

MODEL AGREEMENT

Require Defaulting Tenant to Repay Back Rent

Negotiating a workout agreement requiring a tenant in default to repay rent arrears may make more sense than seeking eviction, especially when dealing with an otherwise reliable tenant in a soft market. One workout strategy that attorneys say has proven effective involves securing the backing of not only a tenant's corporate officer but also that individual's spouse. Ask your attorney to adapt this model agreement to implement that approach.

LEASE ARREARS AND FUTURE PAYMENTS AGREEMENT

THIS AGREEMENT is made as of _____, 20__, between _____ ("Tenant") and _____ ("Landlord"), and pertains to the lease dated _____, 20__, as the same may have been modified, amended, or supplemented in writing (the "Lease"), between Landlord and Tenant, respecting premises at _____, located in the City of _____, and State of _____.

- 1. Promissory Note for Amount Owed.** Tenant hereby agrees to pay to Landlord the sum of \$____, representing previously billed Lease arrearages now owing by Tenant; Tenant shall also pay to Landlord, on an "as and when currently due" basis, all rent, additional rent, and other charges payable by Tenant under the Lease. The obligation to pay the sum specified in the sentence immediately above is further evidenced by Tenant, Tenant's principal _____, and such principal's spouse _____. Tenant acknowledges and agrees that a breach of any of the terms and conditions of this agreement or the Promissory Note shall also constitute a material default under the Lease beyond any applicable grace period and without the necessity of notice from Landlord to Tenant regarding such default, entitling Landlord to the same rights and remedies as if such default were with respect to nonpayment of rent. In addition, at Landlord's election, the entire indebtedness then outstanding under the Promissory Note shall become immediately due and payable.
- 2. No Sublets or Assignments.** Notwithstanding any contrary provisions in the Lease, Tenant shall have no right to assign the Lease, sublet all or any part of the premises demised thereby, or allow anyone other than Tenant to occupy such premises in whole or in part, unless and until Landlord has received full payment of all sums owing to Landlord under the Promissory Note.
- 3. Waivers.** This agreement contains the entire understanding of the parties with respect to the subject matter covered hereby and no provision hereof can be waived or modified except by a written instrument duly signed by the party against whom enforcement of any waiver or modification is sought; the parties expressly intend that such requirements be strictly adhered to and strictly interpreted and enforced by any court that may be asked to consider the matter. Nothing contained herein or in the Promissory Note constitutes a full or partial waiver by Landlord of any Lease default by Tenant nor (except as specifically contemplated hereby and by the Promissory Note) any rights remedies exercisable by Landlord under the Lease. As affected hereby, the Lease and all of its terms and conditions are in all respects ratified, confirmed, and approved, and Tenant acknowledges that it has no claims, defenses, or offsets regarding the performance of any of its obligations hereunder.

(continued)

**MODEL
AGREEMENT**
(CONTINUED)

4. **No Offset without Signature.** Submission of this agreement for Tenant is not to be construed as an offer, nor will Tenant have any right with respect hereto unless and until Landlord executes a copy of this agreement and delivers it to Tenant.
5. **Confidentiality.** Tenant acknowledges and agrees that the existence and terms of this agreement and the Promissory Note constitute sensitive, proprietary, and confidential information of the Landlord and that disclosing it to third parties, including but not limited to other tenants, shall constitute a material default under the Lease entitling Landlord to the same rights and remedies as if such default were with respect to nonpayment of rent and, at Landlord's election, making the entire indebtedness then outstanding under the Promissory Note immediately due and payable to the Landlord.
6. **Parties Bound.** This agreement will bind and inure to the benefit of the parties hereto and their respective legal representatives, successors, and permitted assignees.

WITNESSES:

	LANDLORD: _____	┌ _____ ┐
[As to Landlord]	[Print name]	affix corporate seal
	LANDLORD: _____	└ _____ ┘
[As to Landlord]	[Print name]	
	TENANT: _____	┌ _____ ┐
[As to Tenant]	[Print name]	affix corporate seal
	TENANT: _____	└ _____ ┘
[As to Tenant]	[Print name]	