

## MODEL LEASE CLAUSE

### Set Up Expedited Arbitration Procedure

The following lease clause was drafted by Seattle attorney William H. Block. It's intended to protect you if you must give a strong tenant certain special rights—such as a cotenancy right, an offset right, a self-help right, or a lease termination right—that it can exercise if you violate important lease obligations and restrictions. The clause gives you the right to demand expedited arbitration if you dispute the tenant's claim that you committed a lease violation triggering the special rights. And the tenant can't exercise the special rights until the arbitrator has ruled and you've had an additional time to cure.

Paragraph a gives you the right to send the dispute to an

expedited arbitration and sets out the arbitration procedure. Paragraph b tolls—that is, suspends—the tenant's ability to exercise its special rights until the arbitrator decides the dispute and you have an additional time to cure—that is, fix—the violation. Paragraph c lets the arbitrator assess and allocate the costs of the arbitration and award attorney's fees to the winning party.

The clause designates the American Arbitration Association as the arbitration service. But you may want to designate another service. Show this clause to your attorney before putting it into your lease.

#### EXPEDITED ARBITRATION

- a. Arbitration Procedures.** If Tenant claims a right of [*insert right, e.g. rent abatement or offset, self-help, or termination*] ("Special Right") under this Lease and Landlord disputes such claim, Landlord may submit such dispute to expedited arbitration by giving Tenant a demand therefor. The terms of the expedited arbitration shall be as follows:
- (i) The total time from date of demand for arbitration to final decision shall not exceed [*insert #, e.g., 25*] days;
  - (ii) Within [*insert #, e.g., 3*] business days after giving such demand for arbitration, the parties shall try to select one mutually acceptable arbitrator. If the parties are unable to agree on a mutually acceptable arbitrator within such [*insert #, e.g., 3*] business day period, then either party may request, within [*insert #, e.g., 2*] business days thereafter, that the American Arbitration Association (AAA) select one arbitrator from the National Panel of Real Estate Industry Arbitrators without a submittal of lists and subject to challenge only for good cause shown. The arbitrator selected shall be authorized solely to issue a determination as to whether Landlord is materially breaching the Lease so as to entitle Tenant to exercise its Special Right;
  - (iii) All notices, consents, approvals, demands, or requests given by Landlord or Tenant under this Clause may be made by telephone, facsimile, or other electronic communication with a written copy sent by messenger or by overnight courier delivery service;
  - (iv) The arbitrator shall be instructed that the parties intend that a decision be issued within [*insert #, e.g. 25*] days after the initial demand for arbitration. The time, date, and place of the hearing (which shall be in the [*insert jurisdiction, e.g., City of Seattle*]) shall be set by the arbitrator in his discretion, provided that there be at least [*insert #, e.g. 3*] days prior notice to the parties of the hearing;
  - (v) There shall be no discovery or post-hearing briefs except by order of the arbitrator;
  - (vi) The arbitrator shall issue his decision within [*insert #, e.g., 7*] days after the close of the hearing; and
  - (vii) Deviations from the above time limitations shall not affect the arbitrator's authority to decide the case.
- b. Toll Period.** Tenant's ability to exercise its Special Right shall be tolled pending the arbitrator's decision. If the arbitrator finds in favor of Tenant, Landlord shall have [*insert #, e.g., 30*] days after the arbitrator's decision (or such greater time as may be directed by the arbitrator) in which to correct the circumstance on which Tenant's claim is based, and Tenant shall be entitled to exercise its Special Right only if Landlord fails to correct the circumstance within such period.
- c. Costs.** The arbitrator shall assess and apportion the costs of the arbitration in the arbitrator's discretion. The prevailing party shall be entitled to recover its attorney's fees and costs.