

# SPECIAL REPORT

## TENANT'S INDEMNITY & WAIVER AND LANDLORD'S LIABILITY

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This Special Report was written by Kenneth R. Hale, J.D., CPCU, AAI, LIC of Marsh & McLennan Agency LLC. Mr. Ken Hale can be contacted at 734-525-2412 or khale@mma-mi.com. More Special Reports are available at [www.mma-mi.com](http://www.mma-mi.com).

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### **Tenant's Indemnity**

Tenant will protect, indemnify and save Landlord, its partners, shareholders, members, managers, employees, officers, directors, agents and their respective successors and assigns harmless (if Landlord is a trustee, the term "Landlord" for the purposes of this Article shall include the trustee and all beneficiaries of the trust) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or assessed against Landlord by reason of

- (A) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Premises or any part thereof or the adjoining properties, sidewalks, curbs, streets or ways, or resulting from an act or omission of Tenant or anyone claiming by, through or under Tenant;
- (B) any failure on the part of Tenant to perform or comply with any of the terms of this Lease or any agreements affecting the Premises;
- (C) the use, occupation, condition, or operation of the Premises or any part thereof; or
- (D) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof in case

any action, suit or proceeding is brought against Landlord by reason of any such occurrence. Tenant will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

### **Waiver of Claims**

Except with respect to Landlord's (and Landlord's agents) gross negligence, Tenant waives all claims it may have against Landlord and Landlord's agents for damage or injury to person or property sustained by Tenant or any persons claiming through Tenant or by any occupant of the Premises, or by any other person, resulting from any part of the Premises becoming out of repair, or resulting from any accident on or about the premises or resulting directly or indirectly from any act or neglect of any person, including Landlord to the extent permitted by law. This Section shall include, but not by way of limitation, damage caused by water, snow, frost, steam, excessive heat or cold, sewage, gas, odors, or noise, or caused by bursting or leaking pipes or plumbing fixtures, and shall apply equally whether any such damage results from the act or neglect of Tenant or of any other person, including Landlord to the extent permitted by law, and whether such damage be caused or result from anything or circumstance above mentioned or referred to, or to any other thing or circumstance whether of a like nature or of a wholly different nature. All Tenant's equipment and other personal property belonging to Tenant or any occupant of the Premises that is in or on any part of the Premises shall be there at the risk of Tenant or of such other person only, and Landlord shall not be liable for any damage thereto or for the theft or misappropriation thereof.

### **Indemnity for Litigation**

Tenant agrees to pay, and to indemnify and defend Landlord against, all costs and expenses (including reasonable attorney's fees) incurred by or imposed upon Landlord by or in connection with any claim to which Landlord becomes or is made a party without willful misconduct on its part, whether commenced by or against Tenant, or any other person or entity or that may be incurred by Landlord in enforcing any of the covenants and agreements of this Lease with or without the institution of any action or proceeding relating to the Premises or this Lease, or in obtaining

possession of the Premises after an Event of Default hereunder or upon expiration or earlier termination of this Lease. The foregoing notwithstanding, Tenant's responsibility under this Section to pay Landlord's costs and expenses (including reasonable attorneys fees) shall not extend to such costs and expenses incurred in defending an action brought by Tenant to enforce the terms of this Lease in which there is a court determination that Landlord failed to perform its obligations under this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

### **Landlord's Liability**

Notwithstanding anything to the contrary herein contained, there shall be absolutely no personal liability asserted or enforceable against Landlord or on any persons, firms or entities who constitute Landlord with respect to any of the terms, covenants, conditions and provisions of this Lease, and Tenant shall, subject to the rights of any mortgagee, look solely to the interest of Landlord, its successors and assigns in the Premises for the satisfaction of each and every remedy of Tenant in the event of default by Landlord hereunder; such exculpation of personal liability is absolute and without any exception whatsoever. If the entity constituting Landlord is a partnership, Tenant agrees that the deficit capital account of any such partner shall not be deemed an asset or property of said partnership.

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