this Lease at the rate of 9.5% per annum, plus a 2.5% annual surcharge of the excess Construction Costs, and in each case incur any actual delay regardless of the estimate) within seven (7) days or else the change order shall be deemed rejected. Also, all delivery dates which Landlord has obligated itself to satisfy shall be extended one day for each day of additional construction time that is required as a result of a Tenant initiated change order, it being agreed that Landlord shall have no obligation to do any work described in a change order on an overtime basis to avoid incurring construction delays. If Landlord elects not to amortize all or some portion of the excess Construction Costs, Tenant shall pay Landlord, within five (5) days of request for such payment (which request will come no more than monthly), such excess Construction Costs (hard and soft cost plus 2.5% surcharge) to be incurred as a result of any Tenant change order, if any.

2.5 Landlord intends to construct the Tenant Improvements and deliver the Premises "ready for occupancy" (as defined below) to Tenant on or before the Scheduled Occupancy Date set forth in Paragraph 1.9, subject to Force Majeure and Tenant Delays (each as defined below). The Premises will be conclusively deemed "ready for occupancy" on the earlier to occur of when: (i) the work to be done under this Section has been substantially completed and after the issuance of (A) a conditional or temporary or final certificate of occupancy for the Premises by the appropriate government agency within whose jurisdiction the Building is located or (B) a Certificate of Substantial Completion by the architect for the building, or (ii) when Tenant takes possession of the Premises. The Premises will not be considered unready or incomplete if only minor or insubstantial details of construction, decoration or mechanical adjustments remain to be done within the Premises, or if interior finish, architectural details or similar work requested by Tenant remains incomplete. In addition, if in good faith Landlord is delayed or hindered in any construction (including punch list items) by any labor dispute, strike, lockout, fire, unavailability of material, labor or any other ordinary construction delay, severe weather, acts of God, restrictive governmental laws or regulations, riots, insurrection, war or other casualty or events of a similar nature beyond its reasonable control ("Force Majeure"), the date for the delivery of the Premises to Tenant "ready for occupancy" shall be extended for the period of delay caused by the Force Majeure or Tenant Delay (as defined below). If Landlord is delayed or hindered in construction (including punch list items) as a result of change orders or other requests by, or acts or omissions of, Tenant ("Tenant Delay"), the date for the delivery of the Premises to Tenant "ready for occupancy" shall be extended by the number of days of delay caused by Tenant Delay. The date Landlord delivers the Premises to Tenant "ready for occupancy" is herein referred to as the "Occupancy Date." Landlord shall not be subject to any liability for failure to deliver possession of the Premises to Tenant "ready for occupancy" on the Scheduled Occupancy Date and the validity of the Lease shall not be impaired by such failure. By occupying the Premises, Tenant will be deemed to have accepted the Premises and to have acknowledged that they are in the condition called for in this Lease, subject only

to "punch list" items (as the term "punch list" is customarily used in the construction industry in the area where the Building is located) identified by Tenant by written notice delivered to Landlord within thirty (30) days after the date Landlord tenders possession of the Premises to Tenant. Landlord agrees to use reasonable efforts to complete all punch list items within thirty (30) days after the timely delivery of the punch list.

3. **Term**

3.1 The initial term of this Lease (the "Initial Term" and together with any exercised Option Terms, the "Term") will commence (the "Commencement Date") on the earlier of: (i) the date Tenant takes possession of the Premises; (ii) the Occupancy Date; or (iii) the date the Occupancy Date would have occurred in the absence of Tenant Delay. Unless sooner terminated or extended in accordance with the terms hereof, the Lease will terminate the number of Lease Years and Months set forth in Section 1.10 after the Commencement Date. Lease Year means that period of 12 consecutive months beginning on the Commencement Date or, if the Commencement Date falls on a day other than the first day of any month, then beginning on the first day of the calendar month immediately following the Commencement Date and each 12-calendar-month period thereafter during the Term; provided that the first Lease Year shall include any partial calendar month between the Commencement Date and such first day, and the last Lease Year shall contain such period of time as there is from the beginning of the last Lease Year to the termination or expiration of this Lease. Upon request by Landlord, Tenant will execute a memorandum in order to confirm Commencement Date and the expiration date of the Initial Term.

3.2 Provided (i) Tenant is the Tenant originally named herein, (ii) Tenant actually occupies and operates its business in all of the Premises, and (iii) no event of default of the Tenant's obligations hereunder shall have occurred during the Term, Tenant shall have the right to renew and extend this Lease for ___ (__) additional terms of ____ (____) Lease Years (each an "Option Term" and collectively the "Option Terms"), from the expiration of the Initial Term. Tenant may exercise an Option Term, if at all, by the delivery to Landlord of a written notice of Tenant's election to renew not later than twelve (12) months prior to the expiration of the then existing Term together with Tenant's payment to Landlord of the cost of any capital expenditures and the interest thereon which has been deferred pursuant to Section 6.2. Upon delivery of such election the Lease shall be deemed renewed and extended for an Option Term on the same covenants, agreements, terms and conditions herein contained except that:

- (a) Landlord shall not be obligated to perform any work in the Premises in order to prepare or continue the use of same for Tenant's use.
- (b) The Annual Base Rent shall be the greater amount of the amount set forth in Exhibit A-2 or the then fair market value for rent for the Premises for each year of the Option Term as reasonably determined by Landlord within sixty (60) days after Tenant's delivery of the exercise notice.
- (c) Tenant shall have no further right of renewal after the ____ Option Term.

4. **Rent**

4.1 Tenant shall pay to Landlord the Annual Base Rent, as it may be adjusted pursuant to Sections 2.3-2.4 and 3.2. The Annual Base Rent shall be paid in Monthly Installments of Base Rent. In addition to the Annual Base Rent, Tenant shall pay as additional rent (the "Additional Rent") certain charges designated in this Lease. The Annual and Monthly Base Rent are sometimes generically referred herein as the "Base Rent," and the Base Rent and Additional Rent collectively the "Rent."

4.2 Tenant shall pay Landlord the first Monthly Installment of Base Rent simultaneously with the execution and delivery of this Lease by Tenant. All other Rent will be paid to the order of Landlord, in advance, except as expressly set forth in Section 11.3, without any abatement, setoffs or deductions, on the first day of each and every calendar month (the "Rent Day") at Landlord's Office, or at such other place as Landlord may designate in writing. In the event the Commencement Date is other than the first day of

a calendar month, the Rent for the partial first calendar month of the Term will be prorated on a daily basis based on the number of days in the month. Rent for such partial calendar month shall be paid on the Commencement Date. Any Rent or other sums, if any, payable by Tenant to Landlord under this Lease which are not paid within five (5) days after they are due, and any Rent or other sums received and accepted by Landlord more than five (5) days after they are due, will be subject to a late charge of five (5%) percent of the amount due. Such late charges will be due and payable as additional rent on or before the next Rent Day.

4.3 Landlord and Tenant acknowledge and agree that the Base Rent due hereunder together with any adjustments thereto made during the Term of this Lease shall be absolutely net of all costs, expenses, taxes (real and personal), assessments and charges of every kind and nature whatsoever relating to the ownership, occupancy or use of the Premises in excess of the Base Real Estate Taxes and Base Operating Expenses so that the rental together with any such adjustments constitute the minimum income realized by Landlord from the Premises in excess of the Base Real Estate Taxes and Base Operating Expenses. Tenant will indemnify and hold harmless Landlord from and against such costs, expenses and charges in excess of the Base Real Estate Taxes and Base Operating Expenses.

5. Taxes and Assessments

5.1 Commencing on ~~the Commencement Date and after the expiration of the first full Lease Year,~~ Tenant shall pay, as Additional Rent, its Proportionate Share of any increase in Real Estate Taxes (as hereinafter defined), which shall be computed by subtracting the Base Real Estate Taxes from the Real Estate Taxes for each calendar year (or portion thereof) of Tenant's Lease Term.

5.2 Real Estate Taxes shall mean real estate taxes, ad valorem taxes, assessments (general, special, ordinary or extraordinary), sewer rents, rates and charges, taxes based upon the receipt of rent (other than federal, state and local income taxes), and any other federal, state or local charge (general, special, ordinary or extraordinary) which may now or hereafter be imposed, levied or assessed against the Property or any part thereof. In the event that there shall be imposed a tax or assessment of any kind or nature upon, against or with respect to the Property or any part thereof or the rents payable by Tenant or with respect to the Landlord's ownership interest in the Property, which tax is assessed or imposed by way of substitution for or in addition to all or any part of the Real Estate Taxes, such tax shall be part of the Real Estate Taxes.

5.3 On each Rent Day during the Term, Tenant shall pay its Proportionate Share of any increase in Real Estate Taxes by depositing with Landlord an amount equal to one-twelfth (1/12th) of the estimated increase in Real Estate Taxes as reasonably determined by Landlord. Landlord reserves the right to adjust such estimates at any time Landlord deems appropriate. If the funds deposited with Landlord shall be insufficient to pay Tenant's Proportionate Share of the increase in Real Estate Taxes in full at least thirty (30) days prior to the date they become due, Tenant shall, immediately upon demand by Landlord, deposit with Landlord such Additional Rent as may be required by Landlord to enable it to make such payment. In the event the funds deposited with Landlord shall exceed the amount required for the payment of Tenant's Proportionate Share of the increase in Real Estate Taxes, the excess shall be credited by Landlord to the subsequent deposits required to be made by Tenant to pay future increases in Real Estate Taxes or refunded at the end of the Lease. Upon request, Landlord shall furnish Tenant with copies of paid bills for the Real Estate Taxes.

5.4 During the calendar years in which the Term begins and ends, Tenant's liability for its Proportionate Share of any increase in Real Estate Taxes for such year shall be subject to a pro rata adjustment based upon the total number of days in the calendar year falling within the Term.

5.5 In addition to payment of its Proportionate Share of ~~the any increase in~~ Real Estate Taxes, Tenant shall pay in full to the appropriate taxing authority, before delinquent, all municipal, county, and state taxes assessed, levied or imposed upon Tenant's leasehold interest and all furniture, fixtures, machinery, equipment, apparatus, systems and all other personal property of any kind located at, placed in or used in connection with the Premises or its operation.

6. **Expenses**

6.1 ~~Commencing on the Commencement Date~~ 5.3 On each Rent Day during the Term, Tenant shall pay, as Additional Rent, its Proportionate Share of any increase in Operating Expenses (as hereinafter defined), which shall be computed by subtracting the Base Operating Expenses from the Operating Expenses for each calendar year (or portion thereof) of Tenant's Lease Term.

6.2 Operating Expenses shall mean all costs and expenses of every kind and nature paid or incurred by Landlord in operating, equipping, policing, protecting, lighting, heating, cooling, insuring, repairing, replacing and maintaining that portion of the Property operated, repaired and maintained by Landlord, and the personal and real property used in conjunction therewith, excluding, however, all charges for electricity or utilities used or consumed by Tenant upon the Premises which ~~shall be~~ are paid by Tenant pursuant to Section 9 hereof. Operating Expenses shall include, without limitation, those expenses paid or incurred by Landlord for maintaining, operating and repairing the Property, the cost of electricity for the common areas and related systems, the cost of steam, water, fuel, heating, lighting, air conditioning, window cleaning, insurance, including, but not limited to, fire, extended coverage, liability, workmen's compensation, elevator, boiler and machinery, war risk, or any other insurance carried in good faith by Landlord and applicable to the Property; painting, uniforms, management fees (equal to 5% of the Rent, or if greater, as may be customary in the industry), supplies, sundries, sales or use taxes on supplies or services; janitorial expenses; cost of wages and salaries of all persons engaged in the operation, maintenance and repair of the Property, and so-called fringe benefits, including social security taxes, unemployment insurance taxes, cost of providing coverage for health and disability benefits, cost of any pensions, hospitalization, welfare or retirement plans, group insurance plans, or any other similar or like expenses incurred under the provisions of any collective bargaining agreement, or any other similar or like expenses which Landlord pays or incurs to provide benefits for employees so engaged in the operation, maintenance and repair of the Property; the costs of depreciation and maintenance for movable equipment and personal property; the cost of the maintenance and repair of the HVAC systems, or of major components thereof; the cost of any capital expenditures (structural or otherwise) to the extent described below; the cost of repairs or other activities arising out of the presence of hazardous substances; the charges of any independent contractor who, under contract with Landlord or its representatives, does any of the work of operating, maintaining or repairing of the Property; legal and accounting expenses, including, but not limited to such expenses as relate to seeking or obtaining reductions in and refunds of Real Estate Taxes; and any other expenses or charges, whether or not previously mentioned, which in accordance with sound accounting and management principles would be considered as a cost or expense of maintaining, operating, or repairing the Property. If the Property is not fully rented during all or a portion of any calendar year, then Landlord shall make an appropriate adjustment of the Operating Expenses and Real Estate Taxes for such calendar year, employing sound accounting and management principles, to determine the amount of Operating Expenses and Real Estate Taxes that would have been paid or incurred by Landlord had the Property been fully occupied; and the amount so determined shall be deemed to have been the amount of Operating Expenses and Real Estate Taxes for such year. In addition, if Landlord determines in its reasonable judgment that some portion of Operating Expense or Real Estate Tax applies to only some portion of the Property or is partially allocable to the Premises or to other premises in the Building or other buildings or ~~projects~~ Property's, Landlord shall allocate such expense among such premises, buildings and ~~projects~~ Property's in accordance with sound accounting and management principles to determine the amount of Operating Expenses and Real Estate Taxes for the Premises and Property. With respect to capital expenditures, Tenant shall only be obligated to reimburse Landlord after the time the capital expenditure is made and a request for payment is delivered to Tenant in accordance with Sections 6.3 through 6.5 below, the entire cost of the capital expenditure if the useful life of the item reasonably determined by Landlord is equal or less than the unexpired Term (including any exercised Option Term but excluding any unexercised Option Term). If the useful life of the item is greater than the unexpired Term, Tenant shall reimburse Landlord for the cost of the expenditure which shall be determined by multiplying the costs by a fraction, the numerator of which is the unexpired Term and the denominator of which is the useful life of the item, each expressed in months. If after such partial payment, Tenant exercises an Option Term (if any), it shall contemporaneously therewith, pay Landlord for the remaining cost of the item together with interest thereon from the date of the capital expenditure(s) by Landlord to the date of payment by Tenant using the rate of interest designated by Landlord, which in all events, shall be a reasonable rate of

interest under the circumstances. The remaining cost of the capital expenditure shall be determined by multiplying the cost of the item by a fraction, the numerator of which is the number of months in the Option Term or if less, the number of months remaining in the useful life of the item, and the denominator of which is the number of months of the original useful life. At the time a request for payment is made, Landlord may offer Tenant the option to pay for the capital expenditure in installments amortized over the useful life thereof using the rate of interest designated by Landlord in the notice, which in all events, shall be a reasonable rate of interest under the circumstances.

6.3 On each Rent Day during the Term, Tenant shall pay its Proportionate Share of the increase in Operating Expenses by depositing with Landlord an amount equal to one-twelfth (1/12th) of the estimated increase in Operating Expenses, as reasonably determined by Landlord. If the funds deposited with Landlord shall be insufficient to pay Tenant's Proportionate Share of the increase in Operating Expenses in full, Tenant shall, immediately upon demand by Landlord, deposit with Landlord such Additional Rent as may be required by Landlord to enable it to make such payment. In the event the funds deposited with Landlord shall exceed the amount required for the payment of Tenant's Proportionate Share of the increase in Operating Expenses, the excess shall be credited by Landlord to the subsequent deposits required to be made by Tenant to pay future Operating Expenses or refunded at the end of the Lease.

6.4 At the time of any adjustment, Landlord shall furnish to Tenant evidence of the increase in Operating Expenses reasonably sufficient to sustain the adjustment. If Tenant is not satisfied with Landlord's determination of the amount of such Additional Rent, Tenant shall pay the Additional Rent, but Tenant shall have the right to require Landlord to furnish to Tenant a detailed statement of the basis for such increase. As soon as reasonable after the expiration of each calendar year, Landlord will furnish the Tenant a statement showing the following in reasonable details:

- (a) Operating Expenses and Real Estate Taxes for the expired calendar year.
- (b) Base Operating Expenses and Base Estate Taxes.
- (c) Estimated increase in Operating Expenses and Real Estate Taxes during the new calendar year

6.5 In addition to payment of its Proportionate Share of any increase in Operating Expenses, Tenant shall pay certain Special Utility Items in full as Additional Rent on or before the next Rent Day following notification of the expense by Landlord. Special Utility Items shall be those items of cost or expense referenced in Section 9.2 of this Lease.

7. Use of Premises

7.1 Tenant shall use and occupy the Premises during the continuance of this Lease solely for the Designated Use set forth in Section 1.16 hereof, and for no other purpose or purposes without the prior written consent of Landlord. No other person or entity other than Tenant (or a permitted subtenant under Section 14.1) shall occupy all or any portion of the Premises without the prior written consent of Landlord. In no event shall Tenant use the Premises or the Property in any manner which, in Landlord's judgment, is or may be inconsistent with the operation of a similar building in the greater _____, Michigan area. Except for the certificate of occupancy for the Premises, which shall be obtained by Landlord at its expense, if any governmental license or permit shall be required for the proper and 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 or the Property, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by Landlord. Tenant, at Tenant's expense, shall, at all times, comply with the requirements of each such license and permit. Tenant agrees to indemnify, defend and hold harmless Landlord, its licensees, invitees, agents, employees and contractors, from any loss, damage, claim, liability or expense, (including attorney fees) of any kind, type or description, including without limitation, claims for bodily injury, disease, death, property damage or environmental clean-up arising directly or indirectly out of or in connection with Tenant's failure to obtain or comply with any such license or permit.

7.2 Tenant shall not use or permit any person to use the Premises in any manner which violates or would create liability under federal, state or local laws, ordinances, rules, regulations or policies. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous or flammable substances or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Property any such materials or substances except to use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and the regulations adopted under these acts. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous or flammable substances or materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease against any liability resulting from any release of hazardous or flammable substances or materials on the Premises during the Term of this Lease, or caused by Tenant or persons acting under Tenant. Landlord shall indemnify Tenant against any liability resulting from any release of hazardous or flammable substances or materials on the Property on or before the date of this Lease, or by Landlord or persons acting on Landlord's behalf on or after the date of this Lease.

7.3 Tenant will not place any load upon any floor of the Premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Landlord reserves the right to prescribe the weight and position of all safes, machines and equipment. Such items shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient in Landlord's judgment, to absorb and prevent vibration, noise and annoyance. If at any time any windows of the Premises are temporarily or permanently closed, darkened or covered for any reason whatsoever, including Landlord's own acts, Landlord shall not be liable for any damage Tenant may sustain thereby, and the Landlord shall not be considered a default under this Lease and Tenant shall not be entitled to any compensation therefor nor abatement of any Base Rent or any other sums due hereunder, nor shall the same release Tenant from its obligations hereunder nor constitute an eviction, construction, actual or otherwise.

7.4 Tenant shall not do or permit to be done any act which will invalidate or be in conflict with any insurance policy carried by or for the benefit of Landlord with respect to the Property or which might subject Landlord to any liability, nor shall Tenant keep anything in the Premises except as permitted by the fire department, board of fire underwriters, or other authority having jurisdiction, and then only in such manner as not to increase the insurance rate for the Property or Landlord, nor use the Property in a manner which will increase the insurance rate for the Property or Landlord.

7.5 Tenant shall abide by the commercially reasonable building and parking area rules and regulations and any reasonable modifications or amendments by Landlord (the "Rules and Regulations"). The initial set of Rules and Regulations is attached as Exhibit "D".

8. **Quiet Enjoyment**

8.1 Tenant's quiet enjoyment of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord, unless Tenant defaults in the performance of the covenants of this Lease.

9. **Services**

9.1 Tenant shall directly pay or pay Landlord (at Landlord's option), as Additional Rent, all charges made against the Premises for all gas and electricity used upon or furnished to the Premises (including electricity used or consumed for HVAC and related purposes) as and when due during the Term

of this Lease. In no event shall Landlord be required to furnish water in excess of that required for ordinary lavatory and kitchen purposes.

9.2 If Tenant uses or consumes water for any other purpose or in unusual quantities (of which fact Landlord shall be the sole judge) Landlord may install a water meter at Tenant's expense which shall be maintained at Tenant's expense, to register the water consumption of the Premises, and Tenant shall pay for water consumed at the Premises. Whenever machines or equipment which generate heat are used in the Premises which affect the temperature otherwise maintained by the air conditioning system, Landlord reserves the right to install supplementary air conditioning equipment in the Premises, and the cost of the equipment, and the expense of its operation and maintenance shall be paid by Tenant. To the extent electricity is not separately metered for the Premises, Landlord shall make a determination of Tenant's usage of electricity supplied to the Building and Tenant agrees to pay for such electricity within thirty (30) days after request therefor from Landlord. Whether or not metered, Tenant shall pay for the electricity at the secondary rate (general service rate) established by the applicable governmental authority or the applicable utility company providing the electricity. Tenant shall also pay for fluorescent or other electric light bulbs or tubes and electric equipment used in the Premises.

9.3 Any service which Landlord is required to furnish pursuant to this Lease may, at Landlord's option, be furnished, in whole or in part, by the managing agent of the Building or by one or more independent contractors. Landlord reserves the right to require Tenant to enter into agreements with such independent contractors in form and content approved by Landlord.

9.4 Landlord shall not be liable for interruption in services caused by riots, strike, labor disputes, accidents or other cause beyond the control of Landlord, or for stoppages or interruptions of any services for the purpose of making necessary repairs or improvements. Failure, interruption, or delay in furnishing services shall not be construed as an act of eviction against the Tenant by the Landlord nor shall such failure, interruption or delay in any way operate as a release from the prompt and punctual performance by the Tenant of the covenants of this Lease.

10. **Insurance**

10.1 Tenant shall maintain in full force and effect policies of broad form general liability insurance providing coverage for the Premises, with policy limits of not less than \$2,000,000.00 per person and \$2,000,000.00 per occurrence and general aggregate, exclusive of defense costs, and without any provision for a deductible or self insured retention in excess of \$50,000.00. In the event any policy or policies of insurance which Tenant is required to maintain shall be written on a "claims made" insurance form, each policy shall have a "retroactive date" which is not later than the Commencement Date. Furthermore, should insurance coverage be 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 in the State of Michigan on the Termination Date.

10.2 Tenant shall maintain in full force and effect through the Term of this Lease policies of all risk property insurance covering its personal property, fixtures and improvements to their full replacement cost, without deduction for depreciation. Such insurance shall provide the broadest coverage then available, including coverage for loss of profits or business income or reimbursement for extra expense incurred as the result of damage or destruction to all or a part of the Premises.

10.3 All insurance policies which Tenant is required to maintain shall, in addition to any of the foregoing: be written in carriers authorized to write such business in The State of Michigan and having an A.M. Best & Co. rating of no less than A-8; name Landlord as additional named insured (only on liability insurance); be endorsed to provide that they shall not be canceled or changed materially in any manner adverse to Landlord for any reason except on thirty (30) days prior written notice to Landlord; and provide coverage to Landlord whether or not the event or occurrence giving rise to the claim is alleged to have been caused in whole or in part by the acts or omissions or negligence of the Tenant or Landlord. Certificates of insurance evidencing the coverage and endorsements required hereby shall be delivered by Tenant to Landlord prior to the date thereof. Tenant shall deliver certificates of renewal for such policies to Landlord

not less than thirty (30) days prior to the expiration dates thereof. Insurance provided by Tenant may be in the form of blanket insurance policies covering properties in addition to the Property or entities in addition to Tenant; provided, however, that any overall aggregate limit of liability applicable to Landlord or the Property shall be independent from any overall or annual aggregate applicable to other entities or properties.

10.4 If Tenant fails to provide any of the insurance or subsequently fails to maintain the insurance in accordance with the requirements of this Lease, Landlord may, but is not required to, procure or renew such insurance to protect its own interests only, and any amounts paid by Landlord for such insurance will be Additional Rent due and payable on or before the next Rent Day. Landlord and Tenant agree that any insurance acquired by Landlord shall not cover any interest or liability of Tenant.

10.5 Landlord and Tenant will require their property insurance carriers to include in their policies a clause or 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 or damage to property caused by or resulting from risks insured against under property insurance for loss, damage or destruction by fire or for other casualty.

10.6 Tenant shall maintain in full force and effect policies of workers' compensation and employers liability insurance which shall provide for statutory workers' compensation benefits and employers liability limits of not less than \$1,000,000 per occurrence.

11. Damage By Fire Or Other Casualty

11.1 In the event of damage or destruction by fire or other casualty ("Destruction") to the Premises or the Property, Landlord shall commence reasonably promptly, and with reasonable due diligence continue, to restore same to substantially the same condition as existed immediately preceding such casualty, except as otherwise provided in this Section 11.1. Landlord shall have the right to make changes that do not materially change the Premises or access thereto. Landlord shall not be obligated to expend for such repair or restoration an amount in excess of the insurance proceeds plus deductibles and self-insured amounts made available to Landlord for such purpose.

If, as a result of any Destruction, (i) more than 50% of the Building shall be damaged or destroyed, or (ii) Landlord reasonably determines that the entire Building must be shut-down for restoration and that such shut-down will continue more than 270 days from the date of the Destruction, or (iii) any material damage or destruction occurs to the Premises during the last twelve (12) months of the then current Term (including any exercised Option Term), then Landlord shall have the right, but not the obligation, to terminate, notice to be given within thirty (30) days after the date of the Destruction. Upon the fifteenth (15th) day after such termination notice is given, Tenant shall vacate and surrender the Premises to Landlord, without prejudice, however, to Landlord's rights and remedies against Tenant under the Lease prior to termination and any Rent owing shall be paid.

11.2 Tenant shall give immediate notice to Landlord of fire or other casualty at the Premises. If Landlord repairs or restores the Premises, Tenant at its own cost and expense shall promptly repair or replace its trade fixtures, furnishings, equipment, personal property and leasehold improvements in a manner and to a condition equal to that existing prior to the occurrence of the damage or casualty.

11.3 If the fire, casualty, repairing or rebuilding of the Premises shall render the Premises untenantable, a proportionate reduction of the Annual Base Rent and all other charges, due thereafter shall be abated from the date of the occurrence of such casualty until the date Landlord completes the repairs to the Premises or, in the event Landlord or Tenant elects to terminate this Lease, until the date of termination. Such reduction shall be computed on the basis of the ratio which the floor area of the Premises rendered untenantable bears to the Rentable Floor Area of Premises. Landlord shall not be liable for any delay in the repair or restoration of the Property which is not reasonably within its control.

11.4 Landlord and Tenant shall look first to any insurance in its favor, including that which the party is required to carry by this Lease, before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance, or the insurance required by this Lease, if in force, would have paid the claim, Landlord and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise.

11.5 Tenant acknowledges that Landlord is not required to carry insurance on Tenant's personal property, fixtures, and improvements, and agrees that Landlord will not be obligated to repair any damage or replace the same. However, subject to reimbursement by Tenant to the extent set forth elsewhere in this Lease, Landlord may insure, repair, restore and replace the Property, including the Tenant Improvements, if any, constructed in accordance with Section 2 of this Lease.

12. **Repairs; Alterations**

12.1 Subject to reimbursement in accordance with Section 6, Landlord, at Tenant's expense, will keep and maintain the Property and every part thereof including, but not limited to, the roof, exterior and interior walls, the building slab and foundation, the parking areas, the heating, air conditioning and utility systems, and landscaped and common areas in good repair, ordinary wear and tear and casualty damage excepted. Further, Landlord, at Tenant's expenses, will keep and maintain the Premises and every part thereof including, but not limited to, the ceiling interior walls, floors, and the heating, air conditioning and utility systems, in good repair, ordinary wear and tear and casualty damage excepted. Tenant shall also bear the expense of maintaining the Premises in a clean and safe condition in accord with all federal, state and local laws, ordinances and regulations, and the directions of any health officer, fire marshal, building inspector, or other governmental agency having jurisdiction over the Premises and in a manner consistent with the operation of other similar Class A buildings in the greater _____i, Michigan area; however Landlord shall be responsible for performing the work necessary to comply with such laws, ordinances and regulations, at Tenant's expense. Tenant shall promptly notify Landlord of the need for such work. If Tenant fails to perform any of the work required to be performed by it under this Section 12.1 within ten (10) days after the delivery of written notice thereof by Landlord, Landlord, at Tenant's expense may perform such work and the cost thereof shall be deemed additional rent which shall be due and payable within ten (10) days after written demand for such sums by Landlord.

12.2 Landlord, at Tenant's expense, will repair all damage to the Property caused by the moving of Tenant's fixtures or personal property, or through the negligence or willful acts of Tenant, its agents or invitees. As between Landlord and Tenant, Tenant shall be responsible for the expense of any alterations, changes or improvements to the Premises which may be necessary in order for the Premises and Tenant's use thereof to be in compliance with the Americans with Disabilities Act of 1990 and its state and local counterparts or equivalents (collectively, the "Disabilities Act") during the term of this Lease, but Landlord shall be responsible for such compliance as of the commencement of the term.

12.3 Subject to reimbursement in accordance with Section 6, Landlord will make all other repairs to the Property, its heating, air conditioning and electrical systems, and the common areas, including parking areas. Tenant shall promptly notify Landlord of the need for repair.

12.4 All repairs by Tenant must be approved by Landlord prior to commencement thereof. There shall be no reduction in Rent nor shall there be any liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant, or others making or failing to make any repairs, alterations, additions or improvements to any portion of the Property.

12.5 Tenant shall not make any renovations, alterations, additions or improvements to the Premises without Landlord's prior written consent. All plans and specifications for such renovations, alterations, additions or improvements shall be approved by Landlord prior to commencement of any work. Landlord's approval of the plans, specifications and working drawings for Tenant's alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with laws, rules and regulations of governmental agencies or authorities, including but not limited to the Americans with Disabilities

Act, as amended. All such work shall be performed by Landlord and Tenant shall pay all Construction Costs in connection therewith. All renovations, alterations, additions or improvements made by Tenant upon the Premises, except for movable office furniture and movable trade fixtures installed at the expense of Tenant, shall be and shall remain the property of Landlord, and shall be surrendered with the Premises at the expiration or termination of this Lease, without molestation or injury. In addition, Landlord may designate by written notice to Tenant at any time, the alterations, additions, improvements and fixtures made by or for Tenant which Landlord shall have the right to require Tenant to remove prior to, or at Landlord's option within six (6) months after, the expiration or termination of this Lease. If Landlord exercises this option by the delivery of written notice thereof to Tenant, then the designated items shall be removed by Tenant and Tenant shall promptly repair any damage to the Premises and restore the Premises to the condition it was prior to the alteration, addition, improvement or fixture installation.

12.6 Tenant shall keep the Premises free of liens for work claimed to have been done for, or materials furnished to, Tenant and will hold Landlord harmless from any liens which may be placed on the Premises except those attributable to the acts of Landlord. In the event a construction or other lien shall be filed against the Property or Tenant's interest as a result of any work undertaken by Tenant, or as a result of any repairs or alterations made by Tenant, or any other act of Tenant, Tenant shall, within ten (10) days after receiving notice of the lien, discharge the lien. In the event Tenant shall fail to discharge such lien, Landlord shall have the right, but not the obligation, to procure such discharge, and Tenant shall pay the cost of procuring such discharge to Landlord as Additional Rent upon the next Rent Day.

12.7 There shall be no reduction in Rent nor shall there be any liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant, or others making or failing to make any repairs, alterations, additions or improvements to any portion of the Property.

13. **Eminent Domain**

13.1 If fifty (50%) percent or more of the leasable floor area of the Building or any material portion of the Premises is condemned or taken in any manner, including without limitation any conveyance in lieu of condemnation, for any public or quasi-public use ("Taken"), the Term of this Lease shall cease and terminate as of the date title is vested in the condemning authority.

13.2 If less than fifty (50%) percent of the leasable floor area of the Building or if any material portion of the Premises is Taken, Landlord shall have the right, but not the obligation, to terminate this Lease by giving written notice within thirty (30) days after being notified of such taking, and in such event, termination shall be effective upon the date designated by Landlord in the notice of termination.

13.3 The whole of any award or compensation for any portion of the Premises Taken, including the value of Tenant's leasehold interest under the Lease, shall be solely the property of Landlord. Tenant is not precluded from seeking, at its own expense, an award from the condemning authority for loss of the value of any trade fixtures or other personal property in the Premises, or moving expenses, provided that the award for such claim or claims shall not diminish the award made to Landlord.

13.4 In the event the Premises or any portion are Taken, Tenant shall have no claim against Landlord for the value of any unexpired Term of this Lease or otherwise. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the Annual Base Rent thereafter shall be partially reduced. The reduction shall be computed on the basis of the ratio which the floor area of that portion of the Premises Taken bears to the rentable floor area of Premises.

14. **Assignment Or Subletting**

14.1 Tenant shall not offer to assign or sublet this Lease, and Tenant shall not assign this Lease or sublet the Premises, without the prior written consent of Landlord and any mortgagee of the Property. Any attempted assignment or subletting without consent shall be invalid. In the event of any permitted assignment or subletting, Tenant shall remain fully responsible and liable for payment of Rent and performance of all of Tenant's other covenants under this Lease. No assignment or subletting shall be

permitted or be binding upon Landlord unless the assignee or subtenant shall deliver to Landlord an instrument acceptable to Landlord (in recordable form, if requested) containing, among other things, an agreement of assumption of all of Tenant's obligations under this Lease accruing thereafter for the space so sublet or assigned, and Landlord shall have received an instrument signed by each Guarantor, if any, in a form reasonably acceptable to Landlord containing, among other things, each Guarantor's acknowledgement that such Guarantor remains liable under the Guaranty for the obligations under the Lease as assigned or sublet. Tenant agrees to pay all costs and expenses incurred by Landlord in connection with Landlord's review of any proposed assignment or subletting (including charges for the time of Landlord's internal personnel), and Landlord may require that Tenant deliver a deposit with Landlord prior to Landlord's review of the proposed assignment or subletting. Upon the occurrence of an event of default, if all or any part of the Premises are then assigned or sublet, Landlord, in addition to any other remedies shall have the right, but not the obligation, to collect directly from the assignee or subtenant all Rent becoming due to Landlord. Any collection by Landlord from the assignee or subtenant shall not be construed as a waiver or release of Tenant from the further performance of the covenants of this Lease or the making of a new lease with such assignee or subtenant.

14.2 Landlord may, in its sole discretion, refuse to give its consent to any proposed assignment or subletting for any reason, including, but not limited to, the financial condition, creditworthiness or business reputation of the proposed assignee or subtenant, the prevailing market or quoted rental rates for space in the Building or other comparable buildings, and the proposed use of the Premises by, or business of, the proposed assignee or subtenant. In addition, in lieu of giving its consent, if the proposed subletting is for substantially all of the Premises or in the event Tenant proposed to assign the Lease, Landlord may, at its option, within thirty (30) days after receiving notice of the proposal, terminate this Lease by giving Tenant thirty (30) days written notice of termination, whereupon each party shall be released from any further obligations and liability hereunder.

14.3 The term "assign," as used herein, shall include (1) any merger, consolidation, voluntary or involuntary transfer by operation of law or otherwise, (2) sale, transfer or creation of stock, partnership, membership or other equity interest by which an aggregate of more than 50% of Tenant's equity interest shall be vested in a party or parties who are not stockholders as of the Lease Date.

14.4 In the event Tenant shall sublet all or a portion of the Premises or assign this Lease, all of the sums of money or other economic consideration received by Tenant or its affiliates, directly or indirectly, as a result of such subletting or assignment, whether denominated as rent or otherwise, which exceed in the aggregate 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 rent under this Lease without effecting or reducing any other obligation of Tenant hereunder.

15. Access to the Premises

15.1 Tenant shall permit, and Landlord its representatives, agents and contractors shall have the right, to enter the Premises at all reasonable times for the purposes of (i) inspecting the Premises or the Building, (ii) maintaining the Premises or the Building, (iii) making repairs, alterations or additions to the Premises or the Building and improvements on the land where the Building is situated, or (v) performing any obligations of the Landlord under the Lease. Landlord may show the Premises to prospective purchasers, mortgagees and tenants and may display about the Premises signs advertising the availability of the Premises.

16. Notice

16.1 All bills, notices, statements, communications, or demands (collectively the "Notices") required under this Lease must be in writing. Any Notices from Landlord to Tenant will be deemed to have been duly and sufficiently given on the date delivered if a copy has been personally delivered, on the date sent if sent via telecopy or electronic mail, two (2) business days after they have been mailed by United States mail, postage prepaid, or one (1) business day after they have been sent via overnight courier service to Tenant at the address of the Premises or at such other address as Tenant may designate in writing. Any

Notice from Tenant to Landlord will be deemed to have been duly and sufficiently given if delivered to Landlord in the same manner as provided above at the Landlord's Office or at such other address as Landlord may designate in writing.

17. **Breach, Re-Entry, Termination**

17.1 Each of the following shall be deemed an event of default: (i) Tenant's failure to make payment of Rent when due as provided in this Lease; or (ii) Tenant's failure to perform any of the covenants of this Lease; or (iii) Tenant's violation of the Rules and Regulations; or (iv) if Tenant or another person shall file a petition for relief for Tenant under the bankruptcy laws, or shall make an assignment for the benefit of creditors for Tenant, or if a receiver of any property of the Tenant be appointed in any action, suit or proceeding by or against Tenant, or if Tenant shall admit to any creditor or to Landlord that it is insolvent, or if the interest of Tenant in the Premises shall be sold under execution or other legal process, or if Tenant shall abandon the Premises.

17.2 Upon the occurrence of an event of default, Landlord shall have the right to terminate the Lease and shall be entitled to possession of the Premises. Landlord may make its election to terminate known to Tenant by delivery of a notice of termination. Such termination shall be immediately effective and Landlord shall be entitled to forthwith commence an action in summary proceedings to recover possession of the premises. Anything contained in this Lease to the contrary notwithstanding, on the occurrence of an event of default, the Landlord shall not exercise any right or remedy under any provision of this Lease or applicable law unless and until: (a) the Landlord has given written notice thereof to the Tenant, and (b) the Tenant has failed, (i) if such default consists of a failure to pay money, to pay all such money within five (5) days after receipt of such notice, or (ii) in the event of default consists of something other than the failure to pay money to fully cure such event of default within fifteen (15) days after receipt of such notice or, if such default cannot be cured within fifteen (15) days and Tenant commences to cure the same within fifteen (15) days and to diligently thereafter pursue curing such default, to fully cure such event of default within thirty (30) days. In the event Landlord has sent three (3) or more notices of default to Tenant with any twelve (12) consecutive calendar months, Landlord shall have no further obligation to give Tenant written notice of any further default or to grant Tenant any opportunity to cure the same, except as otherwise provided by law. Except as set forth in this Section, Tenant waives all notice in connection with such termination, including by way of illustration but not limitation notice of intent to terminate, demand for possession or payment, and notice of re-entry.

17.3 No receipt of money by the Landlord from the Tenant after the termination of this Lease shall reinstate, continue or extend the term, nor affect or waive any notice given by the Landlord to the Tenant prior to such receipt of money.

17.4 Should Landlord at any time terminate this Lease, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of any default, including the cost of recovering the Premises, reasonable attorneys' fees, and damages equal to the excess of lost Rent over the reasonable rental value of the Premises, discounted to the date of the default at the rate of 6% per annum, all of which amounts shall be immediately due and payable from Tenant to Landlord. All rent due on or before the default, and all rent discounted as set forth above, shall bear interest from the date of default until paid in full in accordance with Section 17.14 hereof. Additionally, if Landlord has incurred any costs or expenditures to fit the Premises to the needs of Tenant, Tenant agrees to reimburse Landlord such costs and expenditures, including for purposes of illustration but not by way of limitation, expenditures for interior partitions, floor coverings, special paint, plaster or any counter, cabinet, shelving, paneling or other special work done at the request of Tenant and not previously paid for by Tenant, plus the estimated cost to Landlord of restoring the Premises to their original standard condition.

17.5 If the event of default is for the nonpayment of Rent, Landlord may, as an alternative to terminating the Lease, serve a written demand for possession or payment. Unless paid in accordance with the demand for possession or payment, Landlord shall be entitled to possession of the Premises and Tenant shall have no further right to possession under the Lease. Tenant shall remain liable to Landlord for the payment of all Rent and other charges which Tenant has agreed to pay under this Lease throughout

the remainder of its Term. Should Landlord elect to re-enter, as herein provided, it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Premises, and relet said Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each such reletting all rentals and other sums received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorneys' fees and of costs of such alterations and repairs; third, to the payment of Rent and other charges due from Tenant, and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable. If such rentals and other sums received from such reletting during any month be insufficient to pay the Rent and other charges due from Tenant, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry by Landlord shall be construed as an election on its part to terminate this Lease. Notwithstanding any such reletting without termination, Landlord may at any time hereafter elect to terminate this Lease for such previous breach. Tenant waives any further right to possession following re-entry by Landlord.

17.6 Landlord's rights, remedies and benefits provided by this Lease shall be cumulative, and shall not be exclusive of any other rights, remedies and benefits allowed by law. Except as otherwise expressly provided herein, each agreement, covenant, representation, warranty and obligation made in this Lease Agreement by or on behalf of Tenant, or in any instruments delivered pursuant hereto or in connection herewith (including all indemnities and obligations to repair and restore the Premises) shall survive the expiration or termination of this Lease and the consummation of the transactions provided for herein.

17.7 The parties agree that they shall rely solely upon the terms of this Lease to govern their relationship. They further agree that reliance upon any representation, act or omission outside the terms of this Lease shall be deemed unreasonable, and shall not establish any rights or obligations on the part of either party.

17.8 One or more waivers of any covenant of the Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed a waiver of Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach of a covenant of this Lease shall be deemed to have been waived by Landlord, unless such waiver (i) is in writing signed by Landlord; (ii) identifies the breach, and (iii) expressly states that it is a waiver of the identified breach.

17.9 No payment by Tenant or receipt by Landlord of a lesser amount than the full amount of the Rent then due shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of the amount due or pursue any other remedy.

17.10 Notwithstanding anything to the contrary, Tenant acknowledges and agrees that its obligation to pay Rent under this Lease is an independent covenant, and that such obligation to pay is not subject to setoff or recoupment in connection with any action for summary proceedings to recover possession of the Premises.

17.11 Landlord and Tenant hereby waive trial by jury in connection with any action for summary proceedings to recover possession of the Premises. Further, Landlord and Tenant waive trial by jury in connection with any action arising out of or relating to the covenants of this Lease, with the exception of actions for personal injury or property damage.

17.12 In the event that Landlord is required to bring an action arising out of the covenants of this Lease, or in the event Landlord undertakes an action for summary proceedings to recover possession of

the Premises, Tenant agrees to pay Landlord such reasonable costs and attorneys' fees as Landlord may incur in connection with such action.

17.13 Tenant shall not be entitled to surrender the Premises to avoid liability for Rent due to the condition of the Premises or Property, nor shall any purported consensual surrender be effective unless expressly agreed to in a writing signed by the Landlord.

17.14 Any Rent payable by Tenant to Landlord under this Lease not received within five (5) days after the same is due will bear interest at a per annum rate equal to fifteen (15%) percent or, if lower, the highest rate permitted by law. Such interest will be due and payable as Additional Rent within ten (10) days after demand, and will accrue from the date that such rent or other sums are payable under the provisions of this Lease until actually paid by Tenant.

18. **Surrender Of Premises On Termination**

18.1 At the expiration (or earlier termination) of the term hereof, Tenant will surrender the Premises broom clean and free from any Hazardous Materials and in as good condition and repair as they were at the time Tenant took possession, reasonable wear and tear excepted, and promptly upon surrender will deliver all keys and building security cards for the Premises to Landlord at the place then fixed for the payment of rent. All costs and expenses incurred by Landlord in connection with repairing or restoring the Premises to the condition called for herein, together with the costs, if any, of removing any Hazardous Materials or Tenant's Facilities (as defined below) from the Premises, together with liquidated damages in an amount equal to the amount of minimum net rental plus all other charges which would have been payable by Tenant under this Lease if the term of this Lease had been extended for the period of time reasonably required for Landlord to repair or restore the Premises to the condition called for herein, shall be invoiced to Tenant and shall be payable as additional rental within five (5) days after receipt of invoice. The "Tenant Facilities" shall be the all additions or improvements installed by the Tenant upon the Premises and all signs, trade fixtures, additions, improvements, changes or modifications to the base Building whether constructed or installed by the Landlord or the Tenant and designated as part of the Tenant's property or facility by the Landlord. Landlord may designate by written notice to Tenant at any time, those Tenant Facilities which Landlord shall have the right to require Tenant to remove prior to, or at Landlord's option within six (6) months after, the expiration or termination of this Lease. If Landlord exercises this option by the delivery of written notice thereof to Tenant, then the designated Tenant Facilities shall be removed by Tenant and Tenant shall promptly repair any damage to the Premises and restore the Premises to the condition it was prior to the installation or construction of the designated Tenant Facilities. In the event that Tenant fails to thus restore the Premises as above provided, Landlord shall have the right to restore the Premises and shall be reimbursed for any reasonable costs or expenses incurred as a result thereof in accordance with the provisions of this Section.

19. **Performance By Landlord Of The Covenants Of Tenant**

19.1 If Tenant fails to pay any money or to perform any covenant required by this Lease after written notice and failure to cure, Landlord shall have the right, but not the obligation, to make such payment or perform such act. All sums so paid or incurred by Landlord and all incidental costs, including without limitation the cost of repair, maintenance or restoration of the Premises, shall be deemed Additional Rent and shall be due and payable on the next Rent Day.

20. **Subordination; Estoppel Certificates**

20.1 This Lease is subject and subordinate to the lien of any mortgage or mortgages, and all renewals, modifications, consolidations, replacements and extensions of any mortgage or mortgages, now or hereafter placed upon Landlord's interest in the Property. This clause shall be self-operative and no further instrument of subordination is necessary. Despite the foregoing, Tenant shall execute and deliver, within ten (10) days after requested, such further instrument or instruments confirming subordination as requested by Landlord.

20.2 In the event of subordination of this Lease, Landlord shall condition the subordination upon the customary agreement of the mortgagee or lessor that in the event of foreclosure or the assertion of any other rights under the mortgage or lease, this Lease and the rights of Tenant hereunder shall continue in effect and shall not be terminated or disturbed so long as Tenant continues to perform and is not in default under this Lease.

20.3 If any proceedings are brought for foreclosure, or in the event of the conveyance by deed in lieu of foreclosure, or in the event of the exercise of the power of sale, Tenant hereby attorns to, and shall execute any instrument in writing reasonably satisfactory to the new owner, attorning to such successor in interest and recognizing such successor as the Landlord under this Lease.

20.4 Tenant, within fifteen (15) days after request by Landlord, will execute and deliver to Landlord, an estoppel certificate, in a form acceptable to Landlord, certifying: (i) the Commencement Date and Termination Date; (ii) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified, stating the modifications; (iii) that the Lease is not in default, or listing any such defaults and that Tenant does not claim any rights of setoff, or listing such rights of setoff; (iv) the amount of Rent due as of the date of the certificate, the date to which the Rent has been paid in advance, and the amount of any Security Deposit or prepaid Rent; and (v) to such other matters as may be reasonably requested by Landlord. Any such certificate may be relied on by any prospective purchaser, mortgagee or lessor of the Property.

20.5 Tenant agrees to give any mortgagee(s), by registered mail, a copy of any such notice of default served upon the Landlord, provided that prior to such notice, Tenant has been notified, in writing (by way of Notice of Assignment of Rents and Leases, or otherwise), of the address of such mortgagee(s), Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the mortgagee(s) 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 necessary if within such thirty (30) days, any mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default, (including, but not limited to, commencement of foreclosure proceedings, if necessary, to effect such cure) in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

21. **Holding Over**

21.1 If Tenant remains in possession of the Premises after the Termination Date with or without the consent of Landlord, it will be deemed to be occupying the Premises as a tenant from month to month, subject to all the covenants of this Lease to the extent that they can be applied to a month-to-month tenancy, except that the Monthly Installment of Base Rent for each month will be one hundred fifty (150%) percent of the Holdover Base (as defined below) if Landlord has not executed a lease or letter of intent for the Premises with a tenant other than Tenant, and will be two hundred fifty (250%) percent of the Holdover Base if Landlord has executed a lease or letter of intent for the Premises with a tenant other than Tenant. The Holdover Base shall be greater of: (a) the regular Monthly Installment of Base Rent payable for the last month of the Term of this Lease; or (b) the then prevailing market rates of rent for the Property determined by Landlord in its sole and absolute discretion. These covenants shall not preclude Landlord from recovering damages as a result of Tenant's failure to timely deliver possession of the Premises, nor establish any right or option of extension or renewal on behalf of Tenant. . Tenant shall indemnify, defend, and hold Landlord harmless from all loss or liability (including, without limitation, any loss or liability resulted from any claim against Landlord made by any succeeding tenant) resulting from Tenant's failure to timely surrender the Premises to Landlord and losses to Landlord due to lost opportunities to lease the Premises to succeeding tenants

22. **Security Deposit**

22.1 Tenant has deposited the amount set forth in Section 1.15 (Security Deposit) with Landlord to secure Tenant's performance of its Lease obligations. If Tenant defaults Landlord may, without prejudice to Landlord's other remedies and without notice to Tenant, apply part or all of the Security Deposit to cure

Tenant's default. If Landlord so uses part or all of the Security Deposit, then Tenant shall within ten (10) days after written demand, pay Landlord the amount used to restore the Security Deposit to its original amount. Landlord shall not be obligated to keep the Security Deposit as a separate fund, but may mix the said security with its own funds. Any part of the Security Deposit not used by Landlord as permitted by this paragraph shall be returned to Tenant, without interest, within thirty (30) days after the Lease ends. If Landlord sells the Building and transfers the Security Deposit to the purchaser, Landlord shall be relieved of any liability for the Security Deposit. In addition, Tenant agrees that any mortgagee, mortgagee in possession or other successor in title shall have no liability or obligation to return or otherwise account for any Security Deposit to Tenant unless the Security Deposit has been actually received by such person as a Security Deposit for Tenant's performance under this Lease.

23. Indemnification

23.1 Tenant shall, at its expense, indemnify and defend Landlord, its licensees, invitees, agents, employees, servants, and contractors, from any loss, damage, claim, liability or expense, (including attorney fees) of any kind, type or description, including without limitation, claims for bodily injury, disease, death, property damage or environmental clean-up arising directly or indirectly out of or in connection with the condition of the Premises during the Term of the Lease, the use or misuse thereof by Tenant or any other person, during the Term of the Lease, the acts or omissions of Tenant, its servants, agents, employees or contractors during the Term of the Lease, the failure of Tenant to comply with any covenant of this Lease, or any other event on or relating to the Premises, whatever the cause during the Term of the Lease.

24. Definition Of Landlord; Landlord's Liability

24.1 The term "Landlord" as used in this Lease is limited to mean and include only the owner or owners of the Premises at the time in question, and in the event of any sale or transfer of Landlord's interests in the Property, the Landlord herein named (and in case of any subsequent transfers or conveyances the then grantor) will automatically be released of all liability for the performance of any covenants contained in this Lease, accruing after the date of transfer (provided same are assumed in writing by the transferee).

24.2 If Landlord fails to perform any covenant of this Lease, and as a consequence of such default Tenant recovers a money judgment against Landlord, such judgment may be satisfied only out of the proceeds of sale received upon execution of such judgment and levied against the interest of Landlord in the Property and out of the undistributed rents or undistributed sales proceeds from the Property, and Landlord shall not be liable, personally or otherwise, for any deficiency.

24.3 Landlord shall not be liable to Tenant for any acts or omissions of persons occupying the Building, nor for any damage to property entrusted to employees of the Building, nor resulting from any accident or occurrence in the parking area, nor for loss or damage to any property by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature.

25. Parking

25.1 Tenant shall be entitled to use its proportionate share of the common parking areas from time to time provided at the Building. Landlord shall have the right to provide that parking in the Property is regulated either by parking stickers, gates and access cards or other means reasonably employed by Landlord, and Tenant agrees to comply with any such system. Tenant further agrees to be bound by all parking regulations in effect on the Property from time to time. Notwithstanding anything contained herein to the contrary, and Landlord shall have the right to designate other parking spaces in the parking lot for the exclusive use of others. Tenant shall be responsible for the observance of these provisions by Tenant's employees, agents, contractors and invitees.

26. Signs

26.1 Subject to the approval of the City of _____, Landlord shall place Tenant's name on the exterior monument sign located on the _____ side of the Building, together with the names of other tenants and occupants of the Building selected by Landlord ("Tenant's Sign Rights"). The cost of the design, construction and manufacture of Tenant's sign plate together with Tenant's proportionate share (as described below) of the cost of designing and constructing the monument sign shall be part of the Tenant Improvement Allowance. Thereafter, Tenant's name plate shall be maintained, repaired and removed by Landlord but at Tenant's sole cost and expense. In addition, Tenant shall pay or reimburse Landlord for Tenant's share of the cost of operating, maintaining, repairing and replacing the monument sign. Tenant's share shall be a fraction, numerator of which is the size of its name plate and the denominator of which is the size of all name plates on the monument sign. Except for the monument sign, no signs, lighting, lettering, pictures, notices, advertisements, shades, awnings or decorations will be displayed, used or installed by Tenant except as approved in writing by Landlord, which approval shall not be unreasonably withheld. All such materials displayed in and about the Premises will be such only as to advertise the business carried on upon the Premises and Landlord will control the location, character and size thereof. Tenant shall not cause or permit to be caused any advertising materials or methods which are reasonably objectionable to Landlord or to other tenants of the Building, including without limiting the generality of the foregoing: loudspeakers, mechanical or moving display devices, unusually bright or flashing lights and similar devices the effect of which may be seen or heard from outside the Premises. Tenant's Sign Rights shall terminate and its signs shall be removed if: (i) Tenant is not the Tenant originally named herein, (ii) Tenant fails to actually occupy and operate its business in all of the Premises, (iii) if any event of default of the Tenant's obligations hereunder shall have occurred during the Term or (iv) the Lease expires or is otherwise terminated.

27. **General**

27.1 The Lease can be modified or amended only by a written agreement signed by the Landlord and Tenant. Landlord may unilaterally amend the Rules and Regulations by giving Tenant thirty (30) days prior written notice of such modification or amendment, provided the amended Rules and Regulations are uniform and commercially reasonable.

27.2 Time is of the essence in this Lease with respect to the performance of all covenants.

27.3 There are no representations with respect to the condition of the Property, rents, leases, Operating Expenses, Real Estate Taxes or any other matter related to the Premises except as expressly set forth in this Lease, and no rights, easements or licenses are acquired by Tenant by implication or otherwise.

27.4 Landlord reserves the right to relocate Tenant in other comparable space in the Property or another comparable building in the corporate park where the Building is located at any time before or after the Commencement Date, upon not less than sixty (60) days prior written notice to Tenant. Landlord shall pay the reasonable cost of moving Tenant to new space. If Tenant does not wish to accept such relocation, Tenant may object thereto by written notice to Landlord within ten (10) days after the notice from Landlord. In the event Tenant fails to object within such ten (10) day period, Tenant shall be deemed to have accepted the relocation. In the event Tenant so objects, Landlord may rescind the notice of intention to relocate Tenant or may reaffirm said intention, in which event Tenant may terminate this Lease by written notice to Landlord within five (5) days after the affirmation notice from Landlord. In the event Tenant fails to notify Landlord of its termination within such five (5) day period, it shall be deemed to have accepted the relocation. If Tenant terminates this Lease pursuant this paragraph, Tenant must vacate the Premises within thirty (30) days following Tenant's notice to Landlord of termination.

27.5 All questions with respect to the construction of this Lease shall be determined in accord with the laws of the State of Michigan. Except for the terms otherwise defined herein, the language in all parts of this Lease shall be construed, in all cases, according to its plain meaning. The parties acknowledge that each party and its counsel have reviewed this Lease, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Lease or any document executed in connection herewith. The division of this Lease

into articles, sections, subsections, rider and exhibits is for the convenience of reference only and shall not affect the interpretation or construction of this Lease.

27.6 References in this Lease to persons, entities and items have been generalized. Therefore, reference to a single person, entity or item will also mean more than one person, entity or thing whenever such usage is appropriate (for example, "Tenant" may include, if appropriate, a group of persons acting as a single entity, or as tenants-in-common). Similarly, pronouns of any gender should be considered interchangeable with pronouns of other genders.

27.7 This Lease shall be binding on successors and assigns.

27.8 Tenant, and each person executing this Lease on behalf of Tenant, hereby warrant and represent to Landlord that Tenant is validly organized and existing and authorized to do business under the laws of the State of Michigan, that the Tenant has full power and lawful authority to enter into this Lease, and that the execution of this Lease by such individual is legally binding upon the Tenant in accordance with its terms. Landlord, and each person executing this Lease on behalf of Landlord, hereby warrant and represent to Tenant that Landlord is validly organized and existing and authorized to do business under the laws of the State of Michigan, that Landlord has full power and lawful authority to enter into this Lease, and that the execution of this Lease by such individual is legally binding on the Landlord in accordance with its terms. Annually and at any other time reasonably requested by Landlord, Tenant shall promptly furnish Landlord (and in any event within fifteen (15) days after Landlord's request) financial statements (including balance sheets, income statements, statements of cash flows, statements of equity and all accompanying notes) reflecting Tenant's, Guarantor's and each subtenant's and other occupant's current financial condition. All such financial statements shall be in such form and contain such detail as Landlord shall reasonably request.

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

27.10 Except _____ (the "Broker") whose commission shall be paid by Landlord pursuant to the terms of a separate agreement, Landlord represents and warrants to Tenant, that there are no claims for brokerage commissions or finder's fees in connection with this Lease as a result of the contracts, contacts or actions of Landlord and Landlord agrees to indemnify Tenant and hold it harmless from all liabilities arising from an alleged agreement or act by Landlord (including, without limitation, the cost of counsel fees in connection therewith); such agreement to survive the termination of this Lease. Tenant represents and warrants to Landlord that there are no claims for brokerage commissions or finder's fees in connection with this Lease as a result of the contracts, contacts or actions of Tenant, and Tenant agrees to indemnify Landlord and hold it harmless from all liabilities arising from any such claim arising from an alleged agreement or act by Tenant (including, without limitation, the cost of counsel fees in connection therewith); such agreement to survive the termination of this Lease.

27.11 Tenant will not record this Lease or a memorandum hereof, and will not otherwise disclose the terms of this Lease to anyone other than its attorneys, accountants or employees who need to know of its contents in order to perform their duties for Tenant. Any other disclosure will be an event of default under the Lease. Tenant agrees that Landlord may issue a press release or other public announcement or place any sign on any portion of the Demised Premises indicating the entry of the Tenant into the Lease or possession of the Demised Premises by Tenant, and shall have the right to publish a "tombstone" or other promotional description of this Lease.

27.12 If the time for performance of any act or occurrence of any events falls on a day which is not a business day, the then the date for such performance or occurrence shall be postponed to the next business day. For purposes of this Lease, "business day" shall mean any day which is not a Saturday or Sunday or a day on which United States federal courts are not open for business.

27.13 The obligations of Tenant under this Lease have been guaranteed by the Guarantor named in Section 1.18 hereof in accordance with the terms of the Guaranty set forth below. Any default by Guarantor under the Guaranty shall constitute a default under this Lease

Landlord and Tenant have executed this Lease on the Lease Date.

LANDLORD:

_____, a Michigan _____

By: _____

Its: _____

TENANT:

_____, a Michigan _____

By: _____

Its: _____

GUARANTY

In consideration of Landlord's agreement to the terms and conditions contained in the that certain Lease dated _____, 20__ between _____ (the "Landlord") and _____, a _____ (the "Tenant"), _____, a _____ (the "Guarantor") does hereby unconditionally guaranty performance by Tenant of all of its obligations under the Lease and payment of rent and all other sums which may be due Landlord pursuant to the terms of the Lease (the "Obligations"). The Guarantor further promises to pay all of Landlord's costs and expenses, including attorney fees, incurred in enforcing the covenants and agreements of Tenant under the Lease or in enforcing this Guaranty, as well as all damages Landlord may suffer as a result of any default or breach under the Lease or this Guaranty. A separate action or actions may be brought and prosecuted against Guarantor, whether or not action is brought against Tenant or whether Tenant is joined in any such action or actions. At Landlord's option, Guarantor may be joined under this Guaranty in any action or proceeding commenced by Landlord against Tenant, and Guarantor hereby waives any demand by Landlord and/or prior action by Landlord of any nature whatsoever against Tenant. Guarantor hereby consents to all forbearance, indulgences and extensions of time on the part of Landlord afforded to Tenant and the waiver from time to time by Landlord of any right or remedy on its part as against Tenant under the Lease and the Guarantor hereby agrees that no act or omission on the part of the Landlord shall affect or modify the obligation and liability of Guarantor hereunder. This Guaranty shall remain and continue in full force and effect, notwithstanding (i) any alteration of the Lease, (ii) any renewal, extension, modification or amendment of the Lease, or (iii) any assignment or subletting of Tenant's interest in the Lease. Guarantor hereby waives notice of any of the foregoing and agrees that the liability of Guarantor hereunder shall be based upon the obligations set forth in the Lease as the same be altered, renewed, extended, modified, amended or assigned. This Guaranty shall remain and continue in full force and effect, notwithstanding any merger, consolidation, or sale of Guarantor; or any other voluntary or involuntary transfer of this Guaranty, by operation of law or otherwise. Guarantor further waives all notice of the acceptance of this Guaranty and notice of breach, default or non-performance by Tenant under the Lease of its obligations under the Lease.

Guarantor will not assert against Landlord and does hereby unconditionally and absolutely waive all defenses of Tenant and any defenses Tenant may have against Landlord, including, but not limited to, defenses of waiver, release, discharge, bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, fraudulent conveyance, insolvency, lack of consideration, merger of clauses under this Guaranty with the Obligations, ultra vires acts, usury, illegality or unenforceability, and any defense which under principles of guaranty, suretyship or other applicable law would operate to impair or diminish the liability of Guarantor under this Guaranty.

The liability of Guarantor shall not be affected nor impaired by any voluntary or involuntary dissolution, sale or other disposition of all or substantially all of the collateral or assets of Tenant, receivership, insolvency proceeding, bankruptcy, assignment for the benefit of creditors, reorganization proceeding, arrangement, composition or readjustment of, or other similar event or proceeding affecting Tenant or any of its assets and that upon the institution of any of the above actions, at Landlord's sole discretion and without notice thereof or demand therefor, Guarantor's obligations hereunder shall become due and payable and enforceable against Guarantor, whether or not the Obligations are then due and payable.

No act or thing, except for payment in full, which but for this provision might or could in law or in equity act as a release of the liabilities of Guarantor, shall in any way affect or impair this Guaranty. This shall be a continuing, absolute and unconditional Guaranty, and Guarantor's liability on this Guaranty shall be immediate. Landlord may have immediate recourse against Guarantor for full and immediate payment and performance of the Obligations, or any part thereof, at any time after the Obligations have not been paid or performed when due (whether by acceleration or otherwise). This Guaranty shall remain in full force and effect until the Obligations have been paid in full.

Guarantor waives any claim or other right which Guarantor may now have or may hereafter acquire against Tenant or any other person that is primarily or contingently liable on the obligations that arise from the existence or performance of Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, any right to participate in any claim

or remedy of Landlord against Tenant or any collateral security therefor, which Landlord now has or hereafter acquires, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law. If any amount shall be paid to Guarantor contrary to the terms of this section, such amount shall be held by Guarantor in trust for Landlord, segregated from other funds of Guarantor, and shall, forthwith upon receipt by Guarantor, be turned over to Landlord in the exact form received by Guarantor (duly endorsed by Guarantor to Landlord, if required), to be applied against the Obligations, whether matured or unmatured, in such order as Landlord may determine.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any part of the Obligations is rescinded or must otherwise be returned by Landlord upon the insolvency, bankruptcy, reorganization, liquidation or dissolution of Tenant or otherwise, all as if such payment had not been made. Guarantor hereby indemnifies and holds Landlord harmless from and against all cost and expenses incurred by Landlord, including reasonable attorneys fees, in connection with the defense of a bankruptcy preference action, fraudulent conveyance action, lien avoidance action, or other action relating to Landlord's right to retain amounts previously paid to Landlord in respect of the Obligations, and for all costs and expenses incurred by Landlord relating to the Obligations.

All questions with respect to the construction of this Guaranty shall be determined in accordance with the laws of the State of Michigan. Guarantor submits and consents to personal jurisdiction in the State of Michigan for the enforcement of this Guaranty and waives any and all personal rights under the laws of any state or the United States of America or country to object to jurisdiction in the State of Michigan for the purposes of litigation to enforce this Guaranty. Litigation may be commenced either in a court of general jurisdiction in the State of Michigan or any United States District Court located in the State of Michigan, at the election of Landlord. Nothing contained herein shall prevent Landlord from bringing any action or exercising any rights against any security given to Landlord by Guarantor, or against Guarantor personally, or against any property of Guarantor, within any other state or country. Commencement of any such action or proceeding in any other state or country shall not constitute a waiver of the agreement as to the laws of the state which shall govern the rights and obligations of Guarantor and Landlord hereunder or of the submission made by Guarantor to personal jurisdiction within the State of Michigan.

Guarantor shall notify of Landlord within ten (10) days after any merger or consolidation of Guarantor, any sale of all or any material part of Guarantor's assets and any sale of all or any direct or indirect interest in Tenant, if any. No such merger, consolidation or sale shall constitute a release of the Guarantor hereunder. Annually and at any other time reasonably requested by Landlord, Guarantor shall promptly furnish Landlord (and in any event within fifteen (15) days after Landlord's request) financial statements (including balance sheets, income statements, statements of cash flows, statements of equity and all accompanying notes) reflecting Guarantor's current financial condition. All such financial statements shall be in such form and contain such detail as Landlord shall reasonably request

GUARANTOR

_____, a _____

By: _____

Its: _____

Index of Exhibits

Exhibit A-1	Floor Plan and Site Plan
Exhibit A-2	Rent Schedule
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Exhibit D	Rules and Regulations

EXHIBIT A-1

FLOOR PLAN AND SITE PLAN

EXHIBIT A-2
RENT SCHEDULE

Annual Base Rent:*

Initial Term

Option Term (if exercised)**

Year 1: \$ _____ .00
Year 2: \$ _____ .00
Year 3: \$ _____ .00
Year 4: \$ _____ .00
Year 5: \$ _____ .00

Year 6 : \$ _____ .00
Year 7: \$ _____ .00
Year 8: \$ _____ .00
Year 9: \$ _____ .00
Year 10: \$ _____ .00

Monthly Installment of Base Rent:*

Year 1: \$ _____ .00
Year 2: \$ _____ .00
Year 3: \$ _____ .00
Year 4: \$ _____ .00
Year 5: \$ _____ .

Year 6: \$ _____ .
Year 7: \$ _____ .
Year 8: \$ _____ .
Year 9: \$ _____ .
Year 10: \$ _____ .

*Subject to adjustment in accordance with Sections 2.3-2.4

**Subject to adjustment in accordance with Section 3.2

EXHIBIT B

CONCEPT SPECIFICATIONS FOR TENANT IMPROVEMENTS

EXHIBIT C

TENANT'S EXTERIOR SIGN

EXHIBIT D

BUILDING RULES AND REGULATIONS

Tenant shall comply with the following schedule of rules and regulations and take such actions as are necessary to ensure compliance by its agents, contractors and invitees. All rules and regulations set forth in this schedule shall be in addition to, and shall in no way limit, the provisions of the Lease.

1. No area of the Building shall be used for any purposes other than those for which they are designed. Only persons approved from time to time by Landlord may prepare, solicit orders for, sell, serve or distribute food in or around the Building. Except for microwave cooking, Tenant will not use the Premises for preparing or dispensing food, or soliciting of orders for sale, serving or distribution of food. No grilling or barbecuing is permitted on the Property without the prior consent of Landlord.
2. Landlord has the right to control access to the Building and refuse access to any person who does not have satisfactory identification.
3. Soliciting, peddling and canvassing is prohibited in the Building.
4. Nothing shall be attached to the interior or exterior of the Building other than normal, Landlord approved fixtures.
5. No bicycles, vehicles or animals of any kind (other than wheelchairs and seeing-eye dogs) shall be brought into the Building.
6. No marking, drilling, boring, cutting or defacing of the walls, floors or ceilings of the Building (other than the hanging of art work, diplomas and similar objects) shall be permitted, except as expressly provided to the contrary in the Lease.
7. Chair mats must be used under all rolling or similar chairs. Tenant will be liable for the cost of new carpet if wear occurs from the failure to use chair mats.
8. The toilets and other plumbing fixtures shall not be used for any purpose other than that for which they are designed.
9. Smoking is prohibited anywhere inside the Building. Smoking is also prohibited outside the Building near the entry and exit ways, or in any other areas designed by Landlord.
10. Do not obstruct sidewalks, entrances, elevators, halls, or stairways in or about the Building. The movement of furniture or office equipment must be in the areas designated by Landlord, and shall be restricted to the hours designated by Landlord.
11. Do not place objects against glass partitions, doors or windows which may be unsightly from the Building's corridors, or from other areas of the Building.
12. Do not install or change locks.
13. Machinery or mechanical devices which are not directly related to Tenant's ordinary use of the Premises shall not be installed or operated.
14. Landlord shall not be responsible for any lost or stolen money or property.
15. The Premises shall not be used for sleeping or for any immoral or illegal purpose.
16. Building windows may be cleaned at any time.

17. Tenant shall provide adequate waste and rubbish receptacles for the cleaning staff.
18. Landlord must approve any contractor rendering any service in the Premises before performance of any contractual services. All contractors must have a certificate of insurance on file with Landlord. No contractor shall interfere with other work being performed at the Property, nor allow its employees or agents to interfere with such work.
19. Parking Regulations:
 - (i) Vehicles WILL NOT be parked in the designated "Reserved" spaces, unless they are reserved for the tenant, its employees or invitees pursuant to a written agreement between the tenant and Landlord. There will be no parking in any area of the Property other than those areas clearly marked and defined for parking.
 - (ii) Parking will be on the basis of first-come, first-served except for reserved spaces.
 - (iii) Parkers will be expected to park their vehicles in an orderly manner within the marked stalls provided.
 - (iv) It is recommended that vehicles be left in a "brakes on, doors locked" condition at all times.
 - (v) No vehicles will be allowed to park in any driveway area or in any manner which will interfere with the normal flow of traffic.
 - (vi) Vehicles parked illegally will be towed at the vehicles owner's expense.
 - (vii) Tenant agrees that all its employees have been fully informed as to the content of these regulations.
 - (viii) Landlord or Landlord's agents and employees shall not be liable for and Tenant waives all claims through Tenant resulting from any accident or occurrence in and upon the parking area.
 - (ix) All vehicles parked in the parking areas shall be in good condition and repair, driven and handled at the risk of the owner.
 - (x) Vehicle owner or owner's agents shall not wash, wax or otherwise clean or prep the interior/exterior of vehicles or perform any maintenance whatsoever on vehicles within the parking area or on any part of the parking lot servicing the Building.
 - (xi) In the event that vehicle owner's use of the parking area violates any local, county or state law, regulation or ordinance, automobile owner's right to utilize the parking area shall immediately cease. In addition, in no event shall Tenant permit its employees, licensees, invitees or other occupants to use more than Tenant's Proportionate Share of the existing parking spaces for the Property, as notified by Landlord.
 - (xii) Parking areas shall not be used to store vehicles or for parking unduly large commercial or recreational vehicles.
20. The rules and regulations must be observed unless they are waived in writing by Landlord.

Tenant shall be responsible for the observance of all the foregoing rules and regulations, as well as the applicable provisions of the Lease, by Tenant's employees, agents, contractors and invitees. Landlord shall not be responsible for any violation of the foregoing rules and regulations by other tenants of the Building and shall have no obligation to enforce the same against other tenants. Landlord shall have the right to amend these rules and regulations from time to time in accordance with the terms of the Lease.