

Selected Boilerplate Language in Commercial Leases

December 4, 2018

Open Meeting of REBA Commercial Leasing Committee

Richard Heller, Esq.
Peter F. Granoff, Esq.

1. Limitations on Landlord's liability (limiting Tenant to Landlord's interest in property and limitations on liability for physical damage)
2. Estoppel certificates
3. Notice provisions
4. Surrender clauses (wear & tear)
5. Notices of lease provisions
6. Force majeure clauses
7. Severability clauses
8. Integration or merger clauses
9. Venue and jurisdictional clauses
10. Execution clauses – when is lease binding; PDF or electronic signatures; delivery of signed leases

TENANT'S COMMENTS
(Office Landlord Oriented Form)

MISCELLANEOUS

HOLDOVER

If Tenant remains in the Premises after the termination or expiration of the Term, such holding over shall be as a Tenant at sufferance at a rent equal to the ¹greater of two (2) times (i) the Annual Fixed Rent due hereunder for the last month of the Term and (ii) the fair market rent for the Premises, and otherwise subject to all the covenants and conditions (including obligations to pay Additional Rent under Section 2.6) of this Lease. Notwithstanding the foregoing, if Landlord desires to regain possession of the Premises after the termination or expiration hereof, Landlord may, at its option, re-enter and take possession of the Premises or any part thereof at any time thereafter or by any legal process in force in the state in which the Premises are located.²

Notwithstanding the establishment of any tenancy at sufferance following the expiration or earlier termination of the Term, if Tenant fails to vacate the Premises at the expiration or earlier termination of the Term, Tenant shall save Landlord harmless, indemnify and defend Landlord against any claim, loss, cost or expense (including reasonable attorneys' fees by counsel of Landlord's choice and consequential damages) arising out of Tenant's failure promptly to vacate the Premises (or any portion thereof).^{3, 4}

1. *This is an onerous provision; it should be a liquidated damage provision at 1.25 x the amount. The concept of fair market rent is vague-how is it determined; when is it determined.*

2. *If the Tenant is negotiating an extension, add a provision allowing for month-to-month extension on same terms, so long as parties are negotiating in good faith.*

3. *This provision is overbroad. While Landlords generally will not agree to a deletion of the provision in its entirety, the concept of "consequential damages" is too vague and could give rise to significant exposure to Tenant.*

4. *This damage provision shall be qualified to the extent any failure by the Tenant to vacate is not caused by the acts or omissions of Landlord.*

ESTOPPEL CERTIFICATES

At Landlord's request, from time to time, Tenant agrees to execute and deliver to Landlord, within ten (10) days after delivery of such request¹, a certificate which acknowledges the dates on which the Term begins and ends, tenancy and possession of the Premises and recites such other facts² concerning any provision of the Lease or payments made under the Lease which Landlord or a mortgagee or Lender or a purchaser or prospective purchaser of the Building or any interest therein or any other party may from time to time reasonably request. Tenant acknowledges that the execution and delivery of such certificates in connection with a financing

or sale in a prompt manner constitute requirements of Landlord's financing and/or property dispositions.³ Without limitation of the foregoing, Tenant agrees to execute whatever other instruments may be required by the first mortgagee or junior mortgagee to acknowledge such tenancy in recordable form, within ten (10) days after Landlord's request, correcting as appropriate any representations which are not then correct.⁴

1. *The 10 day time period is far too short. Often times an estoppel certificate can effectively amend the Lease. Consequently, the Tenant's attorney needs to review it.*

2. *Tenant should limit what can be included in the estoppel certificate, for example, confirmation of Lease term, any amendments, rent, options to extend or expand, purchase options. A Tenant should not allow the Lender to request financial information not related to the Lease or expand the representations by Tenant. For example, some estoppel certificates try to expand the environmental representations and warranties of Tenant.*

3. *By agreeing to this provision, Tenant could be held liable if the Lender's transaction is negatively impacted by Tenant's failure to execute and deliver the estoppel certificate.*

4. *This language is unclear and too broad. Why does any acknowledgement of such tenancy have to be in recordable form? What representations have to be corrected?*

NOTICE

Any notice, approval, consent and other like¹ communication hereunder from Landlord to Tenant or from Tenant to Landlord shall be effective only if given in writing and shall be deemed duly delivered if (i) hand delivered, (ii) mailed by prepaid certified or registered mail, return receipt requested, or (iii) delivered by a national overnight delivery service, receipt confirmed. If requested, Tenant shall send copies of all such notices in like manner to Landlord's mortgagees and any other persons having an interest in the Premises and designated by Landlord.² Any notice so addressed shall be deemed duly delivered on the third Business Day following the day of mailing if so mailed by registered or certified mail, return receipt requested, whether or not accepted, or on the date of delivery if hand delivered or sent by overnight delivery service. Communications to Tenant shall be addressed to Tenant's Authorized Representative at the Original Address of Tenant set forth in Section 1.1 prior to the Term Commencement Date and thereafter at the Premises.³ Communications to Landlord shall be addressed to the Landlord's Address, and a copy of all notices shall be sent to Landlord's attorneys, Chief Legal Officer, Hobbs Brook Management LLC, 225 Wyman Street, Waltham, Massachusetts 02451-1209 and Richard D. Rudman, Esq., DLA Piper LLP (US), 33 Arch Street, 26th Floor, Boston, Massachusetts 02110.⁴ Either party may from time to time designate other addresses within the continental United States by⁵ notice to the other.

1. *Much too broad. What is an "other like communication"?*

2. *This is too broad and Tenant should not agree to this provision. Does the failure to notify one of the designated parties, vitiate the notice to the other parties?*
3. *This would need to be modified depending upon the Tenant. If the Tenant has multiple units, the notice address should be the corporate headquarters.*
4. *The failure to send a notice to the attorney should not vitiate the notice to the Landlord. Also, only default notices should be sent to the attorney.*
5. *Notice should be in writing.*

LANDLORD'S RIGHT TO CURE

At any time and without prior written notice¹, Landlord may, but need not, cure any failure by Tenant to perform its obligations under this Lease. Whenever Landlord chooses to do so, Tenant shall pay all reasonable costs and expenses incurred by Landlord in curing any such failure, including, without limitation, reasonable attorneys' fees.²

1. *Prior written notice should be required (at least thirty days), unless it is an emergency in which event Landlord should be accompanied by a representative of Tenant.*
2. *This provision should contain a reasonableness standard as to costs and expenses as well as a requirement that Landlord provide Tenant, in advance, a written estimate. An automatic administrative charge is clearly a penalty and should be deleted.*

SUCCESSORS AND ASSIGNS

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns¹, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such Transferees of Tenant as are permitted hereunder.² The term "Landlord" means the original Landlord named herein, its successors and assigns. The term "Tenant" means the original Tenant named herein and its permitted successors and assigns.

1. *This clause should be reviewed in conjunction with the subordination provisions so as to ensure that any successor Landlord, by foreclosure, is bound by the terms of the Lease.*
2. *In this clause, Transferee is a defined term, the Tenant needs to ensure that this provision does not otherwise diminish the Tenant's assignment rights.*

BROKERAGE

Tenant warrants that it has had no dealings with any broker or agent in connection with this Lease or any other space in the Building or office park of which the Building is a part, except for any broker designated in Section 1.1.¹ Tenant covenants to pay, hold harmless, indemnify and

defend Landlord from and against any and all claims, costs, expense or liability (including reasonable attorneys' fees by counsel of Landlord's choice) for any compensation, commissions and charges claimed by any broker or agent other than any such broker designated in Section 1.1 with respect to this Lease or the negotiation thereof arising from a breach of the foregoing warranty.² Landlord shall be responsible for payment of any brokerage commission to any broker designated in Section 1.1 pursuant to a separate written agreement.

1. *The warranty should be mutual*
2. *Similarly, the indemnifications obligation should be mutual and limited to the Lease only and not the negotiations.*

WAIVER

The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon strict performance of, any covenant or condition of this Lease, or, with respect to such failure of Landlord, any of the Rules and Regulations referred to in Section 5.4, whether heretofore or hereafter adopted by Landlord, shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the effect of an original violation, nor shall the failure of Landlord to enforce any of said Rules and Regulations against any other Tenant of the Building be deemed a waiver of any such Rules or Regulations.¹ The receipt by Landlord of Annual Fixed Rent or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord, or by Tenant, unless such waiver is in writing signed by the party to be charged. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.²

1. *Landlord should be obligated to enforce all of its rules and regulations in a nondiscriminatory manner.*
2. *This provision is too broad and over reaching. It should be limited to the Lease.*

ACCORD AND SATISFACTION

No acceptance by Landlord of a lesser sum than the Annual Fixed Rent and Additional Rent then due shall be deemed to be other than on account of the earliest¹ installment of such Rent due, 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 installment or pursue any other remedy provided in this Lease.² The delivery of keys to Landlord shall not operate as a termination of this Lease or a surrender of the Premises.³

1. *This is problematic especially if Landlord is chasing interest on unpaid rent. Tenant should require a written statement from Landlord with respect to the application of said payment.*

2. See the following language to be added to afford the Tenant an opportunity to "pay under protest":

"It is agreed that if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other party under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" such payment not being regarded as a voluntary payment, and there shall survive the right on the part of such party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of such party to pay such sum or any part thereof, such party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease plus reasonable attorney's fees. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", the performance of such work in no event being regarded as a voluntary performance, and there shall survive the right on the part of such party to institute suit for recovery of the cost of such work. If it shall be adjudged that there was no legal obligation on the part of such party to perform the same or any part thereof, such party shall be entitled to recover the cost of such work or the cost of so much thereof as such party was not legally required to perform under this Lease".

3. *This sentence should be deleted. The surrender clause should govern the surrender of the premises.*

REMEDIES CUMULATIVE

The specific remedies to which Landlord or Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies to which it may be lawfully entitled in case of any breach or written threatened breach of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord and Tenant may be entitled to the restraint by injunction of the violation¹ or attempted or threatened violation of any of the covenants or conditions of this Lease or to a decree compelling specific performance of any such covenants or conditions.²

1. *Any threatened violations should be modified such that it is any written threatened violation.*
2. *The remedies should be mutual.*

PARTIAL INVALIDITY

If any term of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.¹

1. *The Tenant should be allowed to terminate the Lease if a provision is invalidated that prevents the Tenant from operating its business as intended. See below for some suggested language:*

“Notwithstanding any provisions herein to the contrary, if the provisions of this Lease relating to the Tenant’s stated use of the Premises shall be determined by any governmental agency having jurisdiction to be invalid or unenforceable, Tenant shall have the right to terminate this Lease, provided that Tenant sends Landlord written notice of such termination within [insert #, e.g., 45] days after learning of such determination. Upon receipt of such written notice of termination by Landlord, this Lease shall be deemed to be void and of no further force or effect and Tenant shall have no further obligations hereunder”.

WAIVERS OF SUBROGATION

Any insurance carried or required to be carried by Landlord or Tenant with respect to the Premises or property therein or occurrences thereon shall include a clause or endorsement denying to the insurer rights of subrogation and/or recovery against the other party for any injury or loss due to hazards which are actually insured by such party or are required to be insured under the Lease. Landlord and Tenant, notwithstanding any provisions of this Lease to the contrary, hereby waive any rights of recovery against the other party for injury or loss due to hazards which are the subject of insurance under the Lease.

1. *First and foremost, this provision, as well as other insurance provisions, should be reviewed by the insurance provider.*

ENTIRE AGREEMENT

This Lease contains all of the agreements between Landlord and Tenant with respect to the Premises and supersedes all prior writings and dealings between them with respect thereto, except [list any documents the Tenant is relying upon].

NO AGREEMENT UNTIL SIGNED

The submission of this Lease or a summary of some or all of its provisions for examination does not constitute a reservation of or option for the Premises or an offer to Lease and no legal obligations shall arise with respect to the Premises or other matters herein until this Lease is executed and delivered by Landlord and Tenant.¹

1. *In order to avoid an open ended transaction in which Tenant may change its position in reliance upon a fully executed Lease, add a provision that if the Lease is not fully executed and delivered to Tenant within a certain period of time, the Tenant can terminate the transaction in which event the Lease shall be null and void and without recourse to the Tenant.*

TENANT'S AUTHORIZED REPRESENTATIVE

Both Landlord and Tenant designate the person named from time to time as Tenant's or Landlord's Authorized Representative to take all acts of such party hereunder. The other party may rely on the acts of such Authorized Representative without further inquiry or evidence of authority. The party's Authorized Representative shall be the person so designated in Section 1.1 and such successors as may be named from time to time by the then current party's Authorized Representative or by such party's president.

NOTICE OF LEASE

Landlord and Tenant agree not to record this Lease. Both parties will, at the request of either, execute, acknowledge and deliver a Notice of Lease and a Notice of Termination of Lease Term, each in recordable form.¹ Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact (which appointment shall survive the expiration of the Term or earlier termination of the Term) with full power of substitution to execute, acknowledge and deliver a notice of termination of Lease² on Tenant's name if Tenant fails to do so within thirty (30) days after request therefor.

1. *Option periods should be identified in the Notice of Lease, as well as exclusive use provisions, rights of first refusal and options to purchase.*
2. *If the Landlord insists upon this provision, require the form of Notice of Termination to be attached to the Lease and specify the conditions upon which the Notice of Termination should be recorded.*

TENANT AS BUSINESS ENTITY

Each party warrants and represents to the other that (a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which such entity was organized; (b) such party has the authority to own its property and to carry on its business as contemplated under this Lease; (c) such party has duly executed and delivered this Lease; (d) the execution, delivery and performance by Tenant of this Lease (i) are within the powers of Such party, (ii) have been duly authorized by all requisite action, (iii) will not violate any provision of law or any order of any court or agency of government, or any agreement or other instrument to which such party is a party or by which it or any of its property is bound, and (iv) will not result in the imposition of any lien or charge on any of Tenant's property, except by the provisions of this Lease; (e) the Lease is a valid and binding obligation of such party in accordance with its terms. Such party agrees that breach of the foregoing warranty and representation shall at such party's election be a default under this Lease for which there shall be no cure. This warranty and representation shall survive the expiration or earlier termination of the Term.

RELOCATION¹

1. *Tenant should resist this provision, as it is not part of the bargain.*

FINANCIAL STATEMENTS^{1, 2}

1. *The submission of financial statement should be avoided; however, if mandated by the Landlord, Tenant should only be required to submit such statements only after two monetary defaults in a Lease year. The submission should only be limited to the fiscal year in which the default occurred.*
2. *The requirement of submitting said financial statements to prospective and actual Lenders and purchasers is too broad; should be limited depending on size of premises and duration of Lease.*

SECURITY DEPOSIT

On the execution of this Lease, Tenant shall pay to Landlord as a Security Deposit for the performance of the obligations of Tenant hereunder the amount specified in Section 1.1. The Security Deposit shall be at the option of Tenant, in the form of cash, or (B) an irrevocable letter of credit in accordance with the provisions of this Section 8.19.

If, pursuant to the first paragraph of this Section 8.19, Tenant is required to deliver to Landlord a letter of credit, such letter of credit shall contain all of the following terms and satisfy all of the following conditions (which terms and conditions are hereinafter referred to as the "Letter of Credit Terms and Conditions"): (i) the letter of credit shall be irrevocable, (ii) the letter of credit shall only require the presentation to the issuer of a certificate of the holder of the letter of credit stating that Landlord is entitled to draw upon the letter of credit under the terms of this Lease, and stating the amount of the requested draw, (iii) the letter of credit shall be payable to Landlord or its successors in interest as the Landlord under this Lease and shall be freely transferable without cost to Landlord or to any such successor or any Lender holding a collateral assignment of Landlord's interest in the Lease, (iv) the letter of credit shall be in the amount required under Section 1.1, (v) the letter of credit shall be for an initial term of not less than one year and contain a provision that such term shall be automatically renewed for successive one-year periods unless the issuer shall, at least forty five (45) days prior to the scheduled expiration date, give Landlord notice of such nonrenewal, (vi) the letter of credit shall be in form and substance reasonably acceptable to Landlord, and (vii) the letter of credit shall be issued by a commercial bank or savings and loan association which is reasonably acceptable to Landlord which can be drawn at such institution's counter in New York, New York and/or Boston, Massachusetts (said initial letter of credit security deposit and every renewal thereof and every new letter of credit in replacement or substitution thereof, are hereinafter referred to as the "Letter of Credit Security Deposit"). Not less than thirty (30) days before the expiration of the initial Letter of Credit Security Deposit and every renewal thereof, Tenant shall deliver to Landlord a renewal of the Letter of Credit Security Deposit or a new Letter of Credit Security Deposit, in either case, except as otherwise expressly provided herein, containing and satisfying the Letter of Credit Security Deposit Terms and Conditions. Notwithstanding the foregoing, the Letter of Credit

Security Deposit to be delivered by Tenant for the final period of twelve (12) or fewer months before the expiration of the Term of this Lease shall be for a term ending not sooner than thirty (30) days after the expiration of the Term of this Lease.

The Letter of Credit Security Deposit shall be issued by a commercial bank or savings and loan association that is chartered under the laws of the United States, any state or commonwealth thereof, or the District of Columbia and insured by the Federal Deposit Insurance Corporation. If such issuer is declared insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver or liquidator is appointed for such issuer), then Tenant shall within thirty (30) days after written notice from Landlord deliver to Landlord a replacement Letter of Credit Security Deposit issued by a commercial bank or savings and loan association acceptable to Landlord in its sole discretion and that meets all other requirements of this Section 8.19. Notwithstanding anything in this Lease to the contrary, Tenant's failure to comply with the foregoing sentence shall constitute an event of default under the Lease (without further notice or grace or cure periods).

Landlord shall be entitled to draw upon the Letter of Credit Security Deposit for its full amount or any portion thereof if (a) Tenant shall fail to surrender the Premises as required under this Lease on or before the expiration of the Term, or shall otherwise fail to perform any of its monetary obligations under the Lease after the expiration of any applicable notice and cure period, (b) not less than thirty (30) days before the scheduled expiration of the Letter of Credit Security Deposit, Tenant has not delivered to Landlord a new Letter of Credit Security Deposit in accordance with this Section 8.19, or (c) Tenant shall fail to provide a replacement Letter of Credit Security Deposit as set forth in the preceding paragraph.

Landlord may, but shall not be obligated to, draw on the Letter of Credit Security Deposit from time to time in the event of a bankruptcy filing by or against Tenant and/or to compensate Landlord, in such order as Landlord may determine, for all or any part of any unpaid rent.

Any amount of the Letter of Credit Security Deposit drawn in excess of the amount applied by Landlord to cure any such monetary default shall be held by Landlord as a cash Security Deposit for the performance by Tenant of its obligations under the Lease. Any cash Security Deposit may not be mingled with other funds of Landlord be liable to pay Tenant interest thereon. If Tenant shall fail to perform any of its monetary obligations under this Lease, Landlord may, but shall not be obliged to, apply the cash Security Deposit to the extent necessary to pay any amount due Landlord hereunder.

After any such application by Landlord of the Letter of Credit Security Deposit or cash Security Deposit, as the case may be, within ten (10) days after written demand from Landlord, Tenant shall reinstate the Security Deposit to the amount originally required to be maintained under the Lease (either in the form of cash or a new Letter of Credit Security Deposit compliant with the provisions of this Section 8.19). Provided that Tenant is not then in default under the Lease (beyond all applicable notice and cure periods), and no condition exists or event has occurred which after the expiration of any applicable notice or cure period would constitute such a default, within thirty (30) days after the expiration or sooner termination of the Term the Letter of Credit

Security Deposit and any cash Security Deposit, to the extent not applied, shall be returned to the Tenant, without interest.

Tenant shall have the right to call upon Landlord to apply all or any part of the Security Deposit to cure any default or to fulfill any obligation of Tenant.

Upon any conveyance by Landlord of its interest under this Lease, the Security Deposit then held by Landlord shall be delivered by Landlord to Landlord's grantee or transferee.

MISCELLANEOUS PROVISIONS

This Lease may be executed in counterparts and shall constitute the agreement of Landlord and Tenant whether or not their signatures appear in a single copy hereof. This Lease shall be construed as a sealed instrument¹ and shall be governed exclusively by the provisions hereof and by the laws of The Commonwealth of Massachusetts as the same may from time to time exist. The titles are for convenience only and shall not be considered a part of the Lease.² The enumeration of specific examples of or inclusions in a general provision shall not be construed as a limitation of the general provision.³ Unless otherwise stated herein, any consent or approval required hereunder may be given or withheld in the sole absolute discretion of the party whose consent or approval is required.⁴ Nothing herein shall be construed as creating the relationship between Landlord and Tenant of principal and agent, or of partners or joint venturers or any relationship other than Landlord and Tenant. This Lease and all consents, notices, approvals and all other documents relating hereto may be reproduced by any party by photographic, microfilm, microfiche or other reproduction process; and each party agrees that any reproductions shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not reproduction was made in the regular course of business) and that any further reproduction of such reproduction shall likewise be admissible in evidence. This Lease may be amended only by a writing signed by all of the parties hereto. Any reference in this Lease to the time for the performance of obligations or elapsed time shall mean consecutive calendar days, months, or years as applicable. "Business Day" shall mean any day of the week other than Saturday, Sunday, or a day on which banking institutions in Boston, Massachusetts are obligated or authorized by law or executive action to be closed to the transaction of normal banking business. In the event the time for performance of any obligation hereunder expires on any day other than a Business Day the time for performance shall be extended to the next Business Day.

1. *A sealed instrument extends the statute of limitations to twenty years.*
2. *This is overly broad.*
3. *This language, if agreeable, should be in the option provision.*
4. *Tenant should try to qualify this language with a reasonableness standard.*

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Notwithstanding the establishment of any tenancy at sufferance following the expiration or earlier termination of the Term, if Tenant fails to vacate the Premises at the expiration or earlier termination of the Term, Tenant shall save Landlord harmless, indemnify and defend Landlord against any claim, loss, cost or expense (including reasonable attorneys' fees by counsel of Landlord's choice and consequential damages) arising out of Tenant's failure promptly to vacate the Premises (or any portion thereof).³⁻⁴

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2. This provision should contain a reasonableness standard as to costs and expenses as well as a requirement that Landlord provide Tenant, in advance, a written estimate. An automatic administrative charge is clearly a penalty and should be deleted.

SUCCESSORS AND ASSIGNS

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and ~~assigns~~assigns¹, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such Transferees of Tenant as are permitted hereunder.² The term "Landlord" means the original Landlord named herein, its successors and assigns. The term "Tenant" means the original Tenant named herein and its permitted successors and assigns.

1. This clause should be reviewed in conjunction with the subordination provisions so as to ensure that any successor Landlord, by foreclosure, is bound by the terms of the Lease.

2. In this clause, Transferee is a defined term, the Tenant needs to ensure that this provision does not otherwise diminish the Tenant's assignment rights.

BROKERAGE

Tenant warrants that it has had no dealings with any broker or agent in connection with this Lease or any other space in the Building or office park of which the Building is a part, except for any broker designated in Section 1.1.¹ Tenant covenants to pay, hold harmless, indemnify and defend Landlord from and against any and all claims, costs, expense or liability (including reasonable attorneys' fees by counsel of Landlord's choice) for any compensation, commissions and charges claimed by any broker or agent other than any such broker designated in Section 1.1 with respect to this Lease or the negotiation thereof arising from a breach of the foregoing warranty.² Landlord shall be responsible for payment of any brokerage commission to any broker designated in Section 1.1 pursuant to a separate written agreement.

1. The warranty should be mutual

2. Similarly, the indemnifications obligation should be mutual and limited to the Lease only and not the negotiations.

WAIVER

The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon strict performance of, any covenant or condition of this Lease, or, with respect to such failure of Landlord, any of the Rules and Regulations referred to in Section 5.4, whether heretofore or hereafter adopted by Landlord, shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the effect of an original violation, nor shall the failure of Landlord to enforce any of said Rules and Regulations against any other ~~tenant~~ Tenant of the Building be deemed a waiver of any such Rules or Regulations.¹ The receipt by Landlord of Annual Fixed Rent or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord, or by Tenant, unless such waiver ~~beis~~ is in writing signed by the party to be charged. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.²

1. Landlord should be obligated to enforce all of its rules and regulations in a nondiscriminatory manner.

2. This provision is too broad and over reaching. It should be limited to the Lease.

ACCORD AND SATISFACTION

No acceptance by Landlord of a lesser sum than the Annual Fixed Rent and Additional Rent then due shall be deemed to be other than on account of the ~~earliest~~ earliest¹ installment of such Rent due, 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 installment or pursue any other remedy provided in this Lease.² The delivery of keys to Landlord shall not operate as a termination of this Lease or a surrender of the Premises.³

1. This is problematic especially if Landlord is chasing interest on unpaid rent. Tenant should require a written statement from Landlord with respect to the application of said payment.

2. See the following language to be added to afford the Tenant an opportunity to "pay under protest":

"It is agreed that if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other party under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" such payment not being regarded as a voluntary payment, and there shall survive the right on the part of such party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of such party to pay such sum or any part thereof, such party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease plus reasonable attorney's fees. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", the performance of such work in no event being regarded as a voluntary performance, and there shall survive the right on the part of such party to institute suit for recovery of the cost of such work. If it shall be adjudged that there was no legal obligation on the part of such party to perform the same or any part thereof, such party shall be entitled to recover the cost of such work or the cost of so much thereof as such party was not legally required to perform under this Lease".

3. This sentence should be deleted. The surrender clause should govern the surrender of the premises.

REMEDIES CUMULATIVE

The specific remedies to which Landlord or Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies to which it may be lawfully entitled in case of any breach or written threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord ~~shall~~ and Tenant may be entitled to the restraint by injunction of the ~~violation~~ violation¹ or attempted or threatened violation of any of the covenants or conditions of this Lease or to a decree compelling specific performance of any such covenants or conditions.²

1. Any threatened violations should be modified such that it is any written threatened violation.

2. The remedies should be mutual.

PARTIAL INVALIDITY

If any term of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.¹

1. The Tenant should be allowed to terminate the Lease if a provision is invalidated that prevents the Tenant from operating its business as intended. See below for some suggested language:

“Notwithstanding any provisions herein to the contrary, if the provisions of this Lease relating to the Tenant’s stated use of the Premises shall be determined by any governmental agency having jurisdiction to be invalid or unenforceable, Tenant shall have the right to terminate this Lease, provided that Tenant sends Landlord written notice of such termination within [insert #, e.g., 45] days after learning of such determination. Upon receipt of such written notice of termination by Landlord, this Lease shall be deemed to be void and of no further force or effect and Tenant shall have no further obligations hereunder”.

WAIVERS OF SUBROGATION

Any insurance carried or required to be carried by Landlord or Tenant with respect to the Premises or property therein or occurrences thereon shall include a clause or endorsement denying to the insurer rights of subrogation and/or recovery against the other party for any injury or loss due to hazards which are actually insured by such party or are required to be insured under the Lease. Landlord and Tenant, notwithstanding any provisions of this Lease to the contrary, hereby waive any rights of recovery against the other party for injury or loss due to hazards which are the subject of insurance under the Lease. For the purposes of this Section 8.11, “Landlord” shall include its mortgagees, agents, employees, managers and/or management companies, officers, directors, attorneys, trustees, independent contractors, and invitees.

1. First and foremost, this provision, as well as other insurance provisions, should be reviewed by the insurance provider.

ENTIRE AGREEMENT

This Lease contains all of the agreements between Landlord and Tenant with respect to the Premises and supersedes all prior writings and dealings between them with respect thereto, except [list any documents the Tenant is relying upon].

NO AGREEMENT UNTIL SIGNED

The submission of this Lease or a summary of some or all of its provisions for examination does not constitute a reservation of or option for the Premises or an offer to ~~lease~~ Lease and no legal obligations shall arise with respect to the Premises or other matters herein until this Lease is executed and delivered by Landlord and Tenant.¹

1. In order to avoid an open ended transaction in which Tenant may change its position in reliance upon a fully executed Lease, add a provision that if the Lease is not fully executed and delivered to Tenant within a certain period of time, the Tenant can terminate the transaction in which event the Lease shall be null and void and without recourse to the Tenant.

TENANT'S AUTHORIZED REPRESENTATIVE

Both Landlord and Tenant ~~designates~~ designate the person named from time to time as Tenant's or Landlord's Authorized Representative to take all acts of ~~Tenant~~ such party hereunder. ~~Landlord~~ The other party may rely on the acts of such Authorized Representative without further inquiry or evidence of authority. ~~Tenant's~~ The party's Authorized Representative shall be the person so designated in Section 1.1 and such successors as may be named from time to time by the then current ~~Tenant's~~ party's Authorized Representative or by ~~Tenant's~~ such party's president.

NOTICE OF LEASE

Landlord and Tenant agree not to record this Lease. ~~If appropriate, both~~ Both parties will, at the request of either, execute, acknowledge and deliver a Notice of Lease and a Notice of Termination of Lease Term, each in recordable form. ~~Such notices shall contain only the information required by law for recording.~~¹ Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact (which appointment shall survive the expiration of the Term or earlier termination of the Term) with full power of substitution to execute, acknowledge and deliver a notice of termination of ~~lease~~ Lease² on Tenant's name if Tenant fails to do so within ~~ten~~ ~~(40~~ thirty (30) days after request therefor.

1. Option periods should be identified in the Notice of Lease, as well as exclusive use provisions, rights of first refusal and options to purchase.

2. If the Landlord insists upon this provision, require the form of Notice of Termination to be attached to the Lease and specify the conditions upon which the Notice of Termination should be recorded.

TENANT AS BUSINESS ENTITY

~~Tenant~~ Each party warrants and represents to the other that (a) ~~Tenant~~ Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which such entity was organized; (b) ~~Tenant~~ such party has the authority to own its property and to carry on its business as contemplated under this Lease; (c) ~~Tenant is in compliance with all laws and orders of public authorities applicable to Tenant;~~ (d) ~~Tenant~~ such party has duly executed and delivered this Lease; (e) the execution, delivery and performance by Tenant of this Lease (i) are

within the powers of ~~Tenant~~Such party, (ii) have been duly authorized by all requisite action, (iii) will not violate any provision of law or any order of any court or agency of government, or any agreement or other instrument to which ~~Tenant~~such party is a party or by which it or any of its property is bound, and (iv) will not result in the imposition of any lien or charge on any of Tenant's property, except by the provisions of this Lease; ~~(f)~~ the Lease is a valid and binding obligation of ~~Tenant~~such party in accordance with its terms; and ~~(g) Tenant's Federal Taxpayer Identification Number is _____.~~ ~~Tenant.~~ Such party agrees that breach of the foregoing warranty and representation shall at ~~Landlord's~~such party's election be a default under this Lease for which there shall be no cure. This warranty and representation shall survive the expiration or earlier termination of the Term.

RELOCATION

~~If at any time during the Term the Rentable Floor Area of the Premises contains less than ten thousand (10,000) square feet, Landlord reserves the right to move Tenant, and if Landlord so requests, Tenant shall vacate the Premises and relinquish its right with respect to the same, provided that Landlord gives Tenant not less than six (6) months prior written notice of such a move, and so long as Landlord provides to Tenant space with within the Hobbs Brook Office Park. Such space shall be reasonably comparable in size, layout, finish and utility to the existing Premises, and further provided that Landlord shall, at its sole cost and expense, move Tenant and its removable property from the Premises to such new space in such a manner as will minimize, to the greatest extent practicable, undue interference with the business operations of Tenant. Landlord agrees to pay for all verified reasonable direct costs actually incurred solely due to any such relocation, including without limitation the costs of relocating furniture, files and equipment, telephone installation, computer wiring and cabling, and reasonable costs of new stationery and business cards. Any such space shall from and after such relocation be treated as the Premises demised under this Lease, and shall be occupied by Tenant under the same terms.~~

RELOCATION¹

1. Tenant should resist this provision, as it is not part of the bargain.

FINANCIAL STATEMENTS^{1, 2}

~~Tenant shall furnish to Landlord within one hundred twenty (120) days after each of Tenant's fiscal years during the Term an accurate, up-to-date, audited if available, financial statement of Tenant and Guarantor showing Tenant's, and each Guarantor's, financial condition for the preceding fiscal year. If not so furnished, Tenant shall furnish the same to Landlord within fifteen (15) days of Landlord's request therefor. If no audited financial statement is prepared, such statement will be certified by the CFO or Treasurer of Tenant or Guarantor, as applicable. Unless public by other means, Landlord will maintain confidential such statement, except as required by as applicable law or court order; however Landlord may provide such statements to Landlord's prospective and actual lenders and purchasers, and its and their accountants, attorneys and partners, as long as Landlord advises the recipients of the existence of Landlord's confidentiality obligation.~~

1. The submission of financial statement should be avoided; however, if mandated by the Landlord, Tenant should only be required to submit such statements only after two monetary defaults in a Lease year. The submission should only be limited to the fiscal year in which the default occurred.

2. The requirement of submitting said financial statements to prospective and actual Lenders and purchasers is too broad; should be limited depending on size of premises and duration of Lease.

SECURITY DEPOSIT

On the execution of this Lease, Tenant shall pay to Landlord as a Security Deposit for the performance of the obligations of Tenant hereunder the amount specified in Section 1.1. The Security Deposit shall be at the option of Tenant, in the form of ~~(A) cash if the amount specified in Section 1.1 is less than One Hundred Thousand Dollars (\$100,000),~~ or (B) an irrevocable letter of credit in accordance with the provisions of this Section 8.19 ~~if the amount specified in Section 1.1 equals or exceeds One Hundred Thousand Dollars (\$100,000).~~

If, pursuant to the first paragraph of this Section 8.19, Tenant is required to deliver to Landlord a letter of credit, such letter of credit shall contain all of the following terms and satisfy all of the following conditions (which terms and conditions are hereinafter referred to as the "Letter of Credit Terms and Conditions"): (i) the letter of credit shall be irrevocable, (ii) the letter of credit shall only require the presentation to the issuer of a certificate of the holder of the letter of credit stating that Landlord is entitled to draw upon the letter of credit under the terms of this Lease, and stating the amount of the requested draw, (iii) the letter of credit shall be payable to Landlord or its successors in interest as the Landlord under this Lease and shall be freely transferable without cost to Landlord or to any such successor or any ~~lender~~ Lender holding a collateral assignment of Landlord's interest in the Lease, (iv) the letter of credit shall be in the amount required under Section 1.1, (v) the letter of credit shall be for an initial term of not less than one year and contain a provision that such term shall be automatically renewed for successive one-year periods unless the issuer shall, at least forty five (45) days prior to the scheduled expiration date, give Landlord notice of such nonrenewal, (vi) the letter of credit shall be in form and substance reasonably acceptable to Landlord, and (vii) the letter of credit shall be issued by a commercial bank or savings and loan association which is reasonably acceptable to Landlord which can be drawn at such institution's counter in New York, New York and/or Boston, Massachusetts (said initial letter of credit security deposit and every renewal thereof and every new letter of credit in replacement or substitution thereof, are hereinafter referred to as the "Letter of Credit Security Deposit"). Not less than thirty (30) days before the expiration of the initial Letter of Credit Security Deposit and every renewal thereof, Tenant shall deliver to Landlord a renewal of the Letter of Credit Security Deposit or a new Letter of Credit Security Deposit, in either case, except as otherwise expressly provided herein, containing and satisfying the Letter of Credit Security Deposit Terms and Conditions. Notwithstanding the foregoing, the Letter of Credit Security Deposit to be delivered by Tenant for the final period of twelve (12) or fewer months before the expiration of the Term of this Lease shall be for a term ending not sooner than ~~sixty (60)~~ thirty (30) days after the expiration of the Term of this Lease.

The Letter of Credit Security Deposit shall be issued by a commercial bank or savings and loan association that is chartered under the laws of the United States, any state or commonwealth thereof, or the District of Columbia and insured by the Federal Deposit Insurance Corporation. ~~If at any time Landlord determines in its sole discretion that the financial condition of such issuer has changed in any materially adverse way from the financial condition of such issuer as of the date of execution of this Lease (including, without limitation, if~~ If such issuer is declared insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver or liquidator is appointed for such issuer), then Tenant shall within ~~five (5)~~ thirty (30) days after written notice from Landlord deliver to Landlord a replacement Letter of Credit Security Deposit issued by a commercial bank or savings and loan association acceptable to Landlord in its sole discretion and that meets all other requirements of this Section 8.19. Notwithstanding anything in this Lease to the contrary, Tenant's failure to comply with the foregoing sentence shall constitute an event of default under the Lease (without further notice or grace or cure periods).

Landlord shall be entitled to draw upon the Letter of Credit Security Deposit for its full amount or any portion thereof if (a) Tenant shall fail to surrender the Premises as required under this Lease on or before the expiration of the Term, or shall otherwise fail to perform any of its monetary obligations under the Lease after the expiration of any applicable notice and cure period, ~~or shall fail to perform any of its obligations under the Lease and transmittal of a default notice is barred by applicable law,~~ (b) not less than thirty (30) days before the scheduled expiration of the Letter of Credit Security Deposit, Tenant has not delivered to Landlord a new Letter of Credit Security Deposit in accordance with this Section 8.19, or (c) Tenant shall fail to provide a replacement Letter of Credit Security Deposit as set forth in the preceding paragraph.

Landlord may, but shall not be obligated to, draw on the Letter of Credit Security Deposit from time to time in the event of a bankruptcy filing by or against Tenant and/or to compensate Landlord, in such order as Landlord may determine, for all or any part of any unpaid rent, ~~any damages arising from any termination of the Lease in accordance with the terms of the Lease, and/or any damages arising from any rejection of the Lease in a bankruptcy proceeding commenced by or against Tenant. Landlord may, but shall not be obligated to, apply the amount so drawn to the extent necessary to pay any amount due Landlord hereunder. Landlord's application of the Letter of Credit Security Deposit shall not contribute to the cure of any default unless and until Tenant reinstates the Security Deposit to its full amount (either in the form of cash or a new Letter of Credit Security Deposit compliant with the provisions of this~~ Section 8.19).

Any amount of the Letter of Credit Security Deposit drawn in excess of the amount applied by Landlord to cure any such ~~failure~~ monetary default shall be held by Landlord as a cash Security Deposit for the performance by Tenant of its obligations under the Lease. Any cash Security Deposit may not be mingled with other funds of Landlord ~~and no fiduciary relationship shall be created with respect to such deposit, nor shall Landlord~~ be liable to pay Tenant interest thereon. If Tenant shall fail to perform any of its monetary obligations under this Lease, Landlord may, but shall not be obliged to, apply the cash Security Deposit to the extent necessary to pay any

amount due Landlord hereunder. ~~Landlord's application of such a cash Security Deposit shall not contribute to the cure of any default unless and until Tenant reinstates the Security Deposit to its full amount (either in the form of cash or a new Letter of Credit Security Deposit compliant with the provisions of this Section 8.19).~~

After any such application by Landlord of the Letter of Credit Security Deposit or cash Security Deposit, as the case may be, within ten (10) days after written demand from Landlord, Tenant shall reinstate the Security Deposit to the amount originally required to be maintained under the Lease (either in the form of cash or a new Letter of Credit Security Deposit compliant with the provisions of this Section 8.19). Provided that Tenant is not then in default under the Lease, ~~(beyond all applicable notice and cure periods),~~ and no condition exists or event has occurred which after the expiration of any applicable notice or cure period would constitute such a default, within ~~sixty (60)~~~~thirty (30)~~ days after the expiration or sooner termination of the Term the Letter of Credit Security Deposit and any cash Security Deposit, to the extent not applied, shall be returned to the Tenant, without interest.

Tenant shall ~~not~~ have the right to call upon Landlord to apply all or any part of the Security Deposit to cure any default or to fulfill any obligation of Tenant, ~~but such use shall be solely in the discretion of Landlord.~~

Upon any conveyance by Landlord of its interest under this Lease, the Security Deposit then held by Landlord shall be delivered by Landlord to Landlord's grantee or transferee. ~~Upon any such delivery and the written acknowledgment by such grantee or transferee of its receipt and that it shall continue to hold such Security Deposit as required by the terms and provisions of this Lease, Tenant hereby releases Landlord herein named (and each subsequent grantor or transferor) of any and all liability with respect to the Security Deposit, its application and return, and Tenant agrees to look solely to such grantee or transferee.~~

MISCELLANEOUS PROVISIONS

This Lease may be executed in counterparts and shall constitute the agreement of Landlord and Tenant whether or not their signatures appear in a single copy hereof. This Lease shall be construed as a sealed ~~instrument~~instrument¹ and shall be governed exclusively by the provisions hereof and by the laws of The Commonwealth of Massachusetts as the same may from time to time exist. The titles are for convenience only and shall not be considered a part of the Lease. ~~Where the phrases "persons acting under Tenant" or "persons claiming under Tenant" or similar phrases are used, the persons included shall be all employees, agents, independent contractors and invitees of Tenant or of any Transferee of Tenant.~~² The enumeration of specific examples of or inclusions in a general provision shall not be construed as a limitation of the general provision. ~~If Tenant is granted any extension option, expansion option or other right or option, the exercise of such right or option (and notice thereof) must be unconditional to be effective, time always being of the essence to the exercise of such right or option; and if Tenant purports to condition the exercise of any option or to vary its terms in any manner, then the option granted shall be void and the purported exercise shall be ineffective.~~³ Unless otherwise stated herein, any consent or approval required hereunder may be given or withheld in the sole absolute

discretion of the party whose consent or approval is required.⁴ Nothing herein shall be construed as creating the relationship between Landlord and Tenant of principal and agent, or of partners or joint venturers or any relationship other than ~~landlord~~Landlord and ~~tenant~~Tenant. This Lease and all consents, notices, approvals and all other documents relating hereto may be reproduced by any party by photographic, microfilm, microfiche or other reproduction process ~~and the originals thereof may be destroyed~~; and each party agrees that any reproductions shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not reproduction was made in the regular course of business) and that any further reproduction of such reproduction shall likewise be admissible in evidence. This Lease may be amended only by a writing signed by all of the parties hereto. Any reference in this Lease to the time for the performance of obligations or elapsed time shall mean consecutive calendar days, months, or years as applicable. "Business Day" shall mean any day of the week other than Saturday, Sunday, or a day on which banking institutions in Boston, Massachusetts are obligated or authorized by law or executive action to be closed to the transaction of normal banking business. In the event the time for performance of any obligation hereunder expires on any day other than a Business Day the time for performance shall be extended to the next Business Day.

2410433.11. A sealed instrument extends the statute of limitations to twenty years.

2. This is overly broad.

3. This language, if agreeable, should be in the option provision.

4. Tenant should try to qualify this language with a reasonableness standard.

ARTICLE XVIII
LANDLORD COMMENT
(National Retail Tenant Oriented Form)

INTERPRETATION

18.1 It is agreed that if any provision of this lease or the application of any provision to any person or any circumstance shall be determined to be invalid or unenforceable, such determination shall not affect any other provisions of this lease or the application of such provisions to any other person or circumstance, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this lease is capable of two constructions one of which would render the provision valid, the provision shall have the meaning which renders it valid.

SUCCESSORS AND ASSIGNS

18.2 The words "Landlord" and "Tenant" and the pronouns referring thereto, as used in this lease, shall mean, where the context requires or admits, the persons named herein as Landlord and as Tenant, respectively, and their respective heirs, legal representatives, successors, assigns and subtenants, irrespective of whether singular or plural, or masculine, feminine or neuter. The agreements and conditions in this lease contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its heirs, legal representatives, successors and assigns and shall inure to the benefit of Tenant and its successors and assigns, and the agreements and conditions on the part of Tenant to be performed and observed shall be binding upon Tenant and its successors and assigns and shall inure to the benefit of Landlord and its heirs, legal representatives, successors and assigns. If Landlord shall be more than one person or entity, the obligations of Landlord hereunder shall be joint and several.

DELAYS

18.3 In any case where either party hereto is required to do any act (other than make a payment of money), delays caused by or resulting from Act of God, war, civil commotion, fire, the elements or other casualty, labor difficulties, general shortages of labor, materials or equipment, or other causes beyond such party's reasonable control, shall not be counted in determining the time when the performance of such act must be completed, whether such time be designated by a fixed time, a fixed period of time, or "a reasonable time". In any case where work is to be paid for out of insurance proceeds or condemnation awards, due allowance shall be made, both to the party required to perform such work and to the party required to make such payment, for delays in the collection of such proceeds and awards. The provisions of this Section 18.3, however, shall not apply to the dates set forth in Article IV above except as specifically set forth in Sections 4.5 and 4.8 above.

HOLDING OVER

18.4 If Tenant or any person claiming under Tenant shall remain in possession of the Demised Premises or any part thereof after the expiration of the term of this lease without any agreement in writing between Landlord and Tenant with respect thereto, the person remaining in possession shall, prior to acceptance of rent by Landlord, be deemed a tenant at sufferance, and, after acceptance of rent by Landlord, the person remaining in possession shall be deemed a tenant from month to month subject to the provisions of this lease insofar as the same may be made applicable to a tenancy from month to month.

WAIVERS

18.5 Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by such party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this lease shall be deemed a waiver of a breach of any other provision of this lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent or approval of such action on any one or more occasions shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this lease or by operation of law, either at law or in equity, upon any breach shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by such party or not, shall be deemed to be in exclusion of any other. Any two or more or all of such rights and remedies may be exercised at the same time. Without limiting the generality of the foregoing, if any restriction contained in this lease for the benefit of either party shall be violated, such party, without waiving any claim for breach of agreement against the other party, may bring such proceedings as it may deem necessary, either at law or in equity, in its own name or in the name of the other party, against the person violating such restriction.

DISPUTES

18.6 It is agreed that if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other party under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest", such payment not being regarded as a voluntary payment, and there shall survive the right on the part of such party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of such party to pay such sum or any part thereof, such party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this lease. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", the performance of such work in no event being regarded as a voluntary performance, and there shall survive the right on the part of such party to institute suit for recovery of the cost of such work. If it shall be adjudged that there was no legal obligation on the part of such party to perform the same or any part thereof, such party shall be entitled to recover the cost of such work or the cost of so much thereof as such party was not legally required to perform under this lease.

QUIET ENJOYMENT

18.7 Landlord agrees that upon Tenant's paying the rent and performing and observing the agreements and conditions on its part to be performed and observed hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Demised Premises and all rights of Tenant hereunder during the term of this lease without any manner of hindrance or molestation.

NOTICES

18.8 Any notice, consent or approval provided for herein shall be deemed duly given by the sender thereof to the addressee thereof only if in writing and mailed to such addressee by registered or certified mail, postage prepaid, or by sending the same via Federal Express, or other overnight courier service which delivers only upon signed receipt of the addressee, return receipt requested, at the "Notice Address" of such addressee. The time of the giving of any notice shall be the time of receipt thereof by the addressee or any agent of the addressee, except that in the event the addressee or such agent of the addressee shall refuse to receive any notice given by registered mail or certified mail as above provided or there shall be no person available at the time of delivery thereof to receive such notice, the time of the giving of such notice shall be the time of such refusal or the time of such delivery, as the case may be, and except that any notice given pursuant to Article IV shall be deemed given when mailed. The Notice Address of Landlord shall be _____. The Notice Address of Tenant shall be _____. If the sender of any notice to any addressee shall have previously been given notice by said addressee of a change of address of said addressee, such changed address shall thereafter as to such sender be deemed the Notice Address of such addressee.

COST AND EXPENSE

18.9 Wherever in this lease provision is made for the doing of any act by any person it is understood and agreed that such act shall be done by such person at its own cost and expense unless a contrary intent is expressed.

THIS INSTRUMENT

18.10 This lease is transmitted for examination only and does not constitute an offer to lease, and this lease shall become effective only upon execution and unconditional delivery thereof by both parties hereto. This instrument contains the entire and only agreement between the parties and no oral statements or representations or prior written matter not contained in this instrument shall have any force or effect. This lease shall not be modified in any way except by a writing subscribed by both parties.

MARGINAL NOTES

18.11 The marginal notes used as headings for various provisions of this lease are used only as a matter of convenience for reference and are not to be considered a part of this lease or used in determining the intent of the parties to this lease.

BROKERS

18.12 Each of Landlord and Tenant warrant and represent to the other that the only brokers it has dealt with in connection with this lease are _____, as brokers and agents for Landlord. Landlord shall defend, indemnify and hold harmless Tenant from and against all commissions, fees and expenses, of said brokers, and all claims therefor, in connection with this lease.

BROKERS

18.12 Each of Landlord and Tenant warrants and represents to the other that it has dealt with no brokers in connection with this lease. Each party shall defend, indemnify and hold harmless the other party from and against all commissions, fees and expenses, and all claims therefor, in connection with this lease of, or by, any broker alleging he, she or it has dealt with the indemnitor party.

INVESTMENT CREDIT

18.13 If any investment tax credit, new jobs credit, or other tax benefit in the nature of any such tax credit shall be available with respect to any property subject to this lease, Landlord hereby waives such tax benefit and agrees that Tenant may claim the same to the extent that the tax laws permit the same to be "passed" to Tenant. Tenant shall provide Landlord with such forms as Landlord shall be required to file to effect the "passing" of such tax benefit to Tenant.

ARTICLE XVIII

LANDLORD COMMENT

(National Retail Tenant Oriented Form)

INTERPRETATION

18.1 It is agreed that if any provision of this lease or the application of any provision to any person or any circumstance shall be determined to be invalid or unenforceable, such determination shall not affect any other provisions of this lease or the application of such provisions to any other person or circumstance, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this lease is capable of two constructions one of which would render the provision valid, the provision shall have the meaning which renders it valid. [NB: Consider possible impact upon related clauses]

SUCCESSORS AND ASSIGNS

18.2 The words "Landlord" and "Tenant" and the pronouns referring thereto, as used in this lease, shall mean, where the context requires or admits, the persons named herein as Landlord and as Tenant, respectively, and their respective heirs, legal representatives, successors, assigns and subtenants, irrespective of whether singular or plural, or masculine, feminine or neuter. The agreements and conditions in this lease contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its heirs, legal representatives, successors and assigns and shall ~~inure~~enure to the benefit of Tenant and its successors and assigns, and the agreements and conditions on the part of Tenant to be performed and observed shall be binding upon Tenant and its successors and assigns and shall ~~inure~~enure to the benefit of Landlord and its heirs, legal representatives, successors and assigns. If Landlord shall be more than one person or entity, the obligations of Landlord hereunder shall be joint and several. If Tenant shall be more than one person or entity, the obligations of Tenant hereunder shall be joint and several.

DELAYS

18.3 In any case where either party hereto is required to do any act (other than make a payment of money), delays caused by or resulting from Act of God, war, civil commotion, fire, the elements or other casualty, labor difficulties, general shortages of labor, materials or equipment, or other causes beyond such party's reasonable control, shall not be counted in determining the time when the performance of such act must be completed, whether such time be designated by a fixed time, a fixed period of time, or "a reasonable time". In any case where work is to be performed by a third party and/or is to be paid for out of insurance proceeds or condemnation awards, due allowance shall be made, both to the party required to perform such work and to the party required to make such payment, for delays in the collection of such proceeds and awards. The provisions of this Section 18.3, however, shall not apply to the dates set forth in Article IV above except as specifically set forth in Sections 4.5 and 4.8 above.

HOLDING OVER

18.4 If Tenant or any person claiming under Tenant shall remain in possession of the Demised Premises or any part thereof after the expiration of the term of this lease without any agreement in writing between Landlord and Tenant with respect thereto, the person remaining in possession shall, ~~prior to acceptance of rent by Landlord,~~ be deemed a tenant at sufferance, and, ~~after acceptance of rent by Landlord,~~ the person remaining in possession shall be deemed a tenant from month to month subject to the provisions of this lease insofar as the same may be made applicable to a tenancy from month to month otherwise subject to all of Tenant's obligations of this lease, except that Tenant shall pay Base Rent equal to ___% [more than 100%] of the Base Rent payable during the last month of the Term. The provisions of this Section 18.4 shall not be deemed to limit or constitute a waiver of any other rights or remedies

of Landlord provided in this Lease or at law or in equity.

WAIVERS

18.5 Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by such party of any of its rights hereunder- except that claims not made within twelve (12) months following the expiration of the Term shall be deemed waived. No waiver by either party at any time, express or implied, of any breach of any provision of this lease shall be deemed a waiver of a breach of any other provision of this lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent or approval of such action on any one or more occasions shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this lease or by operation of law, either at law or in equity, upon any breach shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by such party or not, shall be deemed to be in exclusion of any other. Any two or more or all of such rights and remedies may be exercised at the same time. Without limiting the generality of the foregoing, if any restriction contained in this lease for the benefit of either party shall be violated, such party, without waiving any claim for breach of agreement against the other party, may bring such proceedings as it may deem necessary, either at law or in equity, in its own name or in the name of the other party, against the person violating such restriction. [NB: Consider effect of estoppel certificate given at any time by either party.]

DISPUTES

18.6 It is agreed that if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other party under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest", such payment not being regarded as a voluntary payment, and there shall survive the right on the part of such party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of such party to pay such sum or any part thereof, such party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this lease. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", the performance of such work in no event being regarded as a voluntary performance, and there shall survive the right on the part of such party to institute suit for recovery of the cost of such work. If it shall be adjudged that there was no legal obligation on the part of such party to perform the same or any part thereof, such party shall be entitled to recover the cost of such work or the cost of so much thereof as such party was not legally required to perform under this lease. No acceptance by Landlord of a lesser sum than the Base Rent and Additional Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, 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 installment or pursue any other remedy provided in this Lease. The delivery of keys to Landlord shall not operate as a termination of this Lease or a surrender of the Premises.

QUIET ENJOYMENT

18.7 Landlord agrees that upon Tenant's paying the rent and performing and observing the agreements and conditions on its part to be performed and observed hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Demised Premises and all rights of Tenant hereunder during the term of this lease without any manner of hindrance or molestation by Landlord, subject to the terms, provisions and conditions of this Lease, provisions of law and rights of record to which this Lease or may become subordinate. This covenant is in lieu of any other so-called covenant of quiet enjoyment either express or implied.

NOTICES

18.8 Any notice, consent or approval provided for herein shall be deemed duly given by the sender thereof to the addressee thereof only if in writing and mailed to such addressee by registered or certified mail, postage prepaid, or by sending the same via Federal Express, or other overnight courier service which delivers only upon signed receipt of the addressee, return receipt requested, at the "Notice Address" of such addressee. The time of the giving of any notice shall be the time of receipt thereof by the addressee or any agent of the addressee, except that in the event the addressee or such agent of the addressee shall refuse to receive any notice given by registered mail or certified mail as above provided or there shall be no person available at the time of delivery thereof to receive such notice, the time of the giving of such notice shall be the time of such refusal or the time of such delivery, as the case may be, and except that any notice given pursuant to Article IV shall be deemed given when mailed. The Notice Address of Landlord shall be _____ . The Notice Address of Tenant shall be _____. If the sender of any notice to any addressee shall have previously been given notice by said addressee of a change of address of said addressee, such changed address shall thereafter as to such sender be deemed the Notice Address of such addressee.

COST AND EXPENSE

18.9 Wherever in this lease provision is made for the doing of any act by any person it is understood and agreed that such act shall be done by such person at its own cost and expense unless a contrary intent is expressed.

THIS INSTRUMENT

18.10 This lease is transmitted for examination only and does not constitute an offer to lease, and this lease shall become effective only upon execution and unconditional delivery thereof by both parties hereto. This instrument contains the entire and only agreement between the parties and no oral statements or representations or prior written matter not contained in this instrument shall have any force or effect. This lease shall not be modified in any way except by a writing subscribed by both parties.

MARGINAL NOTES

18.11 The marginal notes used as headings for various provisions of this lease are used only as a matter of convenience for reference and are not to be considered a part of this lease or used in determining the intent of the parties to this lease.

BROKERS

18.12 Each of Landlord and Tenant warrant and represent to the other that the only brokers it has dealt with in connection with this lease are _____, as brokers and agents for Landlord and Tenant, respectively, and as the case may be. Each party shall defend, indemnify and hold harmless the other party for breach of the foregoing representation. Landlord shall defend, indemnify and hold harmless Tenant from and against all commissions, fees and expenses, of said brokers, ~~and all claims therefor, in connection with this lease.~~

BROKERS

~~18.12 Each of Landlord and Tenant warrants and represents to the other that it has dealt with no brokers in connection with this lease. Each party shall defend, indemnify and hold harmless the other party from and against all commissions, fees and expenses, and all claims therefor, in connection with this lease of, or by, any broker alleging he, she or it has dealt with the indemnitor party.~~


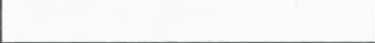



**INVESTMENT
CREDIT**

18.13 If any investment tax credit, new jobs credit, or other tax benefit in the nature of any such tax credit shall be available with respect to any property subject to this lease, Landlord hereby waives such tax benefit and agrees that Tenant may claim the same to the extent that the tax laws permit the same to be "passed" to Tenant. Tenant shall provide Landlord with such forms as Landlord shall be required to file to effect the "passing" of such tax benefit to Tenant. [NB: Modify as needed to provide any tax credit to be claimed by Landlord.]

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Document comparison by Workshare Compare on Tuesday, December 04, 2018
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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