

NOTE — PROHIBITED OR ABANDONED ITEMS IN A BIKELINK PARKING SPACE MAY BE IMMEDIATELY SEIZED AND DISPOSED WITHOUT PRIOR NOTICE OR COMPENSATION. SEE UNDERLINED CLAUSES BELOW FOR DETAILS.

THIS AGREEMENT LIMITS OUR LIABILITY. PLEASE READ CAREFULLY.

BikeLink® System User Agreement

This agreement (“User Agreement”) with eLock Technologies, LLC (also referred to as “eLock” or “BikeLink” and includes any affiliate thereof) and Facility Owner (as defined below) allows You to use a BikeLink access device to obtain share time in a BikeLink facility. Your use of the Access Device constitutes your acknowledgment and consent to this User Agreement – **READ IT CAREFULLY.**

1. Definitions

- 1.1. The “Access Device” is any uniquely assigned ID device, including the BikeLink Smart Card, BikeLink Android or iOS App, Regional Transit Card or Credit Card assigned to a particular User and registered to their profile in the BikeLink user database.
- 1.2. The “Smart Card” is the BikeLink Smart Card issued to the Cardholder.
- 1.3. The “Cardholder” or “User” (“You”) is the bearer of an Access Device.
- 1.4. An “eLocker” is a bicycle locker with compatible Access Device reader made or licensed by eLock.
- 1.5. A “Storage Space” is either an individual eLocker or a unit of a multi-bicycle parking facility with a security Access Device reader made or licensed by eLock.
- 1.6. “BikeLink” is an inter-agency network of shared, on-demand parking and vending facilities for bicycles and other small vehicles, and an administrative system for issuing and distributing Access Devices and the operation and enforcement of BikeLink Facilities. BikeLink® is a registered trademark of eLock.
- 1.7. “Inter-agency network” means that a User can access any BikeLink facility with a BikeLink Access Device. Some BikeLink facilities may require additional access codes.
- 1.8. An “Administrative Device” is a device which enables system administrators, physically or remotely, to update, modify, unlock, or access a BikeLink Facility or any Storage Space thereof.
- 1.9. “Card Issuers” or “Vendors” are agencies or entities which sell or distribute BikeLink Smart Cards.
- 1.10. “Rental” is the result of securing a Storage Space, such as an on-demand eLocker, for the use of a specific access device or linked devices.
- 1.11. “Available” is the state in which any authorized Access Device may initiate a Rental of a Storage Space.
- 1.12. “Rented” is the state in which a particular Storage Space has access to it restricted due to use by a particular User for a selected period of time.
- 1.13. “Expired” is the state resulting when a Rental is not terminated before its scheduled ending date and time.
- 1.14. “Abandoned” is the state in which a particular Storage Space has been left in an “Expired” state long enough to be deemed by eLock or the Facility Owner to be in violation of Rental duration terms indicated on screens or signage at that particular Facility. **THE CONTENTS OF AN ABANDONED RENTAL MAY BE REMOVED AND DISCARDED IMMEDIATELY BY ELOCK OR THE FACILITY OWNER WITHOUT PRIOR NOTICE AND WITHOUT COMPENSATION TO YOU.**
- 1.15. A “Facility Owner” is the agency with ownership of a particular BikeLink facility, or the agency with jurisdiction over a particular BikeLink facility.
- 1.16. “Auto Reload” is a feature You can choose to enable on your BikeLink Web Purse to automatically replenish value for your Access Device.
- 1.17. “Permitted Items” are the permissible items that can be stored in a BikeLink facility **WHICH INCLUDE ONLY THE FOLLOWING:**

- Human or electric powered vehicles which have the primary purpose of transporting their human operator (such as a bicycle, eBike, unicycle, scooter, or skateboard), and is fully functional and assembled at the start of a Rental (each a “Permitted Vehicle”).
- Accessories for the operator and/or a passenger of a Permitted Vehicle, such as a helmet, shoes, safety vest, or bicycle clothing.
- Accessories directly attached to a Permitted Vehicle, such as a tire pump, seat, saddlebags, panniers, child seat, security lock, battery, light, basket, or set of tools.
- Items stored within storage containers directly attached to a Permitted Vehicle, such as saddlebags, panniers, tool bags, or baskets, and that are also not Prohibited Items, as defined below.

- 1.18. “Prohibited Items” are any items not defined above as Permitted Items, **WHICH INCLUDE THE FOLLOWING ITEMS:**

- Fuels in liquid, solid, or gel form, or volatile chemicals of any type.
- Gas powered vehicles, or any vehicle not powered by human or electric energy.
- Any vehicle that was not fully functional and assembled at the start of the Rental.
- Parts of a vehicle that are not part of a fully assembled and functional Permitted Vehicle, such as wheels, chains, tires, skateboard decks, skateboard trucks, or other spare parts.
- Any item that is not stored together with a fully assembled and functional Permitted Vehicle.
- Perishable goods.
- Hazardous materials.
- Weapons.
- Any item that poses a health or safety risk as determined by eLock or the Facility Owner.
- Any illegal item.
- Any Permitted Items stored in a Storage Space in a quantity that, in the aggregate, is unreasonably excessive or would impair the operation of the Storage Space or use of other Storage Spaces by other Users.
- Any Permitted Items or Prohibited that are being stored on behalf of a non-User who is not accompanying the User.
- Any other Prohibited Item that eLock or the Facility Owner may deem prohibited.

2. Rental Transactions

- 2.1. Every time You start a Rental, activate an Access Device, or access access the BikeLink website at www.bikelink.org You are agreeing to this entire agreement including Privacy Policy in Section 15 of this User Agreement.
- 2.2. A Rental creates a bailment for hire with respect to your Permitted Items stored in a Storage Space during the Rental just like a space in a car parking lot. It does not create or grant You a lease or any real property right to occupy a Storage Space. Your rights in connection with a Rental or Storage Space are strictly defined under this User

Agreement.

- 2.3. Rental terms may vary by location and are displayed on information screens or signage.
- 2.4. Only the renting Access Device or an authorized Administrative Device can unlock a Rented, Expired or Abandoned Storage Space.
- 2.5. Only the renting Access Device or an Administrative Device can terminate a Rental.

3. Storage Space: Usage & Contents

- 3.1. Initiation of a Rental at a BikeLink Storage Space entitles You to access a storage space for immediate use. You may store your vehicle in an eLocker only while You have a Rental in progress until the Rental becomes Abandoned. You may store your vehicle in a Group Parking Facility until the maximum duration has been exceeded as defined for that particular facility.
- 3.2. BikeLink Storage Spaces shall be used only for the purpose of storing Permitted Items.
- 3.3. Storage of any Prohibited Item shall constitute a default by You to the terms of this User Agreement.
- 3.4. **YOU AGREE THAT ANY PROHIBITED ITEMS FOUND OR LEFT IN A BIKELINK FACILITY OR STORAGE SPACE SHALL BE DEEMED TO BE INTENTIONALLY ABANDONED AND MAY BE REMOVED AND DISCARDED IMMEDIATELY BY ELOCK OR THE FACILITY OWNER WITHOUT PRIOR NOTICE AND WITHOUT COMPENSATION TO YOU.**
- 3.5. The BikeLink Storage Space shall not be used in, or in connection with, any activity prohibited by law or by any policies or rules set by the Facility Owner.
- 3.6. After a period of time the Facility Owner deems excessive, typically 14 days, an Expired Rental shall be considered intentionally Abandoned. Abandoned Rentals constitute a default by You to the terms of this User Agreement.
- 3.7. Upon default for an Abandoned Rental, eLock will immediately make a reasonable attempt to notify the defaulting User of default in writing via email and by phone, using the contact information provided by the User during registration. **WITHOUT ANY ADDITIONAL ATTEMPT TO CONTACT USER, BIKELINK THE FACILITY OWNER, OR THE FACILITY OWNER'S AGENT(S) MAY IMMEDIATELY EMPTY THE STORAGE SPACE AND IMPOUND OR DISPOSE OF THE ITEMS STORED THEREIN WITHOUT COMPENSATION TO THE USER.** The User's recourse to potentially recover such items is per the Facility Owner's policy. Upon default for Abandonment of a Rental, BikeLink may revoke Your access to all BikeLink facilities, and reinstatement of access will be at the sole discretion of BikeLink.
- 3.8. Upon default for storage of Prohibited Items, eLock will immediately make a reasonable attempt to notify the defaulting User of default both in writing via email and by phone, using the contact information provided by the User. **WITHOUT ANY ADDITIONAL ATTEMPT TO CONTACT USER, BIKELINK, THE FACILITY OWNER, OR THE FACILITY OWNER'S AGENT(S) MAY IMMEDIATELY EMPTY THE STORAGE SPACE AND DISPOSE OF THE PROHIBITED ITEMS WITHOUT COMPENSATION TO THE USER.** Upon default for storage of Prohibited Items, BikeLink may revoke Your access to all BikeLink facilities, and reinstatement of access will be at the sole discretion of BikeLink.
- 3.9. As a condition of using a BikeLink facility for the restricted purposes described above, You waive any claim to the right to privacy with regard to the items You placed inside the Storage Space and expressly consent to allow BikeLink, the Facility Owner, and/or the Facility Owner's agent(s):
 - to open and inspect the storage space and inspect or relocate the contents thereof at any time without additional notice;
 - to determine whether a health or safety hazard exists;
 - to repair or clean the storage space, its door, or locking mechanism; and
 - to determine whether any term of this User Agreement is being violated.
- 3.10. You will be monetarily responsible for damages beyond normal wear and tear to the Storage Space, BikeLink facility, or adjacent structures, caused by any misuse of the Storage Space by You.
- 3.11. **ITEMS REMAINING IN A BIKELINK STORAGE SPACE AFTER A RENTAL HAS ENDED ARE CONSIDERED INTENTIONALLY ABANDONED AND MAY BE IMMEDIATELY REMOVED AND DISCARDED BY**

BIKELINK WITHOUT ANY ATTEMPT TO CONTACT USER OR WITHOUT COMPENSATION TO YOU.

4. Access Devices

BikeLink Smart Card

- 4.1. The BikeLink Smart Card is available for purchase through BikeLink and authorized Vendors.
- 4.2. Vendor Location information is provided at www.BikeLink.org, by calling (888) 540-0546, or on information screens and signage at a BikeLink facility.

3rd Party Access Devices

- 4.3. A 3rd Party Access Device is a unique ID device that must be registered to a BikeLink User to access BikeLink facilities and is used only for the purpose of identifying the User.
- 4.4. 3rd Party Access Devices may include Regional Transit Cards and credit cards.
- 4.5. Adding any 3rd Party Access Device to a User's BikeLink Profile is subject to an administrative fee. This fee is posted on BikeLink.org and shown during the registration process.
- 4.6. Adding or linking more than one BikeLink App enabled Access Device to your profile is subject to an administrative fee.
- 4.7. BikeLink does not vend 3rd Party Access Devices.
- 4.8. User must comply with all terms of service that are applicable to their 3rd Party Access Device in addition to this Agreement.

BikeLink® Smartphone App

- 4.9. The BikeLink App is available on the Apple App Store or the Google Play store.
- 4.10. A smartphone with an installed BikeLink App is an Access Device that requires registration to a BikeLink User Profile to access BikeLink facilities.

5. BikeLink Smart Card Value

- 5.1. The BikeLink Smart Card is not a charge, credit, or debit card.
- 5.2. The value the Smart Card holds is neither cash nor the equivalent of cash. At a BikeLink Facility which charges for use, You can exchange value on the Smart Card for share time in the facility. The Smart Card value has no other use or worth.
- 5.3. BikeLink value is not refundable or exchangeable.
- 5.4. If You default on this agreement, BikeLink Smart Card value is non-refundable.

6. BikeLink Web Purse

- 6.1. The BikeLink Web Purse is an online account to fund Rental transactions for your registered 3rd Party Access Device or App access to BikeLink facilities.
- 6.2. At a BikeLink Facility which charges for use, You can exchange cash value on your Web Purse for parking time at the facility or item.
- 6.3. You can load cash value and manage your payment account on your Web Purse at BikeLink.org, in the BikeLink App or by calling BikeLink at (888) 540-0546.
- 6.4. Any 3rd Party accounts or funds associated with the 3rd Party Access Device are independent of the funding source for your BikeLink Web Purse.
- 6.5. If a Rental costs more than the value on the User's Web Purse, BikeLink may allow the User complete the Rental even if the value exceeds the Web Purse's remaining value. However, sufficient value must be added to the Web Purse to pay for the prior Rental before the Access Device can be used again.
- 6.6. By setting up Auto Reload, the User authorizes BikeLink to automatically reload cash value to User's Web Purse by means of a bank or credit card account whenever the User's Web Purse balance falls below \$5.
- 6.7. User may request to terminate Auto Reload at any time by editing the Auto Reload setting in the BikeLink App, at BikeLink.org, or by emailing support@BikeLink.org.
- 6.8. If your Web Purse balance reaches an Auto Reload threshold identified in Section 6.6 before the Auto Reload termination process is completed, the Web Purse will be loaded with value to bring the Web Purse balance to \$20.00 and You will be liable for payment.
- 6.9. If an Auto Reload charge is declined for any reason, BikeLink may block all Access Devices associated with the Web Purse. In order to have Access reinstated, You must provide a valid payment method on the BikeLink website at BikeLink.org, on the BikeLink App or by writing or calling BikeLink. BikeLink will issue an action to unblock

- Access Devices after collecting funds for the Auto Reload cash value.
- 6.10. BikeLink reserves the right to decline a request to set up an Access Device for Auto Reload, or to accept an alternative payment (bank or credit card) method, in order to prevent fraudulent use or abuse of Auto Reload features and benefits.
- 6.11. BikeLink Web Purse balances are refundable upon request through BikeLink.org. A \$5 or 10%, fee, whichever is greater, of the cash value balance applies to all refunds.
- 6.12. If you are found in default of this agreement, your BikeLink Web Purse will be subject to an administrative fee up to \$50 for the dispose and or impounding of your property.

7. BikeLink Access Device Loss and Damage

- 7.1. **YOU SHALL REPORT ANY LOST, STOLEN, OR IRREPARABLY DAMAGED ACCESS DEVICES TO BIKELINK IN A TIMELY MANNER. IF YOU DO NOT REPORT YOUR LOST OR STOLEN ACCESS DEVICE, YOU MAY BE HELD LIABLE FOR ITS MISUSE, INCLUDING HAVING YOUR RIGHT REVOKED TO USE ANY BIKELINK FACILITY.**
- 7.2. You agree to report all lost, stolen, or irreparably damaged cards at BikeLink.org, or by calling (888) 540-0546. You agree to take all reasonable care of the BikeLink Smart Card to prevent it from damage, defacement, destruction, or loss of any kind.
- 7.3. You shall not alter or interfere with any graphic on the BikeLink Smart Card and shall take all reasonable measures and care to ensure BikeLink Smart Card Data are not interfered or tampered with.
- 7.4. No refund for lost or damaged BikeLink Smart Card will be provided except at the absolute discretion of eLock.
- 7.5. Adding or linking more than one BikeLink App enabled Access Device to your profile is subject to an administrative fee.

8. BikeLink Group Parking Facility Access

- 8.1. For first time access to a BikeLink Group Parking Facility, Users must complete an ID check verification at the entry kiosk. There is an administrative fee for this service.

9. Conditions for Services and Facilities

- 9.1. While using the services and/or facilities of a Facility Owner, You shall observe, perform, and comply with the terms and conditions, by-laws, rules, and regulations, including Rental settings such as maximum Rental duration and hourly rate, selected by that Facility Owner in relation to such services and/or facilities.
- 9.2. At the behest of a Facility Owner, authorized agents of BikeLink or the Facility Owner may electronically access, unlock, move or remove stored contents, and/or modify a facility owned by the Facility Owner, regardless of the facility's state or the state of any affected Access Device, and neither BikeLink nor the Facility Owner shall be liable for any loss or damage resulting therefrom.
- 9.3. A Facility Owner may deny access to, replace, or remove any facilities it owns at any time for any reason, and neither BikeLink nor the Facility Owner shall be liable for any loss or damage resulting therefrom.
- 9.4. Neither BikeLink nor the Facility Owner are responsible for fire, theft, loss, or damage to any article left in a facility. User shall indemnify eLock and the Facility Owner and their directors, officers, agents, representatives, and employees ("Indemnified Parties") from any liability of any nature arising out of the User's use of a facility.
- 9.5. Neither BikeLink nor the Facility Owner are responsible for any property stored in violation of this User Agreement. User shall indemnify the Indemnified Parties from any liability of any nature arising out of the User's misuse of a facility.

10. Termination

- 10.1. BikeLink may terminate this User Agreement at any time and for any reason. At BikeLink's request, or if You wish to terminate this User Agreement, You must return your BikeLink Smart Card in proper working condition to BikeLink. The value on BikeLink Smart Card is non-refundable. Upon termination You may not use any BikeLink Access Device, including 3rd Party or BikeLink App Devices, to access BikeLink facilities.

11. Changes to this User Agreement

- 11.1. BikeLink reserves the right to change the terms of this User Agreement and any associated policies at any time.
- 11.2. Any time You start a Rental or log into BikeLink.org or the BikeLink

App, You are agreeing to the terms of the BikeLink User Agreement in effect at the start of your Rental.

- 11.3. In the event of any changes to this User Agreement, notice will be posted on the BikeLink website at www.BikeLink.org.

12. Release and Indemnity

- 12.1. You hereby release the Indemnified Parties from all loss, damage, or injury whatsoever, known or unknown, arising out of or in any manner connected with the use or performance of the Access Device issued to or used by You. No Indemnified Party will have any obligation or liability with respect to your use of or the performance of the Access Device. You agree to indemnify, protect, and hold harmless the Indemnified Parties from any and all liability for any loss, damage, or injury to persons or property arising from or related to the Access Device.
- 12.2. For and in consideration of permitting You to rent Facility Owner's property, You hereby voluntarily release, discharge, waive and relinquish any and all actions or causes of action for personal injury, property damage or wrongful death occurring to You arising as a result of your use of or the performance of the Access Device issued to You, any BikeLink facility, or any activities incidental thereto, wherever or however the same may occur, and You do for yourself, your heirs, executors, administrators and assigns hereby release, waive, discharge and relinquish any action or causes of action aforesaid, which may hereafter arise for yourself or for your estates and agree that under no circumstances will You or your heirs, executors, administrators and assigns prosecute, present any claim for personal injury, property damage or wrongful death against any Indemnified Party for any of said causes of action whether the same shall arise by the negligence of any of said persons or otherwise. It is your intention by this instrument to exempt and relieve all of the Indemnified Parties from liability for personal injury, property damage or wrongful death, whether or not the same is caused by negligence.
- 12.3. You further agree to indemnify and hold harmless the Indemnified Parties from any liability or claim or action for damages which in any way arises out of your use of or the performance of the Access Device or BikeLink Facility, even though that liability may arise out of the negligence or carelessness on the part of any Indemnified Party. Notwithstanding anything stated in the foregoing paragraphs, nothing in this document shall apply to exempt any person or entity from responsibility for such person's or entity's own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent.

13. Failure to Comply

- 13.1. Failure to comply with or default on any portion of this User Agreement may result in eLock's blocking the use of the Access Device, and no refund will be issued for the balance on your BikeLink Smart Card and /or Web Purse Value up to \$50.

14. Communications

- 14.1. Please address all questions, notifications, and communications related to the BikeLink Access Device and the bicycle parking facility to: support@BikeLink.org, or by mail to:

BikeLink
800 Heinz Avenue Suite 11
Berkeley CA 94710

- 14.2. User agrees to provide BikeLink with their correct and current contact information at the time of registration.
- 14.3. User agrees to immediately notify BikeLink of any change in contact information by updating the User's profile at BikeLink.org, or by contacting BikeLink via email at support@BikeLink.org.

15. Privacy

- 15.1. All information and data relating to the User collected by BikeLink shall be used by BikeLink and the Facility Owner for the purposes of the operation and management of BikeLink facilities, and shall serve as a source of information and data for transit and/or related services in general but shall otherwise be dealt with in a confidential manner by BikeLink unless:
- a) the express written consent of the User has been obtained; and / or
 - b) there is a legal requirement to the contrary.
- 15.2. You retain the right to review all personal identifying information pertaining to your Access Device, whether stored electronically or on paper. Any inquiry or request to obtain information, in accordance

- with the above provisions, should be directed in writing to BikeLink. eLock may adopt procedures for your review of such information, including but not limited to charging a fee for processing requests for access to personal identifying information.
- 15.3. When You provide information to BikeLink, BikeLink will not share this information with other entities except to conduct regular business, to comply with legal requirements, and to protect against fraud. BikeLink will not sell, lease, rent, loan, or trade lists of physical or email addresses or phone numbers. BikeLink's web server, Access Devices and Rental devices collect information that details the traffic on our site and Rental usage patterns. BikeLink may analyze this information and use aggregate statistics to improve the content and navigation on websites and app, and to improve the usefulness of products.
 - 15.4. The Personal Identifiable Information ("PII") that BikeLink collects includes, without limitation, your name, phone number, address, email, identification card or passport, photo, and other contact information.
 - 15.5. When You obtain a BikeLink Access Device You are required to provide accurate PII including your full name, address of residence, email, phone number, last four digits of your photo ID, and contact information. That PII will not be released to third parties, except: (a) it is available on demand to BikeLink facility owners, facility owner's agent(s) and law enforcement officials so that in the event that your BikeLink Access Device is lost while You are storing Permitted Items, your identity may be verified before releasing such Permitted Items to You; (b) to contact You if your Access Device's Rental transactions do not conform with the terms of this User Agreement; (c) in the event of an emergency affecting your items in a Storage Space; or (d) to provide You with information about changes in BikeLink terms or features, facility status, or stored property status.
 - 15.6. BikeLink does not store any credit card information on our servers. Credit card numbers given by Users are disclosed directly to our 3rd party vendor for fulfillment services who comply with all applicable PCI security requirements.
 - 15.7. eLock may provide aggregate statistics and usage reports to our Users, customers or researchers, to assist them in assessing the BikeLink system or in applying for funding to install new facilities. These statistics and usage reports shall not contain PII.
 - 15.8. BikeLink makes no attempt to link website statistics to the individuals who browse our site. BikeLink does not share server statistics with third parties.
 - 15.9. If You request information from us, any PII You supply will be used only to satisfy your request. BikeLink will not share such with third parties unless such sharing is pursuant to this User Agreement or BikeLink has prior approval from You.
 - 15.10. BikeLink uses a combination of technical, administrative, and physical controls to maintain the security of your PII. No method of transmitting or storing PII is completely secure, however. If you have

a security-related concern, please contact BikeLink.

- 15.11. The above policies may be superseded by requirements or obligations imposed by statute, regulation, or legal process.
- 15.12. CALIFORNIA DO-NOT-TRACK DISCLOSURE. Do Not Track is a privacy preference that Users can set in their web browsers. When a User turns on the Do Not Track signal, the browser sends a message to websites requesting them not to track the User. For information about Do Not Track, visit www.allaboutdnt.org. At this time, BikeLink does not respond to Do Not Track browser settings or signals. In addition, BikeLink may use other technology that is standard to the Internet, such as pixel tags, web beacons, and other similar technologies, to track visitors to www.bikelink.org or one of the affiliated pages hosted at the bikelink.org domain. Those tools may be used by us and by third parties to collect information about you and your internet activity, even if you have turned on the Do Not Track signal.
- 15.13. This Privacy Policy contained in this Section 15 is effective as of February 20, 2018. eLock may revise this Privacy Policy without prior notice. Revised Privacy Policies will be available at www.bikelink.org.

16. General

- 16.1. Neither this User Agreement nor any rights, licenses or obligations hereunder, may be assigned by User without the prior written consent of eLock or Facility Owner. eLock may assign this User Agreement freely. Subject to the foregoing, this User Agreement will benefit and bind the parties' successors and assigns.
- 16.2. This User Agreement shall be governed by the laws of the State of California without regard to the conflicts of law provisions thereof. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts in Alameda County, California. Both parties consent to the exclusive jurisdiction of such courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California or federal law. In any action or proceeding to enforce rights under this User Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. In the event that any of the provisions of this User Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this User Agreement shall otherwise remain in full force and effect. This User Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the subject matter hereof. No waiver or modification of this User Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver.