

## MODEL AGREEMENT

# Protect Yourself When Letting a Tenant Buy Its Way Out of a Lease

A negotiated buy-out agreement is one of the most fair and effective ways to end a disadvantageous lease. But there are also a lot of moving parts from the legal perspective. Unfortunately, buy-out negotiations typically focus so intensely on the amount of money the tenant must pay to end the lease early that the nitty-gritty legal details get overlooked. Here's a Model Agreement, based on a template used successfully by a Miami leasing attorney, that you can ask your attorney to adapt to cover your legal flanks.

### LEASE BUY-OUT AGREEMENT

- 1. Surrender Date.** Tenant hereby surrenders to Landlord, as of \_\_\_\_\_, 20\_\_ (the "Surrender Date"), the Lease and Premises, together with all alterations, decorations, installations, additions, and improvements to and in the Premises to Landlord (referred to collectively as the "Improvements"), to the intent and purpose that Tenant's rights and estate in the Lease and Premises will be wholly extinguished on the Surrender Date in the same manner and with the same effect as if that were the date for the natural expiration of the Lease set forth in the Lease.
- 2. No Encumbrances.** Tenant represents and warrants: (a) that neither the Lease nor the Premises nor the Improvements have been or will be encumbered in any way; (b) that Tenant will have good right to surrender all of the same; and (c) that no one other than Tenant has acquired or will acquire through or under Tenant any right, title, or interest in or to any of the same.
- 3. Agreement to Vacate.** As a material inducement for Landlord to enter this agreement, Tenant: (a) hereby relinquishes to Landlord, and waives all rights in and to, all sums paid by Tenant to Landlord prior to the date hereof under or in connection with the Lease, including, without limitation, the entire amount of Tenant's security deposit and advance rent, if any; and (b) agrees to vacate the Premises and surrender and deliver the Premises and Improvements to Landlord in accordance with the terms of the Lease on or before 5:00 p.m. on the Surrender Date.
- 4. Continuation of Lease Obligations.** As of 5:00 p.m. on the Surrender Date, Landlord and Tenant will be deemed released from each and all of their respective past, present, and future obligations under the Lease, except that Tenant will continue to remain liable thereafter: (a) for Landlord's liabilities, costs, and expenses occasioned by Tenant's: (i) failure to surrender the Premises and Improvements in accordance with the terms hereof and the Lease (including, without limitation, reasonable attorneys' fees through appeal and any loss of bargain suffered by Landlord with respect to a prospective tenant for all or any part of the Premises); and (ii) Tenant's failure to comply with Section 9 hereof; (b) for the rent, additional rent, and all other charges under the Lease up to and including the Surrender Date; and (c) with regard to all liabilities and claims (including, without limitation, claims for labor and materials asserted to have been furnished to Tenant) incurred by or made against Landlord and/or Tenant in any way connected with, relating to, or arising out of the use of or occupancy of the Premises by Tenant, or anyone claiming by, through, or under Tenant, up to and including the Surrender Date.
- 5. No Brokers.** Tenant represents and warrants that it has dealt with no real estate agent or broker in connection with this agreement, and on request Tenant will indemnify Landlord against all liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees through appeal) arising out of the claims of any real estate agent and/or agent regarding this agreement.

(continued)

**6. Buy-Out Payment (Option 1: Buy-Out by Tenant).**

Notwithstanding any contrary provisions hereof, in partial compensation for Landlord's liabilities, costs, and expenses in connection with Tenant's surrender of the Premises prior to the natural expiration of the Lease (including, without limitation, brokerage commissions, attorneys' fees, and the cost of preparing and altering the Premises for re-rental), Tenant agrees to pay Landlord the sum of \$ \_\_\_\_\_ as follows: (a) \$ \_\_\_\_\_ on the date hereof (receipt of which, by check subject to collection, is acknowledged by Landlord; and (b) \$ \_\_\_\_\_, by means of cash or certified or cashier's check, on the Surrender Date.

**6. Buy-Out Payment (Option 2: Buy-Out by Landlord).**

In consideration of Tenant's surrender of the Premises and Improvements in accordance with the terms hereof and of the Lease, Landlord agrees to pay Tenant the sum of \$ \_\_\_\_\_ as follows: (a) \$ \_\_\_\_\_ on the date hereof (receipt of which, by check subject to collection, is acknowledged by Tenant; and (b) \$ \_\_\_\_\_, by means of cash or certified or cashier's check, on the Surrender Date.

**7. Failure to Surrender.** Without limiting the generality of anything above, if for any reason Tenant fails to surrender the Premises and Improvements to Landlord in accordance with the terms of this agreement and the Lease, then, commencing on the day after the Surrender Date, for each full or partial day during which such failure continues, Tenant will pay to Landlord immediately on request and as additional rent under the Lease, the sum of \$ \_\_\_\_\_, it being acknowledged by Tenant that: (a) such failure will materially and adversely affect Landlord; and (b) payments as provided herein will represent fair and reasonable compensation to Landlord and will not constitute a penalty to Tenant.

**8. Landlord's Reentry Rights.** If Tenant removes all or substantially all of its property prior to the Surrender Date, Landlord may immediately and without notice enter and alter, renovate, and decorate the Premises, without diminution or abatement of rent or additional rent and without incurring any liability to Tenant, and without in any way affecting Tenant's duty to pay rent through the Surrender Date or other obligations under the Lease as modified hereby.

**9. Surrender Acknowledgement.** Tenant agrees that at any time after 5:00 p.m. on the Surrender Date it will execute, acknowledge, and deliver to Landlord, on request, a recordable instrument indicating that Tenant has surrendered the Lease and possession of the Premises and containing such other information as may be reasonably requested.

**10. Modification of Lease.** As modified by this agreement, the Lease and all of its terms and conditions are hereby in all respects ratified, confirmed, and approved and Tenant acknowledges that it has no defenses or offsets respecting the Lease.

**11. Entire Agreement.** This agreement contains the entire understanding of the parties with respect to the subject matter covered hereby and may be modified only by a written instrument signed by the party against whom enforcement of any modification is sought. Landlord and Tenant intend that, to the maximum extent possible, invalidity or unenforceability of any provision of this agreement will not affect any of the other provisions hereof.

**12. Binding Effect:** This agreement will bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and permitted assigns.