

Living with Leases (Templates for Landlord's Counsel)

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Joshua Stein



WHEN A LANDLORD and a Tenant sign a lease, they both have negotiated and finally agreed to all kinds of things. The rent will probably change over time, and Landlord might have agreed to tell the Tenant about the rent adjustments at certain times and in certain ways. Landlord might have agreed to give Tenant notices when and if other events occur. Landlord may have agreed to obtain non-disturbance agreements whenever Landlord refinances. Landlord may have given Tenant a right to expand, extend, or sometimes even pull back and get smaller. Landlord might have agreed to perform certain work by a certain date, with consequences for missing that date. Landlord may have given Tenant the right to deliver a letter of credit instead of a cash security deposit. Landlord may even have agreed to take certain actions or give certain notices by a specific date, or lose its rights.

In any lease negotiation, all of these things are negotiated at great length, resulting in a whole package of rights and obligations tailored to the circumstances of the lease. Then Landlord might stick the signed lease in a drawer and forget about it. That's not good. A Landlord-Tenant relationship has to be kept up-to-date with the evolving circumstances of the underlying deal between them, as reflected in the Lease. Failure to pay attention can produce unpleasant surprises. A Lease requires care and feeding over time.

Whenever Landlord signs a lease, Landlord's counsel can help prevent future problems by summarizing points that Landlord, or its property manager, should keep in mind so nothing falls between the cracks and Landlord doesn't make any mistakes.

This article offers a model lease administration memo (the "Memo"), which is designed to give the people who have to live with any Lease a simplified reference guide to what the Lease requires them to do. This Memo is not a Lease summary—it is more of a guide to preventing trouble. One could prepare similar memos for a Tenant or for any other type of real estate transaction. In contrast, a Lease summary will cover more ground.

Anyone using this model Memo will need to adapt it for a particular Lease and for the preferences of a particular client. In the author's experience, even sophisticated Landlords with competent property managers usually appreciate receiving a memo of this type. In this model Memo, capitalized terms assume use of a par-

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ticular form of lease in the author's collection of model documents. Those terms must be adjusted based on the actual Lease that the parties signed. Blank spaces, brackets, and footnotes indicate blanks to fill, options, and issues to consider.

Outside the four corners of the model Memo, Landlord's counsel should particularly focus on the possibility that Tenant or a guarantor may deliver a letter of credit ("L/C") to backstop some or all lease obligations. Landlord's counsel will likely receive the original L/C along with the signed leases. Counsel should promptly deliver the original L/C to Landlord. Any L/C creates new pitfalls for any Landlord and its counsel. Landlord's counsel should help everyone steer clear of those pitfalls.

To do that, counsel should give Landlord a separate letter or memo with instructions on proper safekeeping and future administration of the L/C. The amount of detail required for that cover letter will depend on the sophistication of the particular Landlord client. If the client is a substantial commercial real estate owner that has been in the business of leasing property for many years, and is familiar with L/C handling and administration, counsel need not burden (or perhaps insult) Landlord with instructions that might amount to overkill.

If, however, Landlord is smaller and less sophisticated, counsel may wish to give Landlord very specific instructions on L/C safekeeping and administration, including tracking expiration dates and looking out for nonrenewal notices from the bank. This is extremely important. If the L/C is lost or expires, it is worthless. Attached to this Memo is a template cover letter for delivery of an L/C to a Landlord client ("Model L/C Cover Letter"). The attached Model L/C Cover Letter gives highly detailed instructions suitable for a less sophisticated Landlord client. When using the Model L/C Cover Letter, one should edit as appropriate for the particular client.

As soon as the parties sign any Lease, the first item on Landlord's agenda will consist of building out the space (if Tenant did not accept it "as is") and then delivering it to Tenant as quickly as possible. Doing so will often constitute a condition to lease commencement. Delay in delivery will often delay commencement of rent.

The lease may require Landlord to formally notify Tenant when Landlord's work is substantially complete. Sometimes, Landlord must give notice of substantial completion as a condition to commencement of the lease. Other times, Landlord can give the notice after the fact; substantial completion, in and of itself, will suffice for lease commencement. Any Lease with a delayed commencement date will require Landlord and Tenant to enter into an agreement after commencement to confirm dates and other matters under the Lease (a "Lease Confirmation Agreement").

When a lease requires Landlord to perform work as a condition to lease commencement, counsel may want to prepare and include as exhibits to this Memo the documents Landlord will likely need to sign and deliver soon after Lease signing: (i) Notice of Substantial Completion of Pre-Possession Work and Commencement Date ("Completion Notice"); and (ii) Lease Confirmation Agreement (the "Lease Confirmation Agreement"). Attached as exhibits to this Memo are model templates for each of those documents. By having these two documents ready to go, Landlord's counsel can prevent delays, and often

help assure the earliest possible commencement of rental income for Landlord. For a substantial Lease, a slightly earlier rent commencement will more than cover all of Landlord's legal fees for the Lease.

When using those model documents, Landlord or Landlord's counsel should consider these points:

- **Combined Notice and Agreement.** The Completion Notice can also serve as a Lease Confirmation Agreement if the necessary information (i.e., Rent Commencement Date, Scheduled Expiration Date and any updates to the Fixed Rent Schedule) is known when Landlord delivers the Completion Notice. If sending as a single Notice/Agreement, merge the provisions from each model document into one document and include a signature block for Tenant to countersign.
- **Notice Formalities.** Check the Lease for formalities on giving notices. Should they be given in a particular way? Must Landlord give copies to anyone, like Tenant's counsel or Tenant's central leasing department at headquarters? Keep a record to show Landlord gave notice the right way.
- **Other Information.** Does the Lease require Landlord to include any other information, documents, or substantiation as part of the Completion Notice or Lease Confirmation Agreement? If so, comply with those requirements. Read the Lease!
- **Other Requests and Communications.** The Completion Notice may give Landlord a good opportunity to remind Tenant of the monthly rent amount; payment address; and who to call for problems or questions. Also, Landlord can notify Tenant of any change of Landlord's address, any remaining requirements for insurance certificates, or any other loose ends or administrative matters for the tenancy.
- **Followthrough.** Once all Lease dates and other matters are established, the parties should enter into the Lease Confirmation Agreement, unless: (a) no possible issues exist; or (b) the Completion Notice also includes the Lease Confirmation Agreement.

This model Memo reflects provisions generally seen in commercial office Leases. Anyone preparing such a Memo should review the Lease in question, looking for any other deal specific obligations or restrictions that Landlord should keep in mind. If the Lease is not a commercial office Lease, one should add references to other important provisions that might not appear in a commercial office Lease. In preparing this Memo for a ground lease, for example, counsel might address: Environmental Inspections or Issues; Development Requirements and Deadlines; Guarantor; Landlord and Tenant Financing; Nondisturbance for Subtenants; Tenant's Maintenance and Repair Obligations; Title Insurance; and Transfer Taxes. A retail Lease may cover, for example: Exclusive Uses; Operating Hours; Percentage Rent and Co-Tenancy Requirements.

This Memo is not a complete Lease summary or abstract. It's more of a Lease "to do" list for Landlords. If a client requests a complete Lease summary, the Memo will require more information, depending on the client's needs and desires. For example, if the client is a prospective purchaser of property subject to the Lease, the abstract should emphasize provisions of particular concern to a new property owner, who might be buying for demolition and development, as opposed to a client who has just negotiated a new Lease and would like a quick reference to major Lease information. The model Memo can act as the nucleus of a Lease summary, but Landlord's counsel would need to supplement it based on circumstances.

MODEL LEASE ADMINISTRATION MEMO

SUBJECT: Lease dated _____ (the "Lease") between _____ ("Landlord") and _____ ("Tenant") for premises at _____ ("Premises")

This memo identifies some Landlord and Tenant obligations (including required deliveries) and dates to track over the term of this Lease. This is not a complete Lease summary. It just collects some follow-through items for Lease administration. We've also attached as exhibits some notices you will need to give fairly soon. Numbers in parentheses refer to Lease Sections. The Lease defines capitalized terms used in this memo.

This memo is for convenient reference only, as a reminder of some affirmative steps Landlord should take in administering this Lease. Please review the Lease or consult counsel before making any business or legal decision or if disputes or specific questions or issues arise. We have not tried to address unlikely contingencies such as casualty and condemnation.¹ If those occur, check the Lease.

I. IMPORTANT DATES²

Date	Description/Comments
	Signing Date (___)
	Commencement Date(___)
	Tenant can terminate if _____. ³ To terminate, Tenant must _____ on or before _____.(___)

¹ If Tenant has any unusual rights to receive or control casualty or condemnation proceeds, mention them.

² If Tenant delivered an L/C, Landlord will need to track some other very important dates. Those are addressed in the separate L/C cover memo offered later in this article.

	Rent Commencement Date. ⁴ (___) (Tenant prepaid the first month's Fixed Rent on Signing Date. Landlord should credit that payment against the first payment of Fixed Rent due on the Rent Commencement Date.)
	Tenant begins paying Fixed Rent (after credit for payment on Signing Date).
_____ (Annually)	Annual increase in Fixed Rent. (___)
	Tenant deadline to deliver Renewal Notice (___). See below on "Renewal Term Deliveries" for other requirements if Tenant delivers a timely Renewal Notice.
	Scheduled Expiration Date (___) (Subject to ___ Renewal Option(s), each for ___ years) ⁵
	Renewal Term (if Tenant exercises Renewal Option) ⁶ (___)

II. SIGNING DATE DELIVERIES

Security/Guaranty	[\$_____ cash security deposit.] [L/C Security in the amount of \$_____.] ⁷ [None.] [Guaranty delivered by _____ ("Guarantor").] ⁸ (___)
First Month's Rent	Paid on Signing Date. See "Important Dates" above for treatment of this payment. (___)
SNDA	Lender delivered SNDA to Tenant. Landlord paid a fee of \$_____ to Landlord's lender for processing. [Lease requires Tenant to reimburse \$_____ of that fee.] ⁹ (___)

³ Include any termination option deadlines.

⁴ If the Lease gives Tenant any other periods of free rent or if Tenant has other potential rights to a rent credit or abatement, mention as applicable.

⁵ Delete all references to Renewal Term if no Renewal Option.

⁶ Adjust for multiple Renewal Terms as appropriate.

⁷ Mention L/C Reductions, if any, and Lease Section(s) on L/C if applicable. After this model Memo, this article also includes a sample cover letter for delivery of L/C to client, including instructions on proper safekeeping and administration.

⁸ Delete all references to Guarantor if no Guaranty exists.

⁹ Check Lender fees. What does Lender require to process an SNDA request?

III. COMMENCEMENT DATE DELIVERIES¹⁰

Notice of Substantial Completion of Pre-Possession Work and Commencement Date	Landlord must give Tenant notice of Substantial Completion of Pre-Possession Work [and Commencement Date] (___). [Landlord delivered that Notice to Tenant on _____. Attached as Exhibit __ is a copy of that notice, which also included notice of the Commencement Date.] [Attached as Exhibit __ is a blank form for that Notice, ready to use. This Notice should be given as soon as possible, as it is a requirement for the Commencement Date to occur.] ¹¹
Lease Confirmation Agreement	Promptly after the Commencement Date, Landlord and Tenant should sign an agreement to confirm dates and other matters (___). Attached as Exhibit __ is a form of Lease Confirmation Agreement [with an updated Fixed Rent Schedule]. ¹²
Insurance Certificates	Tenant must deliver by Commencement Date (___).

IV. RENT

Fixed Rent	See Fixed Rent Schedule in Lease Exhibit __. ¹³
Tax Escalation Payment ¹⁴	Landlord to give Tenant a Tax Statement (with copy of Tax bill) for any year when Taxes exceed Base Taxes. Landlord must give Tax Statement on or before _____. (___) Tenant to pay Tax Escalation Payment in equal monthly installments (___).

V. LANDLORD'S WORK AND TENANT'S INITIAL ALTERATIONS

Landlord Pre-Possession Work	Generally, _____. See Lease Exhibit __ for details.
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¹⁰ If Signature Date and Commencement Date are the same, combine this section with the preceding one.

¹¹ Attached is a Model Notice of Substantial Completion of Pre-Possession Work and Commencement Date. Blank spaces, brackets and footnotes indicate blanks to fill, options, and issues to consider. The drafter should comply with any requirements in the Lease. If a Notice was delivered before preparing this Memo, include a copy with this Memo.

¹² Attached is a Model Lease Confirmation Agreement. See instructions in the immediately preceding footnote.

¹³ Alternatively, attach the Fixed Rent Schedule as an exhibit to this Memo. The best way to handle Fixed Rent will depend on how complicated it is for a particular transaction.

¹⁴ Mention any other additional rent payable, such as operating expense escalation payments and electricity. Mention any deadlines and requirements for notices or documents.

Landlord Pre-Possession Work Deadline	_____.
Deadline for Tenant to Inspect Landlord's Pre-Possession Work (and to give punchlist)	Earlier of (a) _____; or (b) when Tenant starts Initial Alterations (____).
Landlord Post-Possession Work Deadline	_____ (____). If Landlord misses this date, then Tenant receives Rent Credit of \$____/day. (____).
Notice of Substantial Completion of Landlord's Post-Possession Work	Landlord must Notify Tenant when all Post-Possession Work is Substantially Completed (____). ¹⁵
Tenant Inspection/Punchlist Deadline (Landlord's Post-Possession Work)	____ days after Landlord Notifies Tenant of Substantial Completion of Post-Possession Work (____).
Tenant Fund Disbursement	Landlord must disburse Tenant Fund as follows: _____.
Unused Portion of Tenant Fund[/Rent Credit]	[Tenant not entitled to any unused portion of Tenant Fund.] [Landlord to credit any unused portion of Tenant Fund against Fixed Rent (____).]

VI. TENANT'S ALTERATIONS

Required Deliveries	__ days before starting work, Tenant must submit Plans; workers' compensation and Alterations Insurance (____).
Landlord Deadline to (Dis)Approve Tenant Plans	__ days after receipt of plans; __ Business Days for second review of plans previously submitted (____). [Disapproval notice must give reasons (____).]
Approval for Decorations	Costing: (a) \$ _____ or less, none required; (b) over \$ _____, reasonable approval required (____).
Permits	Tenant obtains at its cost. Landlord to sign applications after receipt, within: (a) [10] days if plans already approved; or (b) [15] days if plans not yet approved (____; ____).
Specialty Alterations (i.e., Tenant Must Remove at	Tenant can by written notice require Landlord to identify at time of plan review (____). ¹⁶ If Landlord does not identify Specialty

¹⁵ If quick delivery of this Notice will accelerate rent commencement, or if otherwise desired, include a sample notice.

End of Term)	Alterations, then Tenant need not remove them.
Landlord's Costs for Tenant Alterations	Tenant pays Actual Costs for Landlord's (and any Ground Lessor's or Mortgagee's) plan review and inspections (____).
Alterations Fee	_____
Fees for Services During Tenant Move-in and Initial Alterations	Tenant must pay for: (a) electricity; (b) overtime services; (c) special security services; (d) overtime freight elevator; and (e) Supplemental HVAC at \$_____ per tap (____).
Tenant Post Completion Deliveries:	After Substantial Completion: (a) within ____ days, final governmental approvals (if required), redlined construction drawings, specifications and contract documents; and lien waivers; and (b) within ____ days, as-built or record drawings. Initial Alterations deliveries must be in a modern machine-readable format acceptable to Landlord (____; ____).

VII. TENANT'S ASSIGNMENT OR SUBLETTING

Broker	Tenant must use Landlord as Tenant's broker for any assignment or subletting (____).
Tenant to deliver Proposed Transfer Notice	__ days before any Proposed Transfer (____), except for any of these "Permitted Transfers": _____.
Landlord to deliver Recapture Notice (if Landlord intends to Recapture)	Within __ days after receipt of Proposed Transfer Notice. If Landlord does not timely deliver Recapture Notice, Recapture right is waived for the Proposed Transfer. Landlord gets a second Recapture right if Tenant's Proposed Transfer changes in certain ways (____).
Landlord's Transfer Related Expenses	Tenant to reimburse Landlord (____).
Sublease/Assignment Profit	Landlord gets [50%] of profit as Additional Rent (____; ____).

¹⁶"Specialty Alterations" generally means Alterations difficult to remove, such as vaults, raised floors or special equipment. A Lease will often require Tenant to remove them at the end of the term, but only if Landlord identified them when Landlord reviewed Tenant's plans. This creates a potential pitfall for Landlord, if Landlord's plan review personnel don't know about the importance of identifying Specialty Alterations when they review plans. Therefore a careful Landlord may reject the concept entirely, or insist that Tenant's plan submission includes a reminder about the importance of identifying Specialty Alterations during plan review.

VIII. OTHER NOTABLE OBLIGATIONS

Insurance	Tenant must deliver replacement certificates no later than ___ days before any policy expires (____). As a practical matter, Tenant will usually miss this deadline, but Landlord should stay on top of it until Tenant complies.
Leasing Restrictions	Landlord has agreed not to lease to _____ (___).
Overtime HVAC	Landlord must provide if Tenant Notifies management office by ___ PM on Business Day; and by ___ PM of previous Business Day for non-Business Day (___).
Supplementary HVAC	Tenant may install up to ___ tons at Tenant's cost, with Landlord's reasonable approval (____).
Landlord's Access, Generally	Access on [reasonable] [one Business Day's] notice. [Notice may be oral.] (___)
Access To Show Prospective Tenants	Within ___ months before any Expiration Date, on reasonable notice (which may be oral), during business hours (___).
Self-Help and Abatement	If Landlord fails to [provide services] Tenant can, after ___ days notice, exercise self-help rights and claim rent offsets (___).

IX. FUTURE DELIVERIES

Nondisturbance Agreements	Landlord must obtain from Future Ground Lessors and Mortgagees. Tenant to pay processing and legal costs (___).
Tenant Estoppel Certificates	Tenant to deliver within ___ Business Days after Landlord, Mortgagee or Ground Lessor requests, up to twice in 12 months (___).
Landlord Estoppel Certificates	Same, on Tenant request (___).
Financial Statements	Tenant must deliver, ___ days after each fiscal year of Tenant, financial statements of Tenant [and Guarantor], certified by outside accountant or auditor. Landlord to maintain confidentiality (___).

X. RENEWAL TERM DELIVERIES (See also deadline for renewal notice in “IMPORTANT DATES” above)

Rent Notice	Notice each party must deliver to the other stating its Determination of Fair Market Rent for the Renewal Term. ¹⁷
Rent Notice Deadline	_____ – Deadline for each party to deliver Rent Notice. [If a party misses that date, the other must give notice and the Rent Notice Date will be deferred (only once) for __ Business Days (____)]. See Section ___ for further procedure on Renewal Term Rent.
Fixed Rent Increases	On each anniversary of Renewal Term Effective Date, the Renewal Term Fixed Rent rises by ____% compounded (____).
Confirmation Certificate	After Renewal Term Fixed Rent is determined, the parties should sign an agreement stating Renewal Term Fixed Rent, Base Tax Year and, if known, Base Taxes (____).

XI. RIGHT OF FIRST OFFER (ROFO)

ROFO Premises	___ Floor
Tenant’s ROFO	Before leasing ROFO Premises to a 3rd party, Landlord must give Tenant a ROFO Notice (____).
ROFO Notice	Must specify terms, including rent, square footage, recalculation of Tenant’s Tax Share, anticipated Delivery Date, and any incentives or improvements (____).
Acceptance Notice	Tenant must deliver within __ Business Days from ROFO Notice. If Tenant does not timely deliver, Landlord may lease ROFO Premises to a 3rd party and ROFO completely terminates (____; ____).
Delivery of ROFO Premises	If Tenant timely delivers Acceptance Notice, then ROFO Premises are added to the Premises on all the same terms for the remaining Term, except as ROFO Notice states (____).
Tenant’s Right to Rescind Acceptance Notice	If Landlord fails to deliver ROFO Premises within ____ days after anticipated ROFO Premises Delivery Date in ROFO Notice (____).

XII. END OF TERM

Tenant Alterations, Except Specialty Alterations	Need not be removed, but if Tenant removes, Tenant must restore (____).
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¹⁷ If Renewal Term Rent is a fixed amount, adjust accordingly.

Specialty Alterations	Tenant must remove unless Landlord agrees in writing (at least ___ days before Expiration Date) that Tenant may leave Specialty Alterations in place (____).
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XIII. NOTICES

Acceptable Methods of Delivery	By hand, registered or certified mail or nationally recognized overnight courier (____).
Tenant Notice Recipients	Must deliver to recipients listed below (___), but Tenant can notify of new recipients or addresses. Watch for any such notices from Tenant, and check the files whenever giving any notice. As of Lease signing, Tenant's notice recipients are [List]:
Unreleased Assignors	If any exist, then Landlord must give them copies of all "default notices" sent to Tenant, at the last address Landlord received by formal notice under the Lease (____).
Notice by Representative	Any representative of either party (including counsel) may give notice on behalf of that party (____).

EXHIBIT __

LEASE CONFIRMATION AGREEMENT

To [Tenant]:

Please refer to Agreement of Lease dated as of _____ (the "Lease") between _____, as Landlord and _____, as Tenant for premises on the ___ floor at _____. Definitions in the Lease²⁰ apply in this letter (this "Notice"), which constitutes Notice under the Lease as Lease Section ____²¹ contemplates.

Landlord has achieved Substantial Completion of Landlord's Pre-Possession Work and by giving this Notice, delivers possession of the Premises to Tenant. [The Lease Commencement Date is the date of this Notice.]²²

Tenant should inspect Landlord’s Pre-Possession Work as the Lease requires, as promptly as possible. To arrange inspection, and for all other construction related matters, please contact _____, Property Manager, at [phone number] or [email address].

[Property Manager] will look forward to working with Tenant’s representative to prepare a list of punchlist items[, if any]. [We do not believe any punchlist work remains, but if we are wrong about that Landlord will work with Tenant to prepare a punchlist and complete any punchlist work as the Lease requires. This can all be handled with [Property Manager.] [As a start to that punchlist, we’ve attached Schedule A to this Notice. The status of each punchlist item is stated in the column under “Comment.”]

Before starting Initial Alterations, Tenant should review and comply with the Lease. No Alterations shall be performed at the Premises without all Landlord approvals, insurance and other deliveries the Lease requires.

We look forward to having Tenant in the Building. If any questions or issues arise on the Building or Tenant’s Initial Alterations, please contact [Property Manager]. For questions on payment of Rental or Lease administration questions, please contact _____, at [phone number] or [email address].

Thank you and best regards.

Yours very truly,

[_____, **Landlord**

PUNCHLIST ITEMS (PRELIMINARY)

<u>Punchlist Item*</u>	<u>Required Work</u>	<u>Comment</u>

* Numbered based on Lease Exhibit ____.

EXHIBIT __Lease Confirmation Agreement**[Landlord Letterhead]**²³*Lease Confirmation Agreement*

To [Tenant]:

Please refer to Agreement of Lease dated as of _____ (the “Lease”) between _____, as Landlord, and _____, as Tenant, for premises on the ___ floor at _____. All definitions in the Lease²⁴ apply in this letter agreement (this “Agreement”).

This Agreement constitutes the agreement between Landlord and Tenant under Lease Section __, confirming these dates and other matters:

1. The Commencement Date is: _____.
2. [Landlord has satisfactorily completed Landlord’s [Pre-Possession and Post-Possession] Work, including any punchlist work.]
3. The Rent Commencement Date is _____.
4. Tenant paid the first month’s Fixed Rent on the Signature Date. On or before _____, Tenant shall pay rent for the partial month of _____ 201__, only for the period from 12:01 a.m. on _____ through the end of that month. Starting on _____, Tenant shall pay Fixed Rent under the Fixed Rent Schedule, in advance on the first day of each calendar month. [Tenant shall pay all Rental by [electronic funds transfer] [check] to Landlord at _____.]²⁵
5. The Scheduled Expiration Date is _____.

²³ This is not a notice under the Lease, but instead an agreement between Landlord and Tenant. There is no need to comply with the notice requirements of the Lease.

²⁴ Check Lease for definitions.

²⁵ Include if different from what Lease requires.

6. [The Fixed Rent Schedule shown on Lease Exhibit __ is deleted and replaced by the Fixed Rent Schedule shown on Schedule 1 attached to this Letter.]²⁶
7. [Tenant [waives] [confirms the expiration without exercise of] Tenant’s: (a) termination right under Lease Section ____; and (b) right to give a Termination Notice under Lease Section ____.]

To the extent that this Agreement varies from the Lease, this Agreement, when countersigned by Tenant, amends the Lease.²⁷

Please return to the undersigned a counterpart of this Agreement dated and signed on behalf of Tenant [and Guarantor]. Electronic or “pdf” signatures shall be accepted as originals. This Agreement may be signed in counterparts. The parties waive jury trial in any dispute about this Agreement.

Thank you.

Yours very truly,

_____, **Landlord**

MODEL COVER LETTER FOR DELIVERY AND ADMINISTRATION OF LETTER OF CREDIT

Dear Addressee:

I enclose the original Letter of Credit identified above (the “L/C”) issued to you by _____ (“Issuer”), to provide credit support for [Tenant’s] [Guarantor’s] obligations relating to the Lease. **To draw on the L/C you must present this original L/C to Issuer in compliance with the L/C, before it expires.** You cannot present a copy or a scanned image.

We recommend that you (i) keep the L/C in a safe place that you will remember; (ii) choose a location that will be accessible and known to others if you are not available; and (iii) email us with the details of that location.

The L/C expires on _____ (the “Expiry Date”). [After that, it may automatically renew for one year at a time after the original Expiry Date, but it will never renew beyond _____]²⁹ (the “Final Expiry Date”). We do not keep track or send out reminder notices of any Expiry Date. You need to keep track of and remain aware of all Expiry Dates.

Issuer must notify you at least __ days before any Expiry Date (except the Final Expiry Date) if Issuer decides not to renew or extend the L/C (a “Nonrenewal Notice”). After you receive a Nonrenewal Notice, you will have until the upcoming Expiry Date to draw on the L/C. You should not delay, however, if you receive a Nonrenewal Notice, please call us right away. Issuer may send you a Nonrenewal Notice in error (e.g., a computer system error). If so, they may be able to correct the mistake quickly and you may not need to draw the L/C. But you do not want to go “down to the wire,” or anywhere close to that, for any Expiry Date.

Please check the Lease before you draw on the L/C. Even if you receive a timely Nonrenewal Notice and you are entitled to draw on the L/C by its terms, the Lease may provide otherwise.

²⁹ Include for L/C with automatic extensions.

For example, if Issuer gives a Nonrenewal Notice, the Lease may give the tenant some time to replace the L/C with a new one before you can draw.

³⁰[Each year that the L/C is automatically extended (i.e., you don't receive a timely Nonrenewal Notice), you may want to contact Issuer, soon after the Nonrenewal Notice deadline, to confirm that no Nonrenewal Notice was in fact issued, even if you did not receive one. Starting with _____ (around five days after the first Nonrenewal Notice deadline), you can call Issuer at _____³¹ each year on or about the same date in that year to confirm (i) that the L/C is still in effect; (ii) the amount remaining on the L/C; and (iii) the current Expiry Date. When you call, you will need to have identifying information on the L/C. You can ask Issuer to confirm this information in writing or just keep a record of who gave you the information by phone. Most L/C beneficiaries do not take the extra step of checking the L/C with Issuer annually, whether in writing or by telephone. So we think just confirming the L/C by phone represents more than "ordinary" diligence on the L/C. If you ask the Issuer to confirm an extended Expiry Date and they refuse, you may have the right to draw the L/C. Call us in that case.]

We do not assume responsibility to track L/C dates, or remind you about them. You need to track and be aware of all L/C Expiry Dates.

Please call us, and send us a copy, **if you receive any notice at all from Issuer**. We need to make sure they are not doing anything to harm your L/C.

Finally, please call us on or about _____ (around 90 days before the Final Expiry Date), so we can help you draw the L/C if necessary, or extend it.

Issuer has no obligation to remind you of any L/C Expiry Date. Once an L/C expires, it gives you no rights and no security. So please mark your calendar with the dates we've outlined in this letter. They are crucial.

If you change your address, you must notify Issuer of your new address. You should ask Issuer to amend the L/C, and give you a copy of the amendment, to reflect your new address, to be double-sure that the change was made.

Please sign where indicated below to confirm you received the original L/C and reviewed this letter.

It has been a pleasure representing you in this transaction. Thank you and best regards.

Very truly yours,

[Signature of Landlord's Counsel]

³⁰ Include for L/C with automatic extensions.

³¹ Insert Issuer's contact number provided in the L/C specifically for L/C inquiries.

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