

## **LANDMARK LOFTS PARKING SPACE LEASE**

THIS LEASE is entered into the 27th day of June, 2001, between DeVries Development, a Michigan co-partnership of Coopers Landing, 1435 Monroe Avenue, N.W., Grand Rapids, Michigan 49505 (the "Landlord") and Landmark Lofts Association, a Michigan a non-profit corporation of Coopers Landing, 1435 Monroe Avenue, N.W., Grand Rapids, Michigan 49505 (the "Tenant").

### **ARTICLE 1**

#### **PARKING SPACES**

1.1 Landlord hereby grants to the Tenant, on the terms and conditions hereinafter set forth, the right to park 25 cars in the parking facility located at the southwest corner of Monroe Avenue and Newberry Street in the City of Grand Rapids, Kent County, Michigan, such spaces to be located as designated by Landlord from time to time (the "Landmark Lofts Parking Spaces").

1.2 The Landmark Lofts Parking Spaces are for the exclusive use of persons residing at Landmark Lofts, a condominium located at the northwest corner of Monroe Avenue and Newberry Street, according to the Master Deed recorded in Liber 5483, Pages 640-709 in the office of the Kent County Register of Deeds and designated as Kent County Condominium Subdivision Plan No. 544, as amended.

1.3 Landlord may re-locate any or all of the Landmark Lofts Parking Spaces by written notice to Tenant, without expense to Tenant, to another specific parking space or spaces within the expansion area of Landmark Lofts to the north of Landmark Lofts as described in the Landmark Lofts Master Deed or to parking facilities on the properties at the northeast or southeast corners of Monroe Avenue and Newberry Street. The re-located Parking Spaces shall be improved parking spaces of a size and in a condition equal to or better than the Parking Spaces initially designated on the southwest corner of Monroe Avenue and Newberry Street.

### **ARTICLE 2**

#### **TERM**

2.1 The term of this lease shall commence on the assignment by the Tenant to a Co-owner of the right to park in the Landmark Lofts Parking Space on the form attached as Exhibit "A" and shall terminate December 31, 2100, unless sooner terminated as hereinafter set forth.

2.2 Tenant is given ten options to extend the term of this lease on all the provisions contained in this lease for ten (10) successive ten (10) year periods (the "extended terms") following expiration of the initial term, by giving notice of exercise of each option. (the "option notice") to Landlord at least six (6) months but not more than one (1) year before the expiration of the initial term or the expiration of the extended term then in effect, as the case may be, or, if later, within thirty (30) days after a notice from Landlord to Tenant of the date of expiration of this lease or, if no such notice has previously been given by Landlord, within thirty (30) days after a thirty (30) day notice from Landlord to Tenant terminating this lease pursuant to Section 2.3, provided that the length of every renewal term shall be measured from the date of expiration

of the initial term or immediately preceding renewal term even if the option notice is given after its expiration. If Tenant is in default on the date of giving an option notice, the option notice shall be, at Landlord's election, totally ineffective, or if Tenant is in default on the date an extended term is to commence, that extended term shall not, at Landlord's election, commence and this lease shall expire at the end of the initial term, or at the expiration of the extended term in effect if the term has previously been extended .

2.3 In the event Tenant shall continue to park cars in any of the Landmark Lofts Parking Spaces after the expiration of the term of this lease, such holding over shall be deemed to constitute a tenancy from month to month terminable on thirty (30) days notice given at any time by either party, upon the same conditions and terms contained in this lease.

### ARTICLE 3

#### RENT

3.1 **Operating Expenses.** Tenant shall as rent pay its proportionate share of operating expenses incurred by Landlord in operating and maintaining the parking facilities containing the Landmark Lofts Parking Spaces. The Tenant's proportionate share for each parking facility shall be determined by dividing the total number Landmark Lofts Parking Spaces in the facility by the number of parking spaces in each facility containing Landmark Lofts Parking Spaces. Operating expenses shall include Landlord's direct and indirect costs and expenses of every kind and nature paid or incurred in the operation and management of the parking facilities and the parcels of property of which they are a part, including, without limitation: all property taxes and assessments, real, personal, general and special; insurance premiums; charges for all utilities, snow removal and exterior ground care; all costs and expenses of operating, repairing, replacing, lighting, cleaning, painting and repainting, striping, surfacing and resurfacing the parking facilities; removing rubbish and debris; policing and securing the parking facilities; costs and expenses of operating, repairing, maintaining and replacing sign posts and signs; costs and expenses of replacement of paving, curbs, walkways, landscaping, drainage and lighting facilities; costs and expenses of planting, replanting, replacing flowers and shrubbery; repairs and general maintenance of any structure containing parking facilities; and management fees which will not exceed five percent (5%) of the operating expenses. Tenant will pay an amount each month estimated by Landlord as 1/12th of Tenant's proportionate share of annual operating expenses, subject to adjustment when actual costs are computed. Actual costs will be computed as of December 31 for the year then ended and on termination of the lease term if the lease is not renewed or is otherwise terminated mid-year. Actual costs will be computed as of December 31 on a calendar year basis and will be based on allocating costs proportionately throughout the calendar year where the term of the lease does not include the full calendar year. Any overpayment will be refunded and any shortfall paid within thirty (30) days after receipt of a statement from Landlord showing in reasonable detail the computation of the amount due.

3.2 All rental shall be paid to the Landlord at Coopers Landing, 1435 Monroe Avenue, N.W., Grand Rapids, Michigan 49505, or at such other address as the Landlord may designate in writing.

## **ARTICLE 4**

### **ASSIGNMENT AND SUBLETTING**

4.1 The Tenant shall not assign, transfer, mortgage or sublet its rights under this Parking Lease or any interest hereunder without first obtaining the written consent of the Landlord, except Tenant may, without the consent of Landlord, assign the right to park in all or a specific number of the Parking Spaces to Co-owners of condominium units in Landmark Lofts on the form attached as Exhibit "A" which will be effective upon delivery of a copy to Landlord.

## **ARTICLE 5**

### **CONTROL OF PARKING AREAS BY LANDLORD**

5.1 The parking facilities containing the Landmark Lofts Parking Spaces shall at all times be subject to the exclusive control and management of Landlord. Landlord shall have the right to construct, maintain and operate lighting facilities in and on the parking facilities containing the Landmark Lofts Parking Spaces; to police the same; from time to time to change the area, level, location and arrangement of the Landmark Lofts Parking Spaces and adjoining areas; to restrict parking to Landmark Lofts Co-owners and their family members, guests and tenants or to them and others; to enforce parking charges (by operation of meters or otherwise) as to those other than Co-owners and their family members, guests and tenants parking in the adjoining areas that are not designated Landmark Lofts Parking Spaces; to close all or any portion of the parking facilities containing the Landmark Lofts Parking Spaces to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; to close temporarily all or any portion of the parking facilities for maintenance activities; to discourage non-tenant parking; and to do and perform such other acts in and to the parking facilities containing the Landmark Lofts Parking Spaces as, in the use of good business judgment, the Landlord shall determine to be advisable. Landlord will operate and maintain the Landmark Lofts Parking Spaces and adjoining areas in such manner as Landlord, in its sole discretion, shall determine from time to time. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ all personnel and to make all rules and regulations pertaining to and necessary or advisable for the proper operation and maintenance of the parking facilities containing the Landmark Lofts Parking Spaces.

5.2 Use of the Landmark Lofts Parking Spaces will be conditioned upon the following:

A. Parking. Each Landmark Lofts Parking Space shall be used only for the parking of one motor vehicle and shall not be used or occupied for any other purpose without the prior written consent of the Landlord. No recreational vehicles, boats, trailers, motor cycles, motor scooters, mopeds, bicycles, tricycles, inoperable vehicles or vehicles designed and intended for other than normal street use shall be parked or stored in a Landmark Lofts Parking Space without the prior written consent of the Landlord. No commercial vehicles or trucks shall be parked in the Landmark Lofts Parking Spaces, except with written permission of Landlord.

B. Registration. Co-owners will, if the Landlord requires, register with the Landlord all vehicles to be parked in the Landmark Lofts Parking Spaces.

C. Gates. The Landlord shall have the right to require that all Co-owners or other users of the Landmark Lofts Parking Spaces shall use such cards, keys or devices ("devices") as the Landlord may designate for the opening of the gates to the parking facilities and all risk of loss regarding such devices shall that of the Co-owner to whom the Landmark Lofts Parking Space is assigned. Such Co-owner shall reimburse the Landlord for loss of such devices at the Developer's scheduled rates therefor. The Landlord shall have the right to require the Co-owners to pay a reasonable purchase price or security deposit at the time such devices shall be provided to the Co-owner and upon return of such devices, in good condition, any such security deposit shall be refunded to the Co-owner.

D. Liability. Neither the Tenant nor Landlord shall be liable for any loss, theft, damage or destruction to any automobile or other vehicle left in any of the Landmark Lofts Parking Spaces, or for any property of any sort left within such automobile or other vehicle, it being expressly acknowledged and agreed that all risk of loss shall be upon Co-owner. The negligence of other Co-owners or other persons parking in the parking facility or of any persons wrongfully in the parking facilities shall not be imputed to the Tenant or Landlord.

E. Rules and Regulations. Co-owner's access to and use of the Landmark Lofts Parking Spaces and adjoining areas shall be governed by, and Co-owner's family members, guests, and tenants shall comply with any parking rules and regulations adopted by the Landlord.

G. Access. Co-owners shall have access to the parking facilities at all times during regular business hours, and at other times reasonably necessary to accommodate Co-owners' needs; provided that the Landlord may restrict such access temporarily for repairs or other causes beyond Landlord's control.

## ARTICLE 6

### DEFAULT

6.1 The occurrence of any of the following is hereinafter referred to as an "Event of Default":

- A. The failure, neglect or refusal of Tenant to pay any installment of rent and/or other payments payable by Tenant when and as the same shall become due and payable under the terms of this lease, if any such default should continue for a period of more than thirty (30) days after written notice of such default; or
- B. The failure, neglect or refusal of Tenant to keep and perform any of the other terms, covenants, conditions, stipulations, obligations or agreements contained in this lease covenanted and agreed to be kept and performed by

Tenant, if any such default shall continue for a period of more than ninety (90) days after written notice of such default.

On the occurrence of an Event of Default, Landlord may, in addition to any other remedy now or subsequently permitted by law, terminate this lease at any time when there is an uncured Event of Default. No act by Landlord other than giving written notice of termination to Tenant shall terminate this lease. On termination of this lease, Landlord has the right to recover from Tenant the unpaid rent and other payments that were payable at the time of termination of this lease, together with interest thereon from the date due at the lesser of the highest rate permitted by law or fifteen percent (15%) per annum.

6.2 In the event of any failure by Tenant to pay the rent payable upon the date due hereunder, Tenant shall also pay to Landlord, upon demand, interest upon said sums at the lesser of the highest rate permitted by law, or fifteen percent (15%) percent per annum from the date due.

6.3 If suit shall be brought for recovery of rent, or because of the breach of any other covenant herein contained on the part of the Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all expenses incurred therefor, including reasonable attorneys' fees.

6.4 All rights and remedies under this lease are accumulative and none shall exclude any other rights or remedies provided by law, specifically including, but not limited to, summary proceedings pursuant to MCLA 600.5701, et seq.

## ARTICLE 7

### MISCELLANEOUS

7.1. **Notices.** All notices and demands which may or are required to be given by either party to the other shall be in writing and shall be served personally or by postage prepaid United States Certified Mail, return receipt requested, addressed to Tenant or to Landlord at their addresses indicated on page 1 hereof or to such other place as may be designated by notice given in accordance with this section. Notice shall be deemed to have been given on the earlier of (a) the date when received, or (b) two (2) days after mailing if mailed in Rent County, Michigan.

7.2. **Entire Agreement.** This lease contains all of the covenants, agreements, terms, provisions and conditions relating to the leasing of the parking rights hereunder, and the Tenant acknowledges and agrees that the Landlord has not made and is not making, and the Tenant in executing and delivering this lease is not relying upon, any other warranties, representations, promises or oral or verbal statements.

7.3. **Amendment.** This lease may be amended only by written instrument executed by Landlord and Tenant and no discussions or other verbal understandings shall be effective unless in writing executed by Landlord and Tenant.

7.4. **Waiver.** No waiver by Landlord shall be deemed to have been made unless expressed in writing and signed by the Landlord and no surrender of any parking rights or any remainder of the term of this lease shall be valid unless accepted by the Landlord in writing. The

receipt and retention by the Landlord of rent from anyone other than the Tenant shall not be deemed a waiver of the breach by the Tenant of any covenant, agreement, term, provision or condition herein contained, or the acceptance of such other person as a Tenant, or a release of the Tenant from the further performance by the Tenant of the covenants, agreements, terms, provisions and conditions herein contained. No waiver of any term, obligation, covenant or condition or of the breach of any term, obligation, covenant or condition of this lease shall constitute a waiver of any subsequent breach of such term, obligation, covenant or condition or shall justify or authorize the non-observance on any other occasion of the same or of any other term, obligation, covenant or condition of this lease, nor shall the acceptance of rent, late charge(s) or other payment by Landlord at any time when Tenant is in default under any term, obligation, covenant or condition of this lease constitute a waiver of such default or of Landlord's right to terminate this lease or of any of Landlord's other rights on account of such default, nor shall any waiver or indulgence granted by Landlord to Tenant be taken as an estoppel against Landlord.

**7.5. Severability.** If any term or provision of this lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each other term and provision of this lease shall be valid and be enforced to the fullest extent permitted by law.

**7.6. Captions.** All headings contained in this lease are intended for convenience only and are not to be deemed or taken as a summary of the provisions to which they pertain or as a construction thereof.

**7.7 Parties Bound.** The covenants, agreements, terms, provisions and conditions of this lease shall bind and benefit the several respective heirs, personal representatives, administrators, successors and assigns of the parties. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee is permitted by Article 4. It is understood and agreed, however, that the covenants and obligations on the part of the Landlord under this lease shall not be binding upon the Landlord herein named with respect to any period subsequent to the transfer of its interest in the Landmark Lofts Association Parking Spaces as owner thereof if the grantee has assumed the covenants and agreements to be performed by Landlord herein, and that in the event of such transfer said covenants and obligations shall thereafter be binding only upon the then owner(s) of the Landmark Lofts Association Parking Spaces who has assumed the covenants and agreements to be performed by Landlord herein.

**7.8. Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein stipulated 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 may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this lease provided.

**7.9 Force Majeure.** In the event that Landlord shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lock-outs, casualties, Acts of God, labor troubles, inability to procure materials, failure of power,

governmental laws or regulations, riots, insurrection, war or other causes beyond the reasonable control of Landlord, then Landlord shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**7.10 Captions and Section Numbers.** The captions, section numbers, and article numbers, appearing in this lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this lease nor in any way affect this lease.

**7.11 Recording.** Tenant agrees not to record this lease. However, Tenant and Landlord, upon the request of either, agree to execute and deliver a memorandum of this lease in recordable form which may be recorded by either Tenant or Landlord at its expense. Said memorandum of this lease shall describe the parties, the premises and the Lease Term and shall incorporate this lease by reference.

**7.12 Interpretation.** No provision in this lease is to be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**7.13 Applicable Law.** The laws of the State of Michigan shall govern the validity, performance and enforcement of this lease.

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

DeVRIES DEVELOPMENT, a Michigan  
co-partnership

By: Edward DeVries  
Edward J. DeVries  
Its Partner

LANDLORD

LANDMARK LOFTS ASSOCIATION, a  
Michigan corporation

By: Edward DeVries  
Edward J. DeVries  
Its Manager

TENANT

**EXHIBIT "A"**  
**LANDMARK LOFTS**  
**PARKING SPACE ASSIGNMENT**

Landmark Lofts Association hereby assigns Landmark Lofts Parking Space no(s). \_\_\_\_\_ in the parking facility at the southwest corner of Monroe Avenue and Newberry Street as shown on the attached plan to the undersigned \_\_\_\_\_ as Co-owner of Landmark Lofts condominium Unit no. \_\_\_\_\_.

Each Parking Space may be used only for parking one automobile or light truck by the Co-owner, or by the Co-owner's family member, guest or tenant residing at the Unit, subject to the terms and conditions of the Landmark Lofts Condominium Documents and the Landmark Lofts Parking Space Lease with DeVries Development, as Landlord.

The undersigned Co-owner acknowledges use of each Parking Space is conditioned upon the following:

A. **Parking.** Each Landmark Lofts Parking Space shall be used only for the parking of one motor vehicle and shall not be used or occupied for any other purpose without the prior written consent of the Landlord. No recreational vehicles, boats, trailers, motor cycles, motor scooters, mopeds, bicycles, tricycles, inoperable vehicles or vehicles designed and intended for other than normal street use shall be parked or stored in a Landmark Lofts Parking Space without the prior written consent of the Landlord. No commercial vehicles or trucks shall be parked in the Landmark Lofts Parking Spaces.

B. **Registration.** Co-owners will, if the Landlord requires, register with the Landlord all vehicles to be parked in the Landmark Lofts Parking Spaces.

C. **Gates.** The Landlord shall have the right to require that all Co-owners or other users of the Landmark Lofts Parking Spaces shall use such cards, keys or devices ("devices") as the Landlord may designate for the opening of the gates to the parking facilities and all risk of loss regarding such devices shall that of the Co-owner to whom the Landmark Lofts Parking Space is assigned. Such Co-owner shall reimburse the Landlord for loss of such devices at the Developer's scheduled rates therefor. The Landlord shall have the right to require the Co-owners to pay a reasonable purchase price or security deposit at the time such devices shall be provided to the Co-owner and upon return of such devices, in good condition, any such security deposit shall be refunded to the Co-owner.

D. **Liability.** Neither the Tenant nor Landlord shall be liable for any loss, theft, damage or destruction to any automobile or other vehicle left in any of the Landmark Lofts Parking Spaces, or for any property of any sort left within such automobile or other vehicle, it being expressly acknowledged and agreed that all risk of loss shall be upon Co-owner. The negligence of other Co-owners or other persons parking in the parking facility or of any persons wrongfully in the parking facilities shall not be imputed to the Tenant or Landlord.

E. **Rules and Regulations.** Co-owner's access to and use of the Landmark Lofts Parking Spaces and adjoining areas shall be governed by, and Co-owner's family members, guests, and tenants shall comply with any parking rules and regulations adopted by the Landlord.



G. Access. Co-owners shall have access to the parking facilities at all times during regular business hours, and at other times reasonably necessary to accommodate Co-owners' needs; provided that the Landlord may restrict such access temporarily for repairs or other causes beyond Landlord's control.

H. Re-Location. Landlord may re-locate the Landmark Lofts Parking Spaces assigned to the Co-owner by written notice, without expense to the Co-owner, to another specific parking space or spaces within the expansion area of Landmark Lofts to the north of Landmark Lofts as described in the Landmark Lofts Master Deed or to parking facilities on the properties at the northeast or southeast corners of Monroe Avenue and Newberry Street. The re-located Parking Spaces shall be improved parking spaces of a size and in a condition equal to or better than the Parking Spaces initially designated on the southwest corner of Monroe Avenue and Newberry Street.

LANDMARK LOFTS ASSOCIATION

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

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

Co-owner:

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

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