

Require Letter of Credit for Tenant's Alterations

The following clause was drafted by New York City attorney Jeffrey A. Moerdler. Add it to your lease's alterations clause to require a tenant to give you a letter of credit (L/C) as security if it plans on making alterations at its space.

Paragraph a sets requirements for the L/C. Paragraph b discusses the L/C's expiration. Paragraph c gives

you the right to draw down on the L/C if the tenant doesn't complete the alterations as required by the lease.

Paragraph d requires you to return the L/C if the tenant completes the alterations as required by the lease, and pays its contractors.

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

CLL10114

LETTER OF CREDIT FOR TENANT ALTERATIONS

- a. Letter of Credit.** Tenant shall deliver to Landlord, to secure the prompt and proper completion of Tenant's Work, an irrevocable, unconditional, transferable, and negotiable letter of credit, issued by a member of the Clearing House Association or a commercial bank or trust company satisfactory to Landlord (having banking offices at which the letter of credit may be drawn upon in [*insert name of city where Premises or Landlord's office is located*] and a net worth of not less than [*insert \$, e.g., \$1 billion*]), in form and content acceptable to Landlord, and in an amount equal to [*insert # e.g., 125*] % of the cost of Tenant's Work as determined by Landlord, in its sole discretion.
- b. Expiration of Letter of Credit.** Such letter of credit shall expire not less than [*insert #, e.g., 1*] year after delivery to Landlord and shall be renewed or replaced by Tenant not less than [*insert #, e.g., 30*] days prior to the expiration of the then current letter of credit until Tenant's Work is completed. Failure to deliver such renewed or replaced letter of credit on or before said date shall be a material breach of this Lease; and Landlord's remedies shall include, without limitation, the right to draw on the then-current letter of credit and retain the funds as a cash security deposit.
- c. Landlord's Draw Right.** Upon Tenant's failure to properly perform, complete, and fully pay for Tenant's Work, as determined by Landlord, Landlord shall be entitled to draw down on the letter of credit to the extent it deems necessary in connection with Tenant's Work; the restoration, or protection of the Premises or the Building; and the payment or satisfaction of any costs, damages, or expenses in connection with the foregoing or Tenant's obligations under this Clause.
- d. Return of Letter of Credit.** Upon:
 - (i) The completion of Tenant's Work in accordance with the terms of this Clause, and
 - (ii) The submission to Landlord of proof evidencing the payment in full for Tenant's Work, the letter of credit (and/or the balance of the proceeds thereof if Landlord has drawn on said letter of credit) shall be returned to Tenant.