

## MODEL LEASE CLAUSE

### Set Procedures to Determine Fair Market Value Rent

The following lease clause, drafted by attorney Jacob Bart, sets procedures to help you determine, with a minimum of dispute, the fair market rent of a renewal term. Paragraph a says that the base rent during the renewal term will be equal to fair market rent. Paragraph b discusses how the fair market rent will be determined. Paragraph c sets up an arbitration procedure to determine a fair rent if there's a dispute. Paragraph d cancels the arbitration procedure if the tenant and you propose rents that

differ only slightly. Paragraph e sets a mechanism to adjust the rent at a later date if the new base rent isn't set by the start of the renewal term. Make sure that you define "Exercise Date," "Expiration Date," "Initial Term," and "Renewal Notice" elsewhere in the lease.

Show this clause to your attorney before putting it into your lease. **CLLI0089**

#### RENEWAL AT MARKET VALUE RENT

- a. Market Value Rent During Renewal Term.** If Tenant shall exercise the Renewal Option in accordance with the terms and conditions of Clause *[insert # of renewal option clause]* hereof, then during the Renewal Term, the Base Rent shall be equal to the annual fair market rental value of the Premises as of the Expiration Date, *[insert formulation, e.g., taking into consideration all relevant factors that would customarily be considered in making such determination with respect to renewals of existing leases]* (the "Market Value Rent"), as determined as provided in Paragraph b hereof and with no changes in the Base Operating Year and the Base Tax Year.
- b. Determination of Market Value Rent.** The initial determination of Market Value Rent shall be made by Landlord. If the Renewal Notice shall so request, Landlord shall give to Tenant written notice of Landlord's initial determination of the Market Value Rent (the "MVR Notice") by *[insert date that's one month after the tenant's deadline to exercise its renewal option]* months prior to the Expiration Date. If the Renewal Notice does not contain a request that Landlord furnish the MVR Notice, Landlord shall give Tenant the MVR Notice at least *[insert #, e.g., two (2)]* months prior to the Expiration Date. Notwithstanding that the Expiration Date shall not yet have occurred, such initial determination of Market Value Rent shall be final and binding in fixing the Market Value Rent, unless, within *[insert #, e.g., fifteen (15)]* days after Landlord shall have given MVR Notice to Tenant, Landlord shall receive a written notice from Tenant (the "MVR Objection Notice"):
- (i) Advising Landlord that Tenant disagrees with the initial determination of Market Value Rent set forth in the MVR Notice; and
  - (ii) Proposing a specific alternative Market Value Rent, which shall have been determined in good faith by Tenant.
- c. Arbitration.**
- (i) If Landlord and Tenant shall fail to agree upon a final and binding Market Value Rent within *[insert #, e.g., fifteen (15)]* days after Landlord shall have received the MVR Objection Notice, then Landlord and Tenant shall mutually designate an arbitrator whose determination of Market Value Rent (which shall be either the Market Value Rent proposed by Landlord in the MVR Notice or the Market Value Rent proposed by Tenant in the MVR Objection Notice, but no other amount) shall be final and binding upon Landlord and Tenant.
  - (ii) If Landlord and Tenant shall fail to agree upon the choice of such arbitrator within *[insert #, e.g., thirty (30)]* days after Landlord shall have received the MVR Objection Notice, then either party may apply to the American Arbitration Association or any successor thereto having jurisdiction to designate an arbitrator. The arbitrator shall be a real estate broker or consultant who is MAI certified by the Appraisal Institute and who shall have had at least *[insert #, e.g., fifteen (15)]* years' continuous experience in the business of appraising or managing real estate or acting as a real estate agent or broker in *[insert location, e.g., the Borough of Manhattan, City of New York]*.
  - (iii) The arbitrator shall conduct such hearings and investigations as he may deem appropriate and shall, within *[insert #, e.g., thirty (30)]* days after his designation, determine which of the two (2) proposals shall be the Market Value Rent, and that choice by the arbitrator shall be binding upon Landlord and Tenant, provided that the arbitrator shall not have the power to add to, modify, or change any of the provisions of this Lease. Each party shall pay its own counsel fees and expenses, if any, in connection with any arbitration under this Clause, and the parties shall share equally all other expenses and fees of any such arbitration.
- d. Arbitration Canceled.** In the event that the determination of the Market Value Rent set forth in the MVR Objection Notice differs from the determination of the Market Value Rent in the MVR Notice by *[insert amount, e.g., eight (8)]*% or less per rentable square foot per annum for each year during the Renewal Term, then the Market Value Rent shall not be determined by arbitration, but shall instead be set by taking the average of the determinations set forth in the MVR Notice and the MVR Objection Notice. Only if the determinations set forth in the MVR Notice and the MVR Objec-

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### RENEWAL AT MARKET VALUE RENT (CONTINUED)

tion Notice shall differ by more than [*insert amount, e.g., eight (8)*] % per rentable square foot per annum for any year during the Renewal Term shall the actual determination of Market Value Rent be made by an arbitrator as set forth in Paragraph c hereof.

- e. Late Determination.** If for any reason the Market Value Rent shall not have been determined prior to the commencement of the Renewal Term, then, until the Market Value Rent and, accordingly, the Base Rent, shall have been finally determined, the Base Rent payable for and during the Renewal Term shall be equal to the Market Value Rent proposed by Landlord. If, upon final determination of the Market Value Rent, it shall have been determined that the Base Rent payable for and during the Renewal Term shall be equal to the Market Value Rent:
- (i) Proposed by Landlord, then the Base Rent shall continue to be due and payable in the amounts proposed by Landlord; or
  - (ii) Proposed by Tenant, then an appropriate adjustment to the Base Rent shall be made reflecting such final determination, and Landlord shall refund to Tenant any overpayment in Tenant's payment of Base Rent from the commencement of the Renewal Term to the date of such final determination.