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Sample Commercial Lease Agreement

Below are examples of common clauses found in commercial leases. Not every commercial lease, however, contains the same wording or clauses. Some might contain language that is more favorable to the tenant, and some might contain language that is more favorable to the landlord. Because commercial leases often use complex language, it may be hard to determine if a particular clause is pro-tenant or pro-landlord. For that reason, this document is meant to highlight differences between clauses that are neutral (in *black ink*), pro-landlord/lessor (in *red ink*), and pro-tenant/lessee (in *green ink*). Please note that some of the examples given are extreme; it is possible to have clauses that meet somewhere in the middle, which are more neutral than what is provided below. Additionally, because a lease is interpreted under principles of contract law, unless the terms are deemed unconscionable or against public policy, they will likely be enforced.¹

Please note that because there are many commercial leases for many particular situations, this document is *not* comprehensive; it is educational, but is no substitute for retaining competent legal counsel. Endnotes that include the sources used in this document are provided after the sample lease.

* * *

State of New York,

County of [*name of county*]

I. THE PARTIES.

This Lease Agreement agreed on [*date of agreement*] is between:

The **Lessor** known as [*name of landlord*] with a mailing address of [*mailing address of landlord*].

AND

The **Lessee** known as [*name of commercial tenant*] with a mailing address of [*mailing address of commercial tenant*].

The Lessor and Lessee agree as follows:

II. GRANT OF THE LEASE.

Lessor, in exchange for (“in consideration of”) Lessee’s security deposit and promise (covenant) to pay rent and additional payments, and otherwise perform its obligations under this Lease, leases to the Lessee the building known as [*name of the building*], in [*name of city*], New York, and more particularly described as [*description of the building,² including street address, legal description, common description, size of the premises, areas not included*].³

If the leased premises is still under construction by the Commencement Date, the Commencement Date shall merely be delayed until the construction is complete. All obligations under this Lease will also be delayed until such date.

What this means is that the Lessor promises to allow the Lessee to possess, occupy, and use the leased premises, so long as the Lessee pays a security deposit, and promises to pay Rent in the future and otherwise comply with the Lease. Instead of requiring the Lessee to pay Rent while the premises is still under construction, the Lessee’s Rent, and other obligations, will not begin until the construction is complete—when the Lessee can possess, occupy, and use the premises.

OR

If for any reason the Lessor is unable to deliver possession of the leased premises by the agreed upon Commencement Date of the Lease (*i.e.*, construction), the Lease shall *not* be void or terminable and the Lessor shall not be liable to the Lessee to the Lessee for damages caused by the delay. Instead, the Lease’s Commencement Date will merely be delayed until the Lessor can deliver possession of the premises.

What this means is that Section 223-a of the New York Real Property Law does not apply to this Lease. As a result, if the Lessor fails to let the Lessee possess, occupy, and/or use the leased premises (failing to deliver possession) by the Commencement Date, the Lessee cannot sue the Lessor for any money the Lessee loses as a result of the delay, nor can the Lessee terminate this Lease.⁴

OR

The Lessor must deliver possession of the premises to the Lessee on agreed upon Commencement Date of the Lease. If the Lessor fails to deliver possession on this date, Lessee may rescind the Lease and recover rent already paid.⁵

Further, Lessor promises to make reasonable efforts to evict any holdover tenants before the Commencement Date.⁶ And, if Lessee is unable to procure the licenses or permits it needs to run its business prior to the Commencement Date, Lessee may terminate the Lease.⁷

What this means is that the Lessee may terminate the Lease before the Commencement Date if one of two things happen: (1) the Lessor fails to give the Lessee possession of the leased premises by the Commencement Date; or (2) the Lessee is unsuccessful in its efforts to obtain any licenses or permits it needs to run its business.

III. LEASE TERM.

The term of this Lease shall begin on the Commencement Date, which shall be on [start date of the lease], and shall terminate on the Termination Date, which shall be on [end date of the lease]. Further, the Lessee shall have the option to renew the Lease for ___ [month, year, etc.] terms at a rent of \$ ___ per [month, quarter, year, etc.], so long as the Lessee provides the Lessor with notice of renewal in writing, no less than ___ days before the Termination Date or expiration of any renewal term, and Lessee remains in good standing under the terms of the Lease for the current lease term. The Lessee and Lessor will continue to abide by the same promises, conditions, and provisions provided in this Lease Agreement, unless they otherwise agree, in writing.⁸

The Lessee may, at any time, terminate this Lease, terminating all its obligations under the Lease by providing ___ days' notice to the Lessor, in writing, and providing a payment of \$___, plus all other amounts then due under this Lease.⁹

What this means is that the Lease shall go from the Commencement Date to the Termination Date, unless the Lessee renews the Lease for additional terms or terminates the Lease prematurely. To either renew or terminate, the Lessee must notify the Lessor in writing. If the Lessee renews, the Rent for the additional terms may be higher. Similarly, to terminate, the Lessee must first pay the Lessee a certain amount of money, which are typically called liquidated damages (see the Glossary of Terms for a definition and more information).

IV. EXTENSIONS AND MODIFICATIONS.

The parties may extend, expand, or modify this Agreement by agreeing to any changed or additional terms and conditions, so long as these terms and conditions are in writing and signed by the parties.¹⁰

What this means is that, to be enforced, any changes to the Lease must be in writing and signed by the parties. Any oral promises will not be enforced.

V. SECURITY DEPOSIT.

The Lessee must give the Lessor a sum of \$___ as security for the full and faithful performance by the Lessee of all the terms and conditions of this Lease that the Lessee is required to perform. Such sum shall be returned to the Lessee ___ days after the expiration of this lease, provided the Lessee has fully and faithfully carried out its obligations.¹¹

What this means is that the Lessee must pay \$___ to show that it will comply with the Lease. So long as the Lessee does comply with the Lease, the Lessor must return the Security Deposit to the Lessee within ___ days after the Termination Date.

However, if the Lessee defaults in any way, the Lessor may, in the Lessor's discretion, use, apply, or keep any sum of the Security Deposit (up to all of it) for the any payments the Lessee missed, or any expenses caused by Lessee's default (i.e., costs of repairs necessary to fix damages the Lessee caused to the premises). Lessor shall not be required to keep the Security Deposit separate from its general funds

and Lessee is not entitled to any interest on the money **OR** Lessor must keep the Security Deposit separate from its general funds.¹²

If the Lessor sells the property of which the leased premises is part of during the Lease term, the Lessor may transfer the Security Deposit to the purchaser, releasing the Lessor from all liability regarding the Security Deposit, including if the Security Deposit is not returned to the Lessee.¹³

What this means is that the Lessor is entitled to use any part of the Lessee's Security Deposit to cover late Rent payments, the cost of maintenance and repairs, or other expenses related to the Lease. If the Lessor properly uses the Security Deposit, or sells the property, they are not required to return the Security Deposit to the Lessee. And, if the Security Deposit is not held in a separate account, it will be difficult to determine whether the Lessor used the Security Deposit, or other funds, to cover late payments, etc., making it difficult to determine whether the Lessee is entitled to have its Security Deposit returned.

VI. DETERMINATION OF RENT.

Base Rent. During the term of the Lease, the Lessee agrees to pay the Lessor, and Lessor agrees to accept, by [*mail, online, etc.*], a Base Rent (also “Fixed Rent”) on a [*monthly, quarterly, yearly, etc.*] basis in the amount of \$____. Payment of rent shall be due no later than [*date each payment is due {i.e., 1st of every month}*].¹⁴

Base Rent can be a consistent, fixed price throughout the term of the lease, or it can change every [month, quarter, year], increasing or decreasing by a percentage or a fixed amount.

Percentage Rent. In addition to the Base Rent, Lessee agrees to pay the Lessor ____% of all gross sales generated on the premises. This amount shall be paid on a per [*month, quarter, year, etc.*] basis.¹⁵

Late Fee. A late fee in the amount of [*fixed amount or percentage of rent*] shall be imposed on the Lessee if payment is not **postmarked** or **received** by Lessor on or before [*day when late fee is imposed {i.e., 3rd day of each month}*].¹⁶

What this means is that if the Lessee fails to make payments on time, an additional fee will be imposed.

VII. ADDITIONAL PAYMENTS (Usually Called “Additional Rent”).

The Lessee shall pay the Lessor for all costs and expenses necessary for the Lessee to use, operate, and maintain the leased premises, including utilities (*i.e.*, electric, gas, water, sewer), maintenance and repair of utility systems, insurance (*i.e.*, Lessor's insurance costs for fire and casualty, loss of rents, and liability insurance of the premises), repairs, replacement costs (due to both ordinary and extraordinary wear and tear, and catastrophe), trash and snow/ice removal, landscaping and lawn maintenance, painting, and sign installation.¹⁷

What this means is that the Lessor is not responsible for any costs associated with the premises while the Lessee is in possession—such costs are the sole responsibility of the Lessee.

i. Taxes.

The Lessee is obligated to pay all taxes levied against its personal property and trade fixtures owned or placed by the Lessee in the leased premises.¹⁸ In addition, during the term of this Lease, the Lessee must compensate the Lessor for all real estate taxes and assessments applicable to the leased premises, from the Commencement Date to the Termination Date. The Lessee will also be responsible for any interest and penalties lawfully imposed on such taxes if the Lessee's payments to the Lessor are late.¹⁹

Real estate taxes include all taxes, assessments, and special assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature, imposed on the leased premises by any body with the authority to do so (*i.e.*, municipal, school, county, open space taxes and business improvement and special improvement district assessments).²⁰

What this means is that the Lessee is required to compensate the Lessor for the cost of real estate taxes and assessments and must pay the Lessor before the taxes are due to avoid additional charges. Further, because the taxes assessed or levied against a property are subject to change, the Lessee's tax payment obligation may increase during the Lease term.

OR

The Lessor shall be responsible for the payments of all real estate taxes and special taxes and assessments attributable to the premises during the term of the Lease.

What this means is that the Lessee is not required to compensate the Lessor for taxes assessed and levied against the property.

ii. Insurance.

The Lessee shall provide and maintain personal liability and property damage insurance with limits of \$___ for injury or death and \$___ for property damage. The Lessee shall provide the Lessor with a copy of such insurance policy prior to the Commencement Date. The insurance shall name the Lessor as an insured and shall protect and indemnify the Lessor for any injury, death, or property damage to that occurs on the premises and the property surrounding it (*i.e.*, parking lots).²¹

However, Lessee shall not be required to indemnify the Lessor for any harm resulting from the Lessor's willful acts or omissions or gross negligence, or that of his employees, agents, licensees, or contractors.²²

What this means is that the Lessee is required to obtain personal liability and property insurance policies, and pay the premiums associated with the policies. In addition, the Lessee must ensure the Lessor is covered under the policies so that the Lessor can be compensated in the event of injury or property damage on the premises.

OR

Lessor shall maintain property insurance, in the amount of \$____, covering the property against fire and other casualties.²³

What this means is that the Lessee is not required to obtain or pay for property insurance—the Lessor is.

iii. Utilities.

Lessee shall pay for all costs related to water, sanitation, sewer, electricity, light, heat, gas, power, fuel, janitorial, and other services related to Lessee's use of the leased premises.²⁴

What this means is that the Lessee is required to pay for utilities and other similar expenses.

OR

Lessor shall pay for all costs related to water, sanitation, sewer, electricity, light, heat, gas, power, fuel, and janitorial, and other services related to the leased premises.

What this means is that the Lessee is not required to pay for utilities and other similar expenses—the Lessor is.

iv. Maintenance and Repairs.

Lessee shall make [*monthly, quarterly, yearly, etc.*] payments to Lessor with respect to the expected costs of maintenance and repairs, to be paid at the same time as Rent payments. The payments shall be in the amount reasonably estimated by Lessor. These expenses are recognized as costs related to common area maintenance, including, among other things, parking area maintenance, snow removal, landscaping, trash removal, janitorial services, and security systems. This is not an exhaustive list.²⁵

What this means is that the Lessee is required to pay for the costs associated with maintaining and repairing the leased premises and common areas, regardless of who does the maintenance/repairs. These payments are due monthly, like additional Rent.

OR

Lessor shall be responsible for any costs related to the maintenance and upkeep of the property's common areas. In addition, Lessor shall be responsible for costs related to the maintenance of structural elements, including foundations, walls, and roof and roof coverings.²⁶

What this means is that the Lessee is not required to pay for costs associated with maintaining and repairing common areas or the property's structural elements—the Lessor is.

VIII. OBLIGATIONS FOR MAINTENANCE AND REPAIRS.

Each party agrees that it will obtain all necessary permits before making any repairs, alterations, or other improvements to the leased premises. If a party notices that repairs are necessary, but are the obligation of the other party, the first party shall give written notice to the other that such repairs are needed. The party responsible for the repairs must then agree to promptly commence and diligently complete such repairs. However, the party performing the repairs shall not be penalized for delays that are occasioned by events beyond that party's control (*i.e.*, natural disaster, strike, riot).²⁷

In addition, Lessor and Lessee shall have shared responsibilities of the repairs and maintenance of the premises. Lessor shall have the following responsibilities [*list of Lessor responsibilities*] and the Lessee shall have the following responsibilities [*list of Lessee responsibilities*].

What this means is that the parties agree to split the responsibility for repairing, maintaining, and improving the premises, and agree to perform all necessary repairs, maintenance, and improvements quickly and diligently, unless they are prohibited from performing for reasons outside of their control.

OR

Lessee recognizes that Lessor has not made any warranties regarding the suitability or fitness of the premises for the Lessee's business or for any other purpose, unless otherwise provided for in the Lease. Therefore, Lessor does not agree to perform any alterations or construct any improvements to the premises to make it so it is fit for Lessee's business. Rather, it is the Lessee's responsibility to ensure the premises is to its standards.

Further, Lessee is responsible for ensuring the premises is in compliance with the Americans with Disabilities Act and all other applicable requirements, including all municipal, county, state, and federal laws, ordinances, rules, and regulations. If the premises is not in compliance with these laws, the Lessee shall be responsible for making any necessary modifications to make it in compliance.²⁸

Lessee shall repair and maintain the leased premises in good order and condition in all respects (whether the need for such repairs is a result of the Lessee's use, or from prior use or normal wear and tear). This obligation includes maintaining all equipment and facilities (*i.e.*, plumbing, heating, air-conditioning, boilers, fire protection systems, fixtures, interior walls, ceilings, floors, windows, doors, parking lots). In addition, at the termination of the lease term, Lessee promises to remove its goods and trade fixtures as well.

Lessor is entitled to enter the leased premises to inspect any repairs, improvements, alterations, or additions made to the premises during the lease term.²⁹

What this means is that the Lessor never promised that the premises would be a certain way; thus, the Lessee is responsible for making the premises the way the Lessee wants it to be. Any repairs,

maintenance, improvements, additions, etc. that the Lessee needs to have done before they can properly run his business are the Lessee's sole responsibility. Further, this also means that the Lessee is responsible for learning what laws govern the premises and the Lessee's business and making sure the Lessee's business is not in violation of any of these laws (including laws governing handicap-accessible entranceways and bathrooms and zoning laws—whether the Lessee can operate his business in the zoning district the leased premises is located).

OR

Lessor shall keep the leased premises free from any defects, deficiencies, deviations, or failures of materials or workmanship in the building during the term of the Lease. Thus, Lessor shall be responsible for, among other things, repairing all reasonable wear and tear. And, Lessee shall not be responsible for maintenance or repairs caused by any acts or omissions or negligence of the Lessor, its employees, agents, or contractors. Lessor shall use reasonable efforts to complete necessary repairs promptly, [but Lessor shall have no liability for any delays in causing such repairs, including any liability for injury to or loss of Lessee's business. Nor shall any delays entitle Lessee to any abatement of Rent or damages, or be deemed an eviction of Lessee.]³⁰

In addition, Lessee shall have the right, at its sole expense, to redecorate the leased premises and make non-structural alterations and changes the Lessee deems necessary.³¹

What this means is that the Lessee can rely on the Lessor to make sure the premises is in good working condition and for all maintenance and repairs throughout the Lease term. Further, this clause permits the Lessee to make non-structural changes to the premises without having to ask the Lessor for permission. However, because of the sentence "but Lessor shall have no liability . . .," the Lessee cannot sue the Lessor if the Lessor is not prompt in their repairs, even if the delay causes injury or damage to the Lessee or their business, and the Lessee is still required to pay rent if the Lessor does not perform the repairs promptly.

i. Damage to Leased Premises.

Unless otherwise specified in this Lease, the Lessor shall not be responsible for any loss of or damage to property of the Lessee, except where caused by the willful act or omission or gross negligence of Lessor or his agents, employees, or contractors.³²

What this means is that the Lessee is still required to perform all its obligations under the Lease, even if the premises is destroyed, and the Lessee cannot sue the Lessor to recover any monetary losses that the Lessee suffers from the destruction. However, the Lessor must take responsibility if the Lessor or their employees intentionally caused the damage or loss.

OR

If the property of which the premises is part of is destroyed or damaged by any causality that was not caused by acts of the Lessee, and which adversely affects the Lessee's occupancy and use of the leased premises, the Rent shall be abated or adjusted to the extent the premises is rendered unfit for use and occupation by the Lessee and until the premises is returned to a proper condition, at the expense of the Lessor. If the Lessor does not either obtain a building permit within ___ days

after the date this damage occurs, or complete such repairs, rebuilding, or restoration within ___ months, Lessee may terminate the Lease any time thereafter, so long as the Lessee sends proper notice to the Lessor.³³

It is understood that if the entire premises is destroyed, the Lessor shall not be obligated to restore, replace, or rebuild the premises, if doing so would cost more than the sum of the insurance proceeds available for reconstruction.

What this means is that, if the leased premises is destroyed, the Lessee does not have to pay Rent until the premises is repaired. And if the premises is damaged, the Lessee's Rent will be reduced, based on how burdensome the damage is on the Lessee's business. Further, the Lessee can rely on the Lessor to repair the damage or rebuild the premises, so long as insurance proceeds cover the costs.

ii. Insurance Proceeds.

In the event of damage to or destruction of the leased premises, Lessee shall be responsible for adjusting the loss and settling all claims with the appropriate insurance companies. The proceeds shall be used for the repair, restoration, rebuilding, or replacement, or any combination thereof, of the leased premises.

The Lessor is entitled to keep any insurance proceeds that are not used for the necessary repairs, etc. of the premises. Meanwhile, if the proceeds are rather inadequate to cover the costs of such repairs, etc., the Lessee shall be responsible to cover the cost of the deficiency.³⁴

What this means is that, in the event of some injury, damage, or loss, the Lessee is responsible for communicating with the insurance company to get money to cover the damage. At the same time, if the insurance company awards more money than what it costs to make the repairs, the Lessor gets to keep whatever money is left over. But if the insurance company does not pay enough to cover the costs of the repairs, the Lessee must pay the difference.

IX. IMPROVEMENTS.

Lessee shall not make any changes to the leased premises, except as permitted by the Lease.³⁵

Before performing the improvements, Lessee must obtain written approval from the Lessor regarding the Lessee's plans, while recognizing that approval of such plans shall not constitute evidence that the plans are in compliance with any applicable state or local governmental code or regulation or that they are adequate for the Lessee's business.³⁶ If Lessor incurs any reasonable expenses through its review Lessee's plans and/or in inspecting Lessee's improvements, Lessee shall reimburse the Lessor.³⁷

Lessee shall obtain all certificates, permits, licenses, and other authorizations required from governmental bodies or authorities for the construction of any improvements on the leased premises. The Lessee shall also be responsible for maintaining these authorizations in full force and effect at Lessee's expense.³⁸ Additionally, throughout construction, Lessee must, at its own expense, maintain a policy of builder's risk and liability insurance. All risk of loss or damage to

improvements during construction of Lessee's improvements shall be on the Lessee, with proceeds from insurance payable to Lessor. Finally, it shall also be the responsibility of the Lessee to negotiate and supervise all the contracts for services, labor, and materials required for the construction of improvements made during the term of the Lease. Lessor shall not be expected to pay for any improvements, alterations, or repairs occasioned by the Lessee.³⁹

What this means is that the Lessee cannot make any improvements on the leased premises without the Lessor's approval of the improvement plans. After approval, the Lessee is solely responsible for paying for and performing all the improvements it wants to make on the property, and for ensuring that it is permitted to do so—under both the Lease and any applicable laws.

OR

Lessee may make structural alterations and additions to the leased premises, provided that Lessee first obtained consent from Lessor, in writing. Lessor agrees not to delay consent or withhold consent unreasonably. In addition, Lessee can install its own property in the leased premises, and paint, carpet, or decorate the leased premises without Lessor's consent, so long as Lessee gives the Lessor ___ days' notice of such improvements.⁴⁰

What this means is that, although the Lessee needs permission from the Lessor to make structural changes to the leased premises, the Lessor must give permission quickly, unless they have a valid reason not to. Further, the Lessee can make non-structural changes without having to ask the Lessor for permission.

X. USE OF PROPERTY BY TENANT.

Tenant shall operate its business within the leased premises for the operation of [business type],

And for no other business or purpose, without prior written consent of the Lessor (*pro-Lessee would be to define the permitted use broadly*). Lessee shall not use the premises in any way that (i) is unlawful, (ii) creates damage, waste, or nuisance, (iii) emits any objectionable odors, sounds or vibrations, or allows any pests, insects or vermin, or (iv) that impairs the structural soundness of the premises. In addition, Lessee promises to operate its business on the leased premises diligently and continuously for the duration of the lease term, beginning on the Commencement Date. If Lessee fails to do so, Lessor is entitled to re-enter the premises and take possession.⁴¹

While operating its business, Lessee shall abide by and observe any rules and regulations established by the Lessor, which the Lessor deems necessary for the safety, security, care, and appearance of the Property.⁴²

What this means is that the Lessee is constrained in what it can do with its leased premises—Lessee can only use the premises for the business purposes specified in the Lease. Further, the Lessee is required to follow any additional rules the Lessor creates regarding how the Lessee runs their business, including the requirement that the Lessee not close its business for prolonged periods of time. The Lessee is also required to ensure that its use of its leased premises does not adversely

impact its neighbor's use of their premises, or adversely impact the use of its leased premises for future tenants.

If in a shopping center or similar building: At the same time, Lessor agrees not to lease any other premises, within the property which the Lessee's premises is part of, to a business similar to the Lessee's. Further, Lessor represents and warrants that the leased premises currently has no existing building code violations and is also properly zoned for the Lessee's intended use.

What this means is that the Lessor promises to protect the Lessee from competition in the shopping center where the Lessee's premises is located. Also, the Lessor promises that the Lessee's intended use of the leased premises is not in violation of any zoning law or building code; if this turns out not to be true, and the Lessee loses money as a result, the Lessee can sue the Lessor to recover the money lost.

XI. ASSIGNMENT AND SUBLETTING.

Lessee shall not assign or sublet any part of the leased premises without Lessor's written consent. This consent shall not be unreasonably withheld or delayed.

However, withholding consent shall be reasonable if the proposed assignment or sublease does not have (i) net worth equal to or greater than Lessee; and/or (ii) at least ___ years' experience in Lessor's trade/business. It is important to note that the Lessee remains responsible under this Lease, and must maintain all its obligations, even after successfully assigning or subletting the premises.⁴³ Thus, any act or omission of any assignee or subtenant in violation of the Lease shall be considered a default by the Lessee.⁴⁴

What this means is that, if the Lessee wants to turn over the premises to someone else, assigning or subletting it, the Lessee must first get permission from the Lessor to do so. But even if the Lessor allows the Lessee to assign or sublet the premises, the Lessee is still bound by this Lease agreement, and can be responsible for payments under the Lease if the assignee or subtenant fail to pay.

XII. LESSEE'S DEFAULT.

In the event the Lessee shall fail to pay rent or any other expenses required under the Lease, or otherwise fails to fully and faithfully perform its obligations for a period of more than ___ days (*the longer the cure period, the better for the Lessee*), after receiving notice of said default, the Lessor may declare the Lease terminated and may immediately re-enter the premises and re-take possession of it, as well as any of the Lessee's personal property, equipment, or fixtures left on the premises. These actions do not release the Lessee from its obligations under the Lease, including Rent obligations. In addition, the Lessor may sue the Lessee for any damages or past rents due and all rents and other costs remaining under the Lease through the Termination Date.⁴⁵

In addition, the Lessor shall not be responsible or liable for failing to re-let the premises or for failing to collect any rent due after re-letting the premises.⁴⁶

What this means is that if the Lessee breaches the Lease in any way, including making late payments or not operating its business on a consistent basis, and does not fix the problem ___ days after the Lessor gives the Lessee notice of the breach, the Lessor can kick the Lessee out of the premises and re-

gain possession. However, even though the Lessee is no longer permitted to use the premises to operate its business, the Lessee must still make all Rent payments until the Termination Date. And, the Lessor has no “duty to mitigate damages” by finding a replacement tenant to cover part of the costs of Rent.

OR

If the Lessee could not reasonably cure the default with diligence, Lessee shall have an extended time to cure. In such circumstances, the Lessor shall give the Lessee an additional ___ days to fully comply, so long as Lessee notifies Lessor of its intention to comply and explains why the extension is necessary.⁴⁷

If the Lessee still fails to comply with the Lease, the Lessor shall make reasonable efforts to re-let the premises. If the Lessor successfully finds a new Lessee, his damages against the defaulting Lessee shall be reduced by the amount of rent collected from the new Lessee.

What this means is that the Lessor should give the Lessee additionally time to make payments, or otherwise perform its obligations under the Lease, so long as the Lessee can provide a good reason to support the extension. And, if the Lessee still breaches the Lease, the Lessor has a “duty to mitigate damages” by finding a replacement tenant. While the Lessor can still sue the Lessee for the breach, the Lessor must subtract any rent payments they collect from the new tenant from the amount of damages they request from the Lessee at trial (or arbitration).

XIII. LESSOR’S DEFAULT.

The Lessee may send written notice to the Lessor specifying certain duties or obligations that the Lessor has not fulfilled, notifying the Lessor of its failure to fully and faithfully perform under the Lease. If said duties or obligations have not been cured in ___ days from receiving such notice, then the Lessor shall be in default of the Lease. If the Lessor is in default, the Lessee may terminate this Lease agreement and is released of all obligations under the Lease. Alternatively, if Lessor fails to cure the default within ___ days after receiving notice of the default, Lessee may cure the default himself and be reimbursed by the Lessor. If Lessor fails to reimburse the Lessee, the Lessee can deduct the cost of the repairs from the next payment owed to the Lessor.⁴⁸

However, if Lessee decides not to terminate the Lease, Lessee is not relieved of its obligations under the Lease as a result of the Lessor’s failure to comply with its obligations under the Lease.⁴⁹

What this means is that a Lessee may end the Lease, or do the Lessor’s work (i.e., replacing a light), and ask to be reimbursed for the costs of performing this work, only if the Lessee first gives the Lessor notice that they have failed to perform his obligations. The Lessee must then wait the required amount of time before taking any action against the Lessor. And, until the Lease is officially terminated, the Lessee is must still pay Rent and otherwise perform its obligations under the Lease, despite the Lessor failing to uphold his end of the bargain.

i. Liquidated Damages.

Lessor agrees that if the Lessor fails to deliver the premises to the Lessee, or otherwise fails to perform under the Lease, the Lessor will pay the Lessee \$___ [dollar amount of liquidated damages] as liquidated damages for such breach of the agreement. The Parties agree that it would be impracticable and extremely difficult to determine the amount of actual damage the Lessee sustains as a result of the Lessor's breach. So, the sum stated above is used to compensate the Lessee for likely damages, and is not intended by the parties to be a penalty.⁵⁰

What this means is that, because it is difficult to predict and/or calculate the actual damages the Lessee will suffer if the Lessor fails to perform his obligations under the Lease, the parties agree that the Lessor will pay \$___ if the Lessor does not perform. This is a fixed number that is meant to compensate the Lessee for losses that results from the Lessor's failure to perform.

XIV. QUIET ENJOYMENT.

Upon payment by Lessee of all Rent and other charges and the performance of all other obligations under the Lease, Lessee shall peaceably and quietly have, hold, occupy, and enjoy the leased premises for the term of the Lease, without interference by the Lessor.⁵¹

What this means is that the Lessee has the right to use and occupy the leased premises, free from unreasonable interference by the Lessee.

i. Warranties

Lessor does not warrant or make any representation that any particular license or permit that may be required for the Lessee to operate his business will be granted. Any failure of the Lessee to obtain, maintain, or renew any necessary licenses or permits shall not affect the Lessee's obligations (i.e., rent payments) under this Lease.⁵²

What this means is that the Lessee will still be required to pay Rent even if the Lessee fails to obtain the permits and/or licenses required to operate the Lessee's business. In other words, the Lessee must still pay Rent, even if the Lessee cannot run their business.

OR

Lessor warrants and represents, and the Lessee has relied on such warranties and representations in the execution of this Lease, that Lessor is the owner of the leased premises, which is free and clear of all encumbrances, except for those of record as of the date of the Lease. Such exceptions shall not impede the Lessee's quiet use and enjoyment of the leased premises. Lessor further warrants and represents that the leased premises is currently zoned for the use contemplated in this Lease.⁵³

What this means is that the Lessor has the authority to permit the Lessee to use and occupy the premises for the term of the Lease. Further, this means that the Lessor promises that the Lessee will not be in violation of any zoning laws if it uses the premises for its business, implying that the Lessor may be responsible for any money the Lessee loses if the zoning law in fact prohibits Lessee's business.

XV. EXCUSED DEFAULTS.

In the event either party shall be delayed or prevented from performing any of its obligations by reason beyond its control (*i.e.*, unavailability of materials, failure of power, restrictive governmental laws or regulations, default of the other party, war), performance of such obligation shall be excused for the period of the delay. The time the party has to complete this obligation shall be extended until it is reasonable to fully perform this obligation (when the event causing the delay is over). However, lack of funds shall not be deemed to be a cause beyond control of either party.⁵⁴

What this means is that neither party is required to perform its obligations under the agreement when it is impossible to do so because of natural disasters, default of the other party, war, or any other reason outside the party's control.

XVI. DISPUTES.

The parties agree that, if at any time a dispute shall arise regarding the amount of any payment to be paid by one party to the other, the party who is obliged to pay may make the payment “under protest,” preserving that party’s right to challenge the payment in a suit to recover the payment. The same can be said for obligations to perform work under the Lease. If it shall be determined that the party did not in fact have an obligation to make the payment or perform the work, that party shall be entitled to recover the costs of any payment or work it was not legally required to perform under the Lease.⁵⁵

What this means is that, if a party fears that it will be in default if it fails to pay or perform, though does not think it should be required to pay or perform, it can pay or perform “under protest.” By doing so, the party avoids being in default while preserving its right to bring a suit to challenge the other party’s assertion that it is required to make that payment or perform that obligation.

i. Waivers.

If Lessor commences a proceeding to recover possession of the premises or payments owed under the Lease, Lessee agrees not to allege any noncompulsory counterclaims in that proceeding (but this is not a waiver of Lessee’s right to assert these claims in a separate proceeding initiated by the Lessee). Both parties waive their rights to trial by jury in the event of any proceeding.

Further, Lessee waives all claims for property damage resulting from any accident in or upon the premises, including claims resulting from equipment becoming out of repair; Lessor’s failure to maintain the premises; any defect in utility systems; or fire or other casualty. In addition, the Lessor shall not be liable for injury or damages, to persons or property, resulting from the criminal activity of others.⁵⁶

*What this means is that if the Lessee has claims against the Lessor (*i.e.*, that the Lessor breached the Lease), the Lessee most likely will have to file a separate suit to bring them before a judge. However, even in a separate suit, these claims cannot include claims regarding property damage on the premises that result from the Lessor’s failure to maintain the premises, utility systems (*i.e.*, heat, water, electricity) or other equipment on the premises.*

ii. Attorneys' Fees.

If Lessor commences a proceeding to recover possession of the premises or payments owed under the Lease due to Lessee's default, Lessor shall be entitled to reasonable attorneys' fees if Lessor prevails under the proceeding. In addition, if no legal action is commenced, a Lessor shall still be entitled to the fees, costs, and expenses incurred in preparing for anticipated litigation, and in serving notices of default.⁵⁷

What this means is that, if the Lessor sues the Lessee for breaching the Lease, and the Lessor wins, the Lessee must compensate the Lessor for the costs associated with consulting with an attorney about the Lessee's breach, preparing the case against the Lessee, and trial itself. Even if the Lessor decides not to take the case to trial, if they consult with an attorney and takes steps to prepare for trial, the Lessee must compensate the Lessor for these costs.

OR

If either party commences a proceeding in response to the other party's default, the prevailing party shall be entitled to reasonable attorneys' fees.

XVII. INDEMNIFICATION.

The Lessee promises and agrees to indemnify, defend, and hold the Lessor harmless from any claims or liabilities which arising from the Lessee's use and occupancy of the premises. Lessee shall also indemnify the Lessor for any losses which the Lessor may suffer due to the Lessee's use and occupancy or care, custody, and control of the premises. The Lessee also promises and agrees to indemnify and hold harmless the Lessor from any claims that arise from any latent defects on the leased premises that the Lessor was not aware of when the Lease was signed or anytime during the term of the Lease.⁵⁸

What this means is that the Lessee cannot sue the Lessor to cover the costs of any injuries that occur on the leased premises during the term of the Lease.

XVIII. HOLDOVER.

If Lessee notifies Lessor of his intention to terminate the Lease, but fails to actually leave, Lessee must pay the Lessor double the Base Rent he otherwise would owe.⁵⁹

What this means is that if the Lessee occupies and uses the leased premises after the date it was expected to exit, the Lessor can charge the Lessee double the Rent for the extra time.

XIX. GOVERNING LAW.

This Lease shall be governed by the laws of the State of New York.

¹ UNIFORM COMMERCIAL CODE § 2-A-501 (McKinney 2014). Milltown Park Inc. v. American Felt and Filter Co., 180 A.D.2d 235 (3d Dep't 1992).

² *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.

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- ³ *Checklist—Drafting a Lease of Commercial Property*, 4A NEW YORK FORMS LEGAL & BUS. § 8:22 (2018).
- ⁴ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW GLOSSARY (2018).
- ⁵ N.Y. REAL PROP. ACTS. LAW § 223-a (McKinney 2018).
- ⁶ ADAM LEITMAN BAILEY & JOHN M. DESIDERO, *THE ESSENTIAL GUIDE TO THE MOST IMPORTANT CLAUSE IN A COMMERCIAL LEASE: THE DEFAULT CLAUSE* (3d ed. 2017).
- ⁷ HON. ORIN R. KITZES ET AL., 4E NY PRAC., COM. LITIG. IN NEW YORK STATE COURTS § 120:8, 21 (4th ed. 2018).
- ⁸ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ *Id.*
- ¹² *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).
- ¹³ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ¹⁴ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).
- ¹⁵ *Id.*
- ¹⁶ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ¹⁷ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).
- ¹⁸ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ¹⁹ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).
- ²⁰ *Id.*
- ²¹ *Office Lease*, N.Y.C. BAR, <https://www2.nybar.org/RealEstate/Forms/lease.pdf>.
- ²² *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ²³ *Office Lease*, N.Y.C. BAR, <https://www2.nybar.org/RealEstate/Forms/lease.pdf>.
- ²⁴ *Id.*
- ²⁵ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).
- ²⁶ *See id.*
- ²⁷ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ²⁸ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ³² *Id.*
- ³³ *Id.*; N.Y. REAL PROP. ACTS. LAW § 227 (McKinney 2018).
- ³⁴ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ³⁵ *Office Lease*, N.Y.C. BAR, <https://www2.nybar.org/RealEstate/Forms/lease.pdf>.
- ³⁶ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).
- ³⁷ *Office Lease*, N.Y.C. BAR, <https://www2.nybar.org/RealEstate/Forms/lease.pdf>.
- ³⁸ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ³⁹ *Commercial Lease Agreement*, SEC (Nov. 18, 2018), <https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.
- ⁴⁰ *Office Lease*, N.Y.C. BAR, <https://www2.nybar.org/RealEstate/Forms/lease.pdf>.
- ⁴¹ ADAM LEITMAN BAILEY & JOHN M. DESIDERO, *THE ESSENTIAL GUIDE TO THE MOST IMPORTANT CLAUSE IN A COMMERCIAL LEASE: THE DEFAULT CLAUSE* (3d ed. 2017).
- ⁴² *(Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).

⁴³ *Id.*

⁴⁴ *Office Lease*, N.Y.C. BAR, <https://www2.nycbar.org/RealEstate/Forms/lease.pdf>.

⁴⁵ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).

⁴⁶ *Holy Properties v. Kenneth Cole Productions*, 87 N.Y.2d 130 (1995).

⁴⁷ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).

⁴⁸ *Commercial Lease Agreement*, SEC (Nov. 18, 2018),

<https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>;

see also N.Y. REAL PROP. ACTS. LAW § 227 (McKinney 2018).

⁴⁹ *Office Lease*, N.Y.C. BAR, <https://www2.nycbar.org/RealEstate/Forms/lease.pdf>.

⁵⁰ *Agreement to Lease—Commercial Building*, 4A NEW YORK FORMS LEGAL & BUS. § 8:31 (2018).

⁵¹ *Commercial Lease Agreement*, SEC (Nov. 18, 2018),

<https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.

⁵² *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).

⁵³ *Commercial Lease Agreement*, SEC (Nov. 18, 2018),

<https://www.sec.gov/Archives/edgar/data/1098009/000100233413000062/elmonteleaseforfiling.htm>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Retail Lease (Pro-Landlord Short Form) (NY)*, THOMSON REUTERS PRACTICAL LAW (2018).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ N.Y. REAL PROP. ACTS. LAW § 229 (McKinney 2018).