

Property or any part thereof for the account of Lessee, in the name of Lessee or Lessor or otherwise, without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor, in its uncontrolled discretion, may determine, and may collect and receive the rents therefor. Lessor shall not be liable for any failure to collect any rent due upon any such reletting.

40. Survival of Lessee's Obligations; Damages. No such expiration of the term of this Lease or repossession of the Leased Property shall relieve Lessee of his liability and obligations under this Lease, all of which shall survive any such expiration or repossession.

In the event of any such expiration, Lessee shall pay to Lessor the Basic Rent, the Percentage Rent and all additional rent and other charges required to be paid by Lessee up to the time of such expiration, and thereafter Lessee, until the end of what would have been the term of this Lease in the absence of such expiration and whether or not the Leased Property or any part thereof shall have been relet, shall be liable to Lessor for, and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default,

(a) the Basic Rent, the Percentage Rent (as estimated on the basis of the average percentage rent for the three fiscal years immediately preceding the year in which such expiration or repossession occurs) and all additional rent and other charges which would be payable under this Lease by Lessee if the term of this Lease had not expired, less

(b) the net proceeds, if any, of any reletting effected for the account of Lessee pursuant to the provisions of section 39, after deducting all Lessor's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration costs, and expenses of preparation for such reletting.

Lessee shall pay such current damages to Lessor monthly on the days on which the Basic Rent would have been payable under this Lease if the term of this Lease had not expired, and Lessor shall be entitled to recover the same from Lessee on each such day.

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