



**Monday, October 19**  
**11:00 am–12:30 pm**

## **1102 The Lease Has Been Executed...Now What?**

**Michael F. Collins**  
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**William E. Myers**  
*Vice President and Associate General Counsel*  
Carrols Restaurant Group, Inc.

**Douglas Pyne**  
*Senior Counsel*  
Macy's Inc.

## Faculty Biographies

### **Michael F. Collins**

Michael F. Collins is an attorney in the real estate department of Amtrak and currently serves as the chairperson for the American Corporate Counsel's Real Estate Subcommittee on Leasing, Construction and Development.

Mr. Collins has drafted and negotiated more than 350 commercial leases, covering more than 3,000,000 square feet of space, and representing rents over the life of the leases. Prior to joining Amtrak, Mr. Collins worked for publicly held real estate investment trusts, private law firms and the federal government in the areas of real estate, general corporate and banking law.

Mr. Collins received his JD from Georgetown University Law Center and his BA, magna cum laude, from St. Lawrence University.

### **William E. Myers**

William E. Myers is vice president and associate general counsel with Carrols Restaurant Group, Inc. in Syracuse, New York. His responsibilities include negotiating and drafting commercial leases, commercial transactions, real estate sales and purchases, and business acquisitions, along with general corporate matters.

Prior to joining Carrols Restaurant Group, Inc., Mr. Myers was in private practice in Syracuse, New York working in a variety of substantive areas including commercial and real estate law.

He currently is a member of the ABA, the New York State Bar Association, and the Onondaga County Bar Association. He serves on the board of directors of ACC's Western and Central New York Chapter and is a member of ACC's Real Estate Committee. Mr. Myers is also an adjunct instructor at Syracuse University.

Mr. Myers received a BA from State University of New York at Buffalo and is a graduate of the University of Dayton School of Law.

### **Douglas Pyne**

Douglas R. Pyne is senior counsel with Macy's Inc. in Cincinnati, Ohio. His work with Macy's focuses on legal matters involving the operation, leasing, acquisition, and development of the company's real estate.

Prior to joining Macy's, Mr. Pyne was senior real estate counsel for RARE Hospitality International, Inc. in Atlanta, Georgia. RARE Hospitality was the parent company of the LongHorn Steakhouse and The Capital Grille restaurant concepts before being acquired

by Darden Restaurants in 2007. Prior to going in-house, Mr. Pyne was in private practice with multiple law firms in Tennessee.

Mr. Pyne is currently the secretary of ACC's Real Estate Committee and a member of the board of directors of the Southwest Ohio chapter of ACC.

Mr. Pyne received his undergraduate degree from the University of North Carolina at Chapel Hill and his law degree from the University of Texas.

The Lease is Signed...Now What??

Actions to be taken by the Legal/Lease Administration Department and the Accounting Department when a new lease is executed by your company

Douglas R. Pyne  
Senior Counsel - Macy's Inc.

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Legal / Lease Administration

Actions to be taken by the Legal or Lease Administration Department

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Lease Summary or Abstract

- Prepare a summary of basic lease terms
- A good summary will enable you to refer to the summary instead of the full lease in answering future questions about lease terms, rights and obligations
- Take the time initially to make sure the summary contains correct information

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### Form of Lease Abstract

- Attached is a form of lease abstract that was used for a restaurant lease
- The abstract should include the terms that are specific to your lease and based on the type of information you need to preserve
- Not all terms will be applicable to every lease – the more customized your abstract, the more useful it will be

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### Database

- Depending upon the number of leases you have in your company, you may want to use a database to track your leases
- The database could be used to track renewal options, expansion rights, termination rights and changes (rent amount) in lease terms
- You can purchase a full scale database or you can create one using simple software (Outlook or others) – depending on how much information you need to track and your budget

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### Memorandum of Lease

- Depending upon the type of lease, Tenant may want to record evidence of Tenant's leasehold rights
- First check to see if the lease permits Tenant to record the lease or a Memorandum of Lease (or Notice of Lease or Short Form Lease)
- The Memorandum of Lease, when recorded, serves as evidence to the world that Tenant has a lease and typically identifies the premises, the term and any other specific rights (i.e. a use restriction, purchase option, or expansion right)

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### Form of Memo of Lease

- Attached is a simple form of Memorandum of Lease
- In some states, the form of document will have certain required language or a certain format for recording
- Check with your title company for help on what is required for recording in the locale where your premises are located

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### Addresses

- Tenant – File the addresses for delivery of notice to Landlord and for payment of rent
- Landlord – File the address for notice to Tenant (note whether notice can be delivered to the premises or to Tenant’s headquarters) and where rent invoices/statements should be sent
- Tenant – Typically you do not want legal notice sent to the premises unless the premises are your headquarters (have them sent to legal dept.)
- Landlord – Should not use premises since notices may be sent after lease ends and Tenant vacates

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### Authority & Financial Docs

- Landlord should collect from Tenant (and any guarantor) and file in its records any of the following that are to be provided under the lease: (i) certificates of good standing and authority (ii) authorizing resolutions and secretary certificates, and (iii) financial statements regarding Tenant’s (and any guarantor’s) creditworthiness

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### Security Deposit

- Tenant should deliver to Landlord the security deposit - whether in cash, check or via a letter of credit or other security
- Landlord should collect the security deposit from Tenant and determine any restrictions on how funds are held (interest/non-interest bearing, etc.)
- If a letter of credit is used, both parties should track the renewal or replacement requirements for the letter

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### Critical Dates Report

- Prepare and distribute to your team a critical dates report that identifies the deadlines in connection with the initial occupancy of the premises
- Examples would be dates for delivery of insurance certificate, completion of Landlord deliverables, delivery/receipt of possession, commencement of Tenant's construction/buildout, completion of Tenant's construction/buildout, Tenant's deadline for opening (if any), and rent commencement date

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### Holdover Prior Tenant

- Landlord – If the prior tenant has not vacated the premises, you may need to initiate legal action to evict the prior tenant and recover possession of the premises

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### Rent Commencement Agreement

- If the lease provides for execution of a Rent Commencement Agreement (sample copy attached), both Landlord and Tenant will need to execute a document confirming the actual date that rent payments commenced
- Since the actual rent commencement date may be conditioned on the actual date of tenant's occupancy of the premises or opening for business, this date is important to confirm
- In addition, the term will often end   x   years after the rent commencement date

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### Accounting Department

- Both Landlord and Tenant Legal Departments will need to coordinate with their respective Accounting Departments on each new lease to make sure that the Accounting Department takes certain specific steps with respect to each new lease to set it up in their system

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### Accounting Department Coordination -Tenant

- Obtain a W-9 from the Landlord with the Landlord's federal tax id number (an example copy is attached)
- Set up Landlord's payment address in your accounts payable system to pay base rent payments each month and to pay additional rent (CAM, Taxes, Percentage Rent) at the intervals due under the lease
- Track Rent Commencement Date

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### Accounting Department Coordination - Landlord

- Landlord – Deliver a W-9 to Tenant
- Set up Tenant’s address in your accounts receivable system to send invoices for base rent payments each month and additional rent (CAM or Taxes) at the intervals required under the lease
- Invoicing for base rent may not be required, but you will typically need to request the amount due for items that are reimbursements of actual costs (such as CAM or taxes) and not fixed amounts in the lease
- Track Rent Commencement Date

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### Track Rent Changes

- Most long term leases provide for base rent to increase over time at specific intervals
- Both Landlord and Tenant need to track those rent change dates and adjust invoices and payments, respectively, and respond accordingly
- Monthly estimated CAM & Tax charges will often change from year to year and fixed CAM will often increase at specific intervals during the term

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### Real Estate Commissions

- Review the lease to determine which party pays which real estate broker
- Typically Landlord pays both brokers
- Even if you are not obligated to pay your own broker (because the other party is paying) it is a good idea to confirm payment of your broker, both to avoid broker liens (in some states) and in case you need to use that broker again in the future

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### Percentage Rent

- Percentage Rent is an additional rent paid based on sales or revenues generated or collected at the premises
- Often used in a retail or restaurant lease, particularly where the base rent is set at a below market rate to reduce Tenant's fixed costs in exchange for giving Landlord a share of the upside if Tenant is successful

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### Percent Rent – Cont'd

- If the lease calls for Percentage Rent, Tenant's accounting department needs to track gross sales and any exclusions from gross sales included in the lease (carve-outs for returns, employee discounts, etc.)
- Tenant will typically be expected to provide Landlord with periodic statements of gross sales and pay Percentage Rent when due

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### Percent Rent – Cont'd

- Landlord's accounting department will need to track the deadlines for receipt of gross sales statements from Tenant, review those figures against the lease and collect any Percentage Rent owed
- Landlord will also typically have the right to periodically audit Tenant's books with regard to gross sales

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### CAM and Tax Reconciliations

- Landlord's accounting department will be expected to track CAM & Tax expenses during the year
- In many leases, Tenant pays a fixed monthly amount for these charges based upon an estimate generated by Landlord
- At year end (calendar or lease year) Landlord will reconcile Tenant's monthly estimated payments against actual amounts paid and Tenant will either pay an additional amount for any shortfall or receive a credit for any overpayment

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### CAM & Tax Reconciliations – Cont'd

- Tenant's accounting department will often (depending upon the specific lease terms) have the right in the lease to audit the annual CAM & Tax amounts against any exclusions in the lease and challenge any inappropriate charges
- This audit right will only be permitted at certain times and Tenant's accounting department must be ready to review and respond within this window

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### Payments to Vendors

- If Tenant is paying vendors directly for taxes, utilities, trash, or maintenance/service contracts (HVAC etc.) then Tenant's accounting department needs to coordinate with these vendors to establish service and set the vendors up in Tenant's accounts payable system

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### Payments to Vendors – Cont'd

- If Landlord pays vendors for taxes, utilities, trash, or maintenance/service contracts (HVAC etc.) on behalf of Tenant and then collects reimbursement from Tenant, Landlord's accounting department needs to coordinate with the vendors to add the premises to Landlord's service and set Tenant up in Landlord's accounts receivable system to bill Tenant for its share of costs

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### Default by Tenant

- Landlord's Legal (Lease Administration) and Accounting Departments need to coordinate on a plan for notification and action if Tenant fails to pay rent when due to insure that default notices are timely delivered and Landlord's lease rights are enforced

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### The Lease is Signed - Now What? Construction and Operation Issues

Michael F. Collins  
National Passenger Railroad Corporation  
Chairperson, ACC Real Estate  
Subcommittee on Leasing, Development and Construction

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**Construction**  
**Effect on Term and Rent**  
**Commencement Dates**

- Commencement of Term and Tenant's obligation to pay Rent
  - Heavily negotiated
  - Often based on formulas relating to the construction of leasehold improvements, e.g.
    - X days (e.g., 30, 60 or 90) after Landlord substantially completes construction
    - The earlier of x days from the commencement of construction, or Tenant's opening for business

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**Construction Delay Ramifications**

- If Tenant is responsible for delay
  - Usual remedy is for Tenant to begin paying rent on date rent obligations would commence under Lease, without regard to the delay
    - Landlords want uninterrupted cash flow commencing as soon as possible

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**Construction Delay Ramifications**

- If Landlord is responsible for delay
  - Usual remedy is for rent commencement date to be extended on a day for day basis
    - Tenants may be able to increase extension on a 2 for 1 or 3 for 1 basis
      - Based on T needs such as avoiding holdover or eviction in its then current space, need to hold grand opening, need to service new contract/customer

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### Construction Delay Ramifications

- If Landlord is responsible for delay other Tenant remedies are:
  - Right to terminate
  - Monetary damages
    - Holdover rent in Tenant's existing space
    - Additional delivery and moving expenses
    - Lost profits

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### Condition at Term Commencement

- The term of a lease often commences prior to the obligation of Tenant to pay rent
- During this gap period, construction usually takes place
- During this gap period often all lease provisions will be in effect other than Tenant's obligation to pay rent

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### Condition at Term Commencement

- Prior to commencing construction Tenants should:
  - Have their construction/architectural agreements in place
  - Have their insurance in place
  - Provide Landlord with a certificate of insurance

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**Condition at Term Commencement**

- Prior to commencing construction Tenants should:
  - Obtain all required entitlements such as:
    - Building permits
    - Environmental impact permits
  - Provide Landlord with a copy of the building permit
  - Arrange for temporary power to their space
  - Arrange for construction barricades

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**Condition at Term Commencement**

- Prior to commencing construction Tenants should also physically inspect the Premises
  - Leases often require the Tenant to accept physical possession of their space "AS IS", meaning with all faults. Accordingly, Tenant's should have an engineer physically inspect the space prior to accepting possession
  - Tenants should also inspect any Landlord Work for compliance with the plans and specifications agreed upon in the Lease

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**Condition at Term Commencement**

- Prior to construction Landlord should:
  - Verify receipt of a building permit
  - Verify receipt of a certificate of insurance
  - File a Contractor's Waiver of Liens
  - Post a notice of non-responsibility
    - Done to avoid liens against Landlord's property

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### Construction

- After signing the Lease, the amount of construction related work needed to be monitored and/or coordinated will be based on the method of construction agreed upon and the parties respective roles and responsibilities under that method

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### Construction

- Methods - Turn Key
  - Landlord constructs the entire premises, except for Tenant's trade fixtures

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### Construction

- Methods - Vanilla Shell
  - Landlord constructs a shell with demising walls, i.e., no mechanical, electrical, plumbing, interior walls/partitions or other interior improvements
  - Walls - spackled, ready to paint
  - Ceiling grid
  - Floor slab

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**Construction**

- **Methods - Warm Vanilla Shell**
  - Landlord constructs a Vanilla Shell +
    - mechanical
    - Electrical
    - HVAC
    - Plumbing roughed-in

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**Construction**

- **Methods - Shell and Allowance**
  - Landlord builds Shell +
    - interior improvements based on specific dollar "allowance" amount
    - If improvements exceed allowance, Tenant reimburses Landlord for the extra cost
    - If the cost of improvements is less than the allowance, Landlord may pay tenant the difference or reduce Minimum Rent

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**Construction**

- **Landlord Work/Tenant Work**
  - Exhibit or Work Letter
    - It's usually preferable to agree to detailed plans and specifications in the Construction Exhibit or Work Letter
- **Landlord and Tenant plans and specs**
  - Tenants - If the Landlord is building to "building standard" or "industry standard" make sure your construction people monitor that work closely, as the parties often have different understandings as to the meaning of these terms

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**Construction**

- Design
  - Landlord's Work usually designed without Tenant input/approval
  - Redesign cost, permits and utility connections generally Tenant responsibility
  - Tenant's Work requires Landlord approval
  - Tenant to submit and re-submit Plans until approved by Landlord
    - Avoid deemed approvals, or at the least, provide a second written notice before any approval is deemed granted

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**Construction**

- Tenant Allowance
  - Estimate of cost to complete Tenant Improvements
  - Amount of Allowance factored into Minimum Rent
    - Amortized over Initial Term

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**Construction**

- Tenant Allowance
  - Both parties must monitor and designate a party to be responsible for payment conditions, such as:
    - Completion of work
    - Receipt of certificate of occupancy
    - Delivery of lien releases or waivers
    - Tenant opening for business

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### Construction

- Tenant Allowance
  - May be paid in installments as work progresses
  - Tenant may seek set off if Allowance not paid timely

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### Construction

- Upon completion of any Tenant Construction Work, Landlord should ask Tenant for the following:
  - An affidavit from Tenant's contractors that their work is fully completed and that they have been paid in full
  - Releases of liens from every contractor, subcontractor and supplier

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### Construction

- Upon completion of any Tenant Construction Work, Landlord should ask Tenant for the following:
  - "As-Built" drawings and specifications signed and sealed by Tenant's architect
  - A Certificate of Occupancy
  - An electrical underwriters certificate

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### Construction

- Substantial Completion
  - Construction Industry Term
  - Achieved when only Punch List items remain
  - Punch List items
    - Minor items
    - Not materially interfere
      - Tenant Work
      - Tenant business operations

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### Construction

- Substantial Completion is often a pre-condition to the release of the “retainage,” i.e. money that is withheld from the contractor pending the final completion of the project

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### Operations

- Delivery of Rules and Regulations
  - Landlord should deliver a set of rules and regulations for the use, operation and maintenance of the building and its common areas and facilities
    - Tenant’s should avoid de facto lease amendments by ensuring any changes to the rules and regulations will not impair its rights under the Lease; and will be applied equally to all tenants engaging in the same acts or use

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### Operations

- Heating, Ventilation and Air-Conditioning (HVAC)
  - Often in retail and industrial leases, the tenant assumes the obligation for maintaining the HVAC system, while this is usually the obligation of Landlord in office leases
  - The responsible party should contract for HVAC maintenance with a third party vendor if it does not have such capability in-house

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### Operations

- Utility Services
  - For other utility services, review the lease to determine whether Landlord or Tenant is responsible for providing utilities
  - The responsible party should contract directly with the utility provider, unless it is providing the power itself

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### Operations

- Tenant's operations departments should coordinate with their construction departments to make sure any other business specific need is met such as:
  - Access to risers and conduits for IT service/ connectivity
  - Access to the roof for installation of satellite dishes
  - Off hours lighting (building and parking lot)
  - Emergency generators (storm/blackout protection)
  - Supplemental HVAC (special systems/computers, density of personnel)

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**Operations**

- Delivery
  - Tenants ask for and Landlords try to avoid providing formal Notice of the date Landlord will deliver possession of the Premises to Tenant

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**Operations**

- Notice of Delivery allows Tenants to coordinate timelines/lead times for items to be in place prior to turnover of possession, such as:
  - Ordering Equipment and Materials
  - Stocking
  - Installing Trade Fixtures
  - Hiring

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**Operations**

- Both parties should distribute Use restriction information such as:
  - Permitted Uses
  - Use Restrictions
  - Co-Tenancy Restrictions
  - Radius Restrictions
- In addition, both parties should designate the persons responsible in their organizations for tracking compliance with such restrictions

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### Operations

- Landlord should designate a parking area for Tenant's employees
- Landlord should also obtain a list of employees allowed to park in such areas and their car makes and license numbers
- Tenants should inspect employee parking areas to make sure there is sufficient security and lighting in place

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### The Lease is Signed .... Now What?

Tax, Insurance, Due Diligence, and Miscellaneous Issues

William E. Myers  
Vice President & Associate General Counsel  
Carrols Restaurant Group, Inc.

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### Tax Department

- Lease Date: date the lease is signed. May/may not be the Effective Date.
- Lease Term Commencement Date and Expiration Date: May/may not be the Lease Date or the Effective Date. First day/last day of month vs. day during month.
- Rent Commencement Date: date rent payments begin. May/may not be Lease Date or Effective Date.

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Tax Department (continued)

- Impositions Commencement Date: tax, insurance, assessment, and imposition payments may begin on a date other than Rent Commencement Date.
- Rent Holiday: any period of time after the lease goes "hard" and before Rent Commencement Date.
- Key Money: amounts paid to landlord by tenant for leasehold improvements, site improvements, build-outs, equipment, assignment, or subletting; amounts paid or credited by landlord to tenant for leasehold improvements.

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Tax Department (continued)

- Rent Differential: If a sublease or assignment, amount of any difference between rent paid under your lease and rent paid under sublease or existing lease after assignment.
- Tax Characterizations: lease required tax positions – e.g. characterizing payments as a capital contribution vs. rent or income, values assigned to leasehold improvements, rights to amortize improvements.

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Tax Department (continued)

- Tax Billing Information: For real property taxes, personal property taxes, and privilege or business taxes, provide copies of existing tax bills and tax billing information such as due dates and payment arrangements (pay to landlord or pay directly to taxing authority).
- Sale Leaseback Leases: Variety of FAS 98 issues in lease language that must be discussed/disclosed including purchase options, landlord liens, substitution options, collateral, guarantees (in casualty, condemnation, and environmental), indemnities, fixed rents during renewals that may result in lease being deemed capital lease (debt on books) vs. operating lease (no debt on books).

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### Insurance

- Lease insurance provisions should be sent for internal review by your company and for review by your insurance company to confirm that exiting policies will satisfy the lease insurance requirements.
- Must be very careful to insure that current insurance will satisfy lease requirements and any loan/lender requirements.

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### Insurance (continued)

- If being reviewed after signing, be sure that review and approval of insurance requirements is included in your due diligence/inspection period.
- Notify insurance department of lease signing and obligations/terms of coverage.
- Be sure that your insurance department immediately adds location to current coverages.

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### Insurance (continued)

- Tenant = obtain required insurance certificates, evidence of insurance, or memorandum of insurance from your carrier and send to landlord as required by lease terms.
- Landlord = insure receipt of required insurance certificates, evidence of insurance, or memorandum of insurance from tenant and review for accuracy, completeness, and compliance with lease terms. Example of basic checklist is attached to materials.

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### Insurance (continued)

- Leases usually require an ACORD™ (Association for Cooperative Operations Research and Development) certificate. Various ACORD™ certificates include ACORD (property), ACORD 25 (liability), ACORD 28 (property) and ACORD 75 (binder for property and liability). Copies of examples of ACORD™ certificates are attached.

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### Insurance (continued)

- Self insurance. If lease has a self insurance option, be sure to provide (tenant) or receive (landlord) proof of compliance with any threshold requirements. For example, minimum number of units, minimum net worth, or minimum EBITDA (earnings before interest, taxes, depreciation and amortization).

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### Insurance (continued)

- Provide insurance department with timing for proof of renewal or new insurance – e.g. number of days of prior notice to landlord before cancellation or termination of coverage; number of days to provide required proof of insurance on any termination or renewal; whether policy, certificates, certification or some combination are required; penalty for non-compliance – e.g. default or landlord may purchase insurance and bill to tenant. Usually a very short time frame – 10 days.

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### Insurance (continued)

- Provide insurance department with any required subrogation clauses; obtain any required waiver statements – e.g. required certificates or statements, if any.
- Provide list of required insurance: builder's risk, casualty, property, CGL, business interruption, automobile, workers comp, self-insurance.
- Provide information if type of insurance coverage is limited – e.g. is a blanket policy permitted, can coverage be obtained from more than one policy/insurer.

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### Insurance (continued)

- Confirm that your current insurer meets any stated lease requirements – e.g. Best rating, licensed to do business in state.
- Confirm designation required by lease: additional insured vs. additional named insured, vs. loss payee.

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### Due Diligence

- Due Diligence Period: a negotiated period of time running from a date which may be lease date, effective date, or date of some agreed event, during which Tenant has the right to perform inspections, tests, and reviews, obtain title and survey, obtain any required approvals (governmental or private), obtain any required easements, and otherwise satisfy itself as to the suitability of the property for the tenant's intended use.

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**Due Diligence (continued)**

- Generate critical dates memo logging deadlines for due diligence investigations and names and departments responsible for each task. Sample critical dates memo is attached to materials.
- Circulate critical dates memo to all responsible parties with reminder of tasks that each is responsible for.

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**Due Diligence (continued)**

- Note due diligence period deadlines, any extension periods and payments required for extensions, if any.
- Note deadlines for completion of any landlord's work and delivery of Non-Disturbance Agreements and Estoppel Certificates.
- Note deadlines for approval of tenant's layout and plans from landlord.

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**Due Diligence (continued)**

- Review lease and provide (if landlord) seek (if tenant) landlord deliverables e.g. copy of the landlord's survey print, copy of landlord's title insurance policy, copies restrictive easement agreements or similar documents affecting the leased premises, copy of the landlord's deed, copies of the most recent property tax bills, copies of environmental or geotechnical reports, copies of development requirements.

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**Due Diligence (continued)**

- Note deadlines for your required internal approvals of the lease.
- Note deadlines of all required permits (building, zoning, signage, construction), variances, and approvals (municipal, landlord, OEA/REA, private associations) needed and advise responsible parties/departments.
- Note deadlines to obtain and record memorandum of lease and non-disturbance agreement.

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**Due Diligence (continued)**

- Note deadlines for approvals or reviews required by the OEA/REA, this Lease, or other agreements or restrictions.
- Review the OEA/REA carefully for additional conditions such as use restrictions, building and site plan approvals, building size limitations, parking requirements, lighting requirements, construction requirements, and insurance requirements.

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**Due Diligence (continued)**

- Note deadlines for receipt of title commitment and deadline for objections.
- Title commitment is an agreement to enter into a contract for title insurance.
- Title commitment is broken up into Schedules.
- Insurer promises that if certain conditions are met, it will issue a policy on certain terms subject to specific exceptions.

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Due Diligence (continued)

- Schedule A: of title commitment lists terms of coverage: name of insured, amount of coverage, estate to be insured (e.g. fee simple or leasehold), name of current owner, and source of title, and legal description of property to be insured.
- Schedule B Section 1: of title commitment lists conditions to be satisfied before insurer will insure such as proof of payment of taxes, delivery of title affidavits and deed, payment of premium.

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Due Diligence (continued)

- Schedule B, Section 2: of title commitment lists exceptions to coverage. Matters which will not be covered by the policy such as existing easements, restrictions, liens, and taxes.
- Endorsements: many types and vary from state to state. Provide additional coverage for specific issues such as zoning, access to public roads, construction, survey, and environmental.

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Due Diligence (continued)

- Note deadline for receipt of survey and deadline for objections.
- Order survey as soon as lease is signed.
- Surveyor can start field work, but will need a copy of the title commitment and all supporting documents to complete survey. Try to arrange to have the title company send a copy directly to surveyor at same time it is sent to you.

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Miscellaneous

- Landlord must deliver the new tenant's use restriction to other tenants and occupants of the development.
- Carefully review loan documents for compliance issues, e.g. lender approval of tenant, lender approval of lease, subordination agreement, assignment of rents, insurance requirements, and lender notice requirements such as notice of new lease, notice of construction, notice of draws for construction, notice for debt covenant issues.

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## Lease Abstract

STORE NUMBER:

STORE NAME:

TYPE OF LEASE: Ground Lease, Whole Building Lease, Space Lease

STORE ADDRESS:

LANDLORD NAME & ADDRESS:

DEVELOPER:

LANDLORD NOTICE ADDRESS:

REQUIRED DELIVERY METHOD:

TENANT NAME & ADDRESS:

PREMISES SIZE:

PREMISES LAYOUT (Include Drawing):

BUILDING/RESTAURANT SIZE:

RESTAURANT SEAT COUNT:

NAME OF SHOPPING CENTER:

SHOPPING CNTR BOUNDARIES:

LEASE EXECUTION DATE:

POSSESSION DATE:

INITIAL TERM:

RENT COMMENCEMENT

DATE:

OPTIONS:



**OPTION NOTICE REQUIRED:**

**BASE RENT:**

Lease Years  
1-5  
6-10  
11-15 (Option 1)  
16-20 (Option 2)  
21-25 (Option 3)  
26-30 (Option 4)

**PERCENTAGE RENT:**

**CONCESSIONS:**

**USE:**

**EXCLUSIVE:**

**RADIUS RESTRIC. - EXCLUSIVE:**

**RECAPTURE CLAUSE:**

**OPERATING CLAUSE:**

**SUBLEASE/ASSIGNMENT:**

**CAM RESPONSIBILITY:**

**FORMULA FOR CAM PAYMENT:**

**WHO DOES SNOW REMOVAL:**

**FORMULA FOR R/E TAXES:**

**RADIUS RESTRICTION:**

**REMODEL/ALTERATION:**

**OPTION TO PURCHASE:**

**SNDA/ESTOPPEL:**

This Instrument Was Prepared By  
And, After Recording, Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Space Above for Recorder's Use)

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (hereinafter the "Memorandum") is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between \_\_\_\_\_, a \_\_\_\_\_, having an address of \_\_\_\_\_ (hereinafter called "Landlord"), and \_\_\_\_\_, a \_\_\_\_\_, having an address of \_\_\_\_\_ (hereinafter called "Tenant").

1. TERM AND PREMISES. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the terms and provisions of that certain Ground Lease of even date herewith between Landlord and Tenant (hereinafter the "Lease"), Landlord leases to Tenant and Tenant leases from Landlord that certain premises containing \_\_\_\_\_ and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter the "Premises"), which Premises are located at \_\_\_\_\_, for the term of \_\_\_\_\_ ( ) years from and after the commencement date specified in the Lease, together with the options set forth in Paragraph 2 below and upon all of the provisions set forth in the Lease, all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein.

2. OPTIONS TO EXTEND TERM. Reference is particularly made to Section \_\_\_\_ of the Lease wherein Tenant is given the option to extend the term of the Lease on the terms and conditions set forth therein for up to \_\_\_\_\_ ( ) \_\_\_\_\_ ( ) year options.

3. RIGHT OF FIRST REFUSAL. Reference is particularly made to Section \_\_\_\_\_ of the Lease wherein Tenant has been granted the right of first refusal to purchase the Premises, as more fully described therein.

4. PURPOSE OF MEMORANDUM. This Memorandum is prepared for the purposes of recording and in no way modifies the express and particular provisions of the Lease. The provisions and terms of the Lease shall control in the event of any conflict between the terms of this Memorandum and the terms of the Lease. A complete copy of the Lease may be found at the offices of Tenant or Landlord.

5. FOR THE BENEFIT OF THE PREMISES; GOVERNING LAW. It is the intention of Landlord and Tenant that the covenants described and referred to herein shall be binding on their respective successors, heirs and assigns, as the case may be. Each successive owner of the Shopping Center, or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by and this agreement shall be construed in accordance with the laws of the state of in which the Premises are located.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the day and year first above written.

**LANDLORD:**

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

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

Before me, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be president (or other officer authorized to execute the instrument) of \_\_\_\_\_, the within named bargainer, a corporation, and that he/she as such \_\_\_\_\_ executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as \_\_\_\_\_.

WITNESS my hand and seal, at office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF \_\_\_\_\_

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

Before me, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be president (or other officer authorized to execute the instrument) of \_\_\_\_\_, the within named bargainer, a corporation, and that he/she as such \_\_\_\_\_ executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as \_\_\_\_\_.

WITNESS my hand and seal, at office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

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

**EXHIBIT "A"**

## CRITICAL DATES MEMO

**Brand:** \_\_\_\_\_

**Transaction Type: Lease**
**Property Address: Unit # \_\_\_\_\_, \_\_\_\_\_**
**Tenant** \_\_\_\_\_

**Landlord** \_\_\_\_\_

Notices: Deemed delivered \_\_\_ days after deposit in mail or next business day if overnight; day of if faxed

Final Dates: If date is on Sat/Sun/Holiday it moves to next day not Sat/Sun/Holiday

Day(s)	Date	Event	Responsible Person	Status
Introductory Paragraph		Lease Date (LD)	Legal	
With Execution of Lease Section ____		<b>MOL</b> executed by both sides	Legal	
Upon Lease Date Section ____		LL to provide copies of any public/private agrmt that might govern signage	Legal	
Upon Lease Date Section ____		<b>Delivery Date:</b> Lessor to deliver Premises to Lessee w/ Work completed (List of Work see Section ____)	Legal/Const.	
Delivery Date + ___ days Section ____	TBD	<b>Release of MOL</b> to be executed by Lessee  *Lessor not to file or record unless given written notice by Lessee of termination  *Lessor to return unrecorded release of MOL to Lessee upon written notice by Lessee that Premises is suitable (waiving right to terminate)	Legal/Const.	
LD + ___ days Section ____		<b>Inspection Period (___ - ___) day extension(s)</b> Lessee to examine: 1. Survey 2. Title 3. Approvals/permits for Shared Sign *Lessee to provide written notice of objections (if any)	Legal/Const.	
LL's Receipt of Inspec. Period objections + ___ days Section ____	TBD	LL to give notice to Lessee: (i) attempt to cure or (ii) not cure If curing, LL has ___ days from date of notice	Legal	

## CRITICAL DATES MEMO

Lessee's Receipt of LL's Notice + ___ days Section ___	TBD	<b>If LL doesn't cure:</b> Lessee to (i) waive objections or (ii) terminate	Legal	N/A
During Inspection Period Section ___		Lessee's Conditions: 1. RE committee approval 2. Receipt of all permits/approvals (incl. signage) 3. OK w/ soil conditions 4. Acceptable Title 5. Acceptable Survey	Legal/Const.	
Earlier of: (i) Store Open; or (ii) ___ days after earlier of: (a) mobilizing/staging for Construction; or (b) expiration of Inspection Period + ___ days Section ___	Earlier of:  (i) TBD (ii) TBD	Rent Commencement Date	Legal/Const.	
On/Before Rent Commencement Section ___	Earlier of:  (i) open or (ii) TBD	(1) Lessee to submit written request for costs w/ verification for: re-engineering, re design, re drawing, and obtaining permits for site design and plans (Not to exceed \$_____) (2) Lessee may then deduct cost (up to \$_____ from next month's rent)	Legal	
Week of _____ Section ___		Lessee to commence initial Lease Improvements no earlier or later than week of _____	Legal	
Week of _____ Section ___		Lessee to commence 1/2 of curb cut & entrance no earlier nor later than week of _____ ("Lessee's Driveway Work")  <b>*IF</b> Lessee's Driveway Work is not completed by 8 wks after Lessor starts construction and/or Work continues after 30 days written notice from Lessor to Lessee, Lessor can complete the Work.	Legal/Const.	Lessee's Driveway Work started 1/5/09 ( <b>must be complete by 3/2/09</b> )

## CRITICAL DATES MEMO

During Lessee's Driveway Work Section _____	TBD	Lessor or Adjacent Tenant to construct 1/2 curb cut and 1/2 driveway. Lessor to complete road access ("Lessor's Driveway Work")  *IF Lessor's Driveway Work is not completed by 8 wks after Lessee starts construction and/or Work continues after 30 days written notice from Lessee to Lessor, Lessee can complete the Work.  *If Lessee can seek reimbursement from LL if Lessee finishes Work	Legal/Const.	Lessor's Driveway Work started 1/5/09 <b>(must be completed by 3/2/09)</b>  Lessee started Construction 1/5/09
Lease Date + _____ days Section _____		Lessor's Covenants to deliver to Lessee: 1. Survey 2. Title Insurance 3. Recorded deed to Lessor 4. Tax Bills 5. Environ Report 6. W-9	Legal/Const.	Rec'd: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____
Lessee's Receipt of Final Plat + _____ days Section _____	TBD	Lessee to have working drawings and specs. for initial Lease Improvements submitted to LL/LL's architect.	Legal/Const.	
LL's Receipt of Lessee's drawings + _____ days Section _____	TBD	Lessor to respond to Lessee with any objections to plans (or deemed approved)	Legal	
Lease Date + _____ days Section _____		Lessor to execute and deliver SNDA to Lessee	Legal	N/A
Construction Commencement + 8 wks Section _____	TBD	Lessee to construct a two-tenant monument sign ("Shared Sign")  Lessee shall finish sign or LL can finish and seek reimbursement	Legal/Const.	
Placement of Shared Sign + _____ days Section _____	TBD	LL to reimburse Lessee for 1/2 signage construction cost.  Lessee to provide written demand for \$ and reasonable documentation.  * Lessee can charge Default Interest Rate if LL does not pay w/in 30 days	Legal/Const./ Lease Acct	



**RENT COMMENCEMENT DATE**  
**ACKNOWLEDGEMENT**

\_\_\_\_\_, a \_\_\_\_\_, as Landlord (“Landlord”) and \_\_\_\_\_, a \_\_\_\_\_, as Tenant (“Tenant”), entered into a Lease Agreement dated \_\_\_\_\_, 2009 for Premises located at \_\_\_\_\_ in \_\_\_\_\_; and

WHEREAS, in accordance with the terms of said Lease Agreement, the parties wish to fix the Rent Commencement Date and the beginning and ending date of the original Lease Term.

NOW THEREFORE, in consideration of the Premises, the parties hereto agree that:

1. The Rent Commencement Date is \_\_\_\_\_.
2. The original Term of said Lease Agreement began on \_\_\_\_\_ and ends at midnight on \_\_\_\_\_, subject to any renewal options in the Lease Agreement.
3. All the terms, covenants and conditions of the above referenced Lease Agreement are hereby affirmed, ratified and restated.

IN TESTIMONY WHEREOF, the parties hereto have duly executed this Acknowledgement this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Witness

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

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

\_\_\_\_\_  
Witness

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

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

Form **W-9**  
(Rev. October 2007)  
Department of the Treasury  
Internal Revenue Service

## Request for Taxpayer Identification Number and Certification

**Give form to the  
requester. Do not  
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup>However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Lease Checklist for Insurance Certificates

1. Correct name of insured.
2. Correct name of landlord/certificate holder.
3. Correct designation as additional insured, additional named insured, or loss payee.
4. Correct mailing addresses.
5. Correct dates of coverage (should be one year).
6. Correct coverage and limits of coverage.
7. Correct deductible amounts.
8. Notice of cancellation: correct party and address named and number of days for notice.
9. Any required waiver of subrogation language.
10. Claims made vs. occurrence coverage as required by lease.



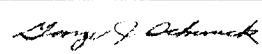
<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 2/25/2009
PRODUCE:  INSURED:	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A <u>Zurich American Insurance Co</u>	
	INSURER B <u>National Union Fire Ins Co of</u>	
	INSURER C <u>Travelers Indemnity Company</u>	
	INSURER D:	
	INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADDL	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		9/1/2008	9/1/2009	EACH OCCURRENCE	\$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$500,000
						MEDEXP (Any one person)	\$ Excluded
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 3,000,000
						PRODUCTS - COMPI/OP AGG	\$ 3,000,000
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
B		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000		9/1/2008	9/1/2009	EACH OCCURRENCE	\$ 5,000,000
						AGGREGATE	\$ 5,000,000
							\$
							\$
							\$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS	OTH-ER
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$
C		<b>OTHER</b> Property Coverage		9/1/2008	9/1/2009	Building Limit:	\$
						Contents Limit:	\$
						Deductible:	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

<b>CERTIFICATE HOLDER</b>  	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE 

**IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



## ACC Extras

Supplemental resources available on [www.acc.com](http://www.acc.com)

Subordination, Nondisturbance and Attornment Agreement #2.  
Sample Form & Policy. May 2009

<http://www.acc.com/legalresources/resource.cfm?show=245263>

Tenant's Lease Checklist.  
Quick Reference. July 2009

<http://www.acc.com/legalresources/resource.cfm?show=398565>

The In-House Counsel Survival Guide for an Office or Company Move.  
InfoPak. July 2009

<http://www.acc.com/legalresources/resource.cfm?show=459224>

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.