



APPLICATION AND AGREEMENT FOR STANDBY LETTER OF CREDIT

WHEN TRANSMITTING THIS APPLICATION BY FACSIMILE ALL PAGES MUST BE TRANSMITTED TO JPMORGAN.

TO: JPMorgan Chase Bank
Attention Standby Letter of Credit Department
c/o JPMorgan Treasury Services
Global Trade Services
10420 Highland Manor Drive
Tampa, FL 33610
("Issuer")

[Name(s) of Applicant(s)]

jointly and severally if more than one, (individually and collectively, "Applicant") hereby requests that pursuant to the terms and conditions contained you issue your irrevocable standby letter of credit requested below (together with any replacements, extensions or modifications, the "Credit) and transmit it by:

☐ Airmail ☐ Teletransmission ☐ Courier Service ☐ Other _____ (Please specify)

IN FAVOR OF:

TO BE ADVISED THROUGH

(If Applicable):

("Beneficiary")

Up to an aggregate amount of _____ ☐ If not USD, indicate currency _____

Available by (indicate (i) A and/or B or (ii) C)

☐ A. Drafts at sight drawn on you.

☐ B. Beneficiary's dated statement purportedly signed by an authorized person reading as follows (Please state within the quotation marks the wording to appear on the statement to be presented):

"The amount of this drawing (indicate currency and amount) _____ under
JPMorgan Chase Bank Letter of Credit Number _____ represents funds due us as

"

☐ C. Authenticated Teletransmission to Issuer (SWIFT demand available for use only when the Beneficiary is a SWIFT participant or a Bank) stating **(Please state within the quotation marks the wording to appear in the demand to be presented):**

"Re: JPMorgan Chase Bank Letter of Credit Number _____. We hereby demand payment of
(indicate currency and amount) _____ and such amount represents funds due us as

(Y) application of any law, regulation, guideline or instruction from any central bank, monetary authority or governmental authority, or any change in the interpretation of the foregoing (whether or not having the force of law) applicable to Issuer or any entity controlling Issuer, regarding any reserve (including any special deposit or similar requirement), assessment, capital or similar requirement (including changes in the capital adequacy conversion factor), or any change in generally accepted accounting principles or in Issuer's accounting, relating to letters of credit or the Credit or reimbursement agreements generally or to similar liabilities or assets, whether existing at the time of issuance of the Credit or adopted thereafter. Applicant acknowledges that there may be various methods of allocating costs to the Credit and agrees that Issuer's allocation for purposes of determining the costs referred to above shall be conclusive and binding upon Applicant provided such allocation is made in Good Faith. **"Business Day"** means any day on which commercial banks in New York City, New York are not authorized or required to be closed for business. **"Good Faith"** means honesty in fact in the conduct or the transaction concerned. **"Prime"** means the rate of interest per annum publicly announced from time to time by Issuer as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

(b) If the amount drawn under the Credit is in non-United States currency (**"foreign currency"**), Applicant shall pay under paragraph 2(a)(i) above the United States dollar equivalent of the amount computed at Issuer's selling rate, as of the date of Applicant's payment, for cable transfers of such foreign currency to the place of payment; provided, further, that if, for any reason, Issuer has no selling rate for cable transfers of that currency to such place on the payment date, Applicant shall pay Issuer an amount in United States currency equivalent to Issuer's actual cost of settlement of its obligation.

(c) All payments shall be made in immediately available funds, free and clear of and without deduction for any present or future taxes, levies, imposts, deductions, charges, withholdings, set-off or other liabilities. Applicant shall pay all withholding, stamp and other taxes or duties imposed by any taxing authority on payment under the Credit and this Agreement and shall indemnify Issuer against all liabilities, costs, claims, and expenses resulting from Issuer having to pay or from any omission to pay or delay in paying any duty or tax.

(d) Issuer may (but shall not be required to), without demand for payment or notice to the Applicant, and in addition to any other right of set-off which Issuer may have, (i) debit any account or accounts maintained by Applicant with any office of Issuer or any subsidiary or affiliate of Issuer (now or in the future) and set-off and apply (X) any balance or deposits (general, special, time, demand, provisional, final, matured, unmatured, contingent or absolute) in the account(s) and (Y) any sums due or payable from Issuer or any subsidiary or affiliate of Issuer, to the payment of any and all amounts owed by Applicant to Issuer and/or (ii) advance funds to Applicant under any line of credit (committed or uncommitted) made available to Applicant by Issuer and apply such funds to said payment obligations.

(e) Applicant's payment obligations under this paragraph 2 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including, without limitation: (i) any lack of validity, enforceability or legal effect of the Credit or this Agreement (including Part I), or any term or provision therein or herein; (ii) payment against presentation of any draft, demand or claim for payment under the Credit or other document presented for purposes of drawing under the Credit (**"Drawing Document"**) that does not comply in whole or in part with the terms of the Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person (or a transferee of such Person) purporting to be a successor or transferee of the beneficiary of the Credit; (iii) Issuer or any of its branches or affiliates being the beneficiary of the Credit; (iv) Issuer or any correspondent honoring a drawing against a Drawing Document up to the amount available under the Credit even if such Drawing Document claims an amount in excess of the amount available under the Credit; (v) the existence of any claim, set-off, defense or other right that Applicant or any other Person may have at any time against any beneficiary, any assignee of proceeds, Issuer or any other Person; (vi) Issuer or any correspondent having previously paid against fraudulently signed or presented Drawing Documents (whether or not Applicant reimbursed Issuer for such drawing); and (vi) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing, that might, but for this paragraph, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, Applicant's obligations hereunder (whether against Issuer, the beneficiary or any other Person); provided, however, that the foregoing shall not exculpate Issuer from liability to Applicant as may be finally, judicially determined in an independent action or proceeding brought by Applicant against Issuer following payment of Applicant's obligations under this Agreement, subject to paragraph 4 hereof. **"Person"** means any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

3. **Amendment; Waiver.** Issuer shall not be deemed to have amended, changed or modified any term hereof, or to have waived any of its rights hereunder or thereunder unless Issuer or its authorized agent shall have consented to and signed such amendment, change, modification or waiver. No such waiver, unless expressly stated therein, shall be effective as to any transaction which occurs subsequent to the date of such waiver, nor as to any continuance of a breach after such waiver. Issuer's consent to any amendment, change, waiver, or modification does not mean that Issuer shall consent or has consented to any other or subsequent Instruction to amend, change, modify, or waive a term of this Agreement or the Credit.

4. **Agreements and Acknowledgments; Indemnification; Limitation of Liability.** (a) The Credit shall be subject to the International Standby Practices 1998 (International Chamber of Commerce Publication Number 590) and any subsequent revision thereof adhered to by Issuer (the "**ISP**"), or, if specified in Part I, the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 and any subsequent revision thereof adhered to by the Issuer ("**UCP**").

(b) Applicant shall indemnify and hold harmless Issuer, its parent, affiliates, subsidiaries and correspondents and each of their respective directors, officers, employees and agents (each, including Issuer, an "**Indemnified Person**") from and against any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including expert witness fees and legal fees, charges and disbursements of any counsel (including in-house counsel fees and allocated costs) for any Indemnified Person ("**Costs**"), arising out of, in connection with, or as a result of: (i) the Credit or any pre-advice of its issuance; (ii) any transfer, sale, delivery, surrender, or endorsement of any Drawing Document at any time(s) held by any Indemnified Person in connection with the Credit; (iii) any action or proceeding arising out of or in connection with the Credit or this Agreement (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under the Credit, or for the wrongful dishonor of or honoring a presentation under the Credit; (iv) any independent undertakings issued by the beneficiary of the Credit; (v) any unauthorized Instruction or error in computer transmission; (vi) the enforcement of this Agreement or any rights or remedies under or in connection with this Agreement or the Credit; (vii) Issuer dishonoring any presentation upon or during the continuance of any Event of Default or for which Applicant is unable or unwilling to make any payment to Issuer required under paragraph 2 above; (viii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of such Indemnified Person; provided, however, that such indemnity shall not be available to any Person claiming indemnification under (i) through (vi) above to the extent that such Costs are found in a final, non-appealable judgement by a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Indemnified Person claiming indemnity. If and to the extent that the obligations of Applicant under this paragraph are unenforceable for any reason, Applicant shall make the maximum contribution to the Costs permissible under applicable law.

(c) The liability of Issuer (or any other Indemnified Person) under, in connection with and/or arising out of this Agreement or the Credit (or any pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to any direct damages suffered by Applicant that are caused directly by Issuer's gross negligence or willful misconduct in (i) honoring a presentation that does not at least substantially comply with the Credit, (ii) failing to honor a presentation that strictly complies with the Credit or (iii) retaining Drawing Documents presented under the Credit. In no event shall Issuer be deemed to have failed to act with due diligence or reasonable care if Issuer's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement, including paragraph 4(d) below. Applicant's aggregate remedies against Issuer and any Indemnified Person for wrongfully honoring a presentation under the Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Applicant to Issuer in respect of the honored presentation in respect of the Credit under paragraph 2 above, plus interest. Notwithstanding anything to the contrary contained herein, Issuer and the other Indemnified Persons shall not, under any circumstances whatsoever, be liable for any punitive, consequential, indirect or special damages or losses regardless of whether Issuer or any Indemnified Person shall have been advised of the possibility thereof or of the form of action in which such damages or losses may be claimed. Applicant shall take action to avoid and mitigate the amount of any damages claimed against Issuer or any Indemnified Person, including by enforcing its rights in the underlying transaction. Any claim by Applicant for damages under or in connection with this Agreement or any Credit shall be reduced by an amount equal to the sum of (i) the amount saved by Applicant as a result of the breach or alleged wrongful conduct and (ii) the amount of the loss that would have been avoided had Applicant mitigated damages. If the Credit is to be governed by a law other than that of the State of New York, Issuer shall not be liable for any Costs resulting from any act or omission by Issuer in accord with the UCP and Applicant shall indemnify Issuer for all such Costs. "**Standard Letter of Credit Practice**" means any domestic or foreign law or letter of credit practices applicable in the city in which Issuer issued the Credit or for its branch or correspondent, such laws and practices applicable in the city in which it has advised,

confirmed or negotiated the Credit, as the case may be. Such practices shall be (i) of banks that regularly issue Credits in the particular city and (ii) required or permitted under the UCP or the ISP, as chosen in the Credit.

(d) Without limiting any other provision of this Agreement, Issuer and each other Indemnified Person (if applicable): (i) may (but shall not be obligated to) honor a presentation under the Credit which on its face substantially complies with the terms of the Credit; (ii) may honor a presentation of any Drawing Documents which appear on their face to have been signed, presented or issued (X) by any purported successor or transferee of any beneficiary or other party required to sign, present or issue the Drawing Documents or (Y) under a new name of the beneficiary; (iii) shall not be responsible for the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness, or legal effect of any presentation under the Credit or of any Drawing Documents; (iv) may (but shall not be obligated to) disregard any non-documentary conditions stated in the Credit; (v) may act upon any Instruction which it, in Good Faith believes to have been given by a Person or entity authorized to give such Instruction; (vi) shall not be responsible for any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document, (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation; (vii) shall not be responsible for any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated Person or any other Person; (viii) may assert or waive any provision of the UCP or ISP which primarily benefits an issuer of a letter of credit, including, any requirement that any Drawing Document be presented to it at a particular hour or place; (ix) may pay any paying or negotiating bank (designated or permitted by the terms of the Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under the Standard Letter of Credit Practice applicable to it; (x) may dishonor any presentation upon or during any Event of Default or for which Applicant is unable or unwilling to reimburse or indemnify Issuer (provided that Applicant acknowledges that if Issuer shall later be required to honor the presentation, Applicant shall be liable therefore in accordance with paragraph 2 hereof); and (xi) may act or not act if required or permitted under Standard Letter of Credit Practice applicable to where it has issued, confirmed or advised the Credit, as the case may be.

(e) Applicant shall notify Issuer of (i) any noncompliance with any Instruction, any other irregularity with respect to the text of the Credit or any amendment thereto or any claim of an unauthorized, fraudulent or otherwise improper Instruction, within one (1) Business Day of Applicant's receipt of a copy of the Credit or amendment and (ii) any objection Applicant may have to Issuer's honor or dishonor of any presentation under the Credit or any other action or inaction taken or proposed to be taken by Issuer under or in connection with this Agreement or the Credit, within three (3) Business Days after Applicant receives notice of the objectionable action or inaction. The failure to so notify the Issuer within said times shall discharge Issuer from any loss or liability that Issuer could have avoided or mitigated had it received such notice; to the extent that the Issuer could be held liable for damages hereunder; provided, that, if Applicant shall not provide such notice to Issuer within three (3) Business Days of the date of receipt in the case of clause (i) or ten (10) Business Days from the date of receipt of clause (ii), then Issuer shall have no liability whatsoever for such noncompliance, irregularity, action or inaction and Applicant shall be precluded from raising such noncompliance, irregularity or objection as a defense or claim against Issuer. Applicant's acceptance or retention of any Drawing Documents presented under or in connection with the Credit (whether or not the document is genuine) shall ratify Issuer's honor of the presentation and preclude Applicant from raising a defense, set-off or claim with respect to Issuer's honor of the Credit. Issuer shall not be required to seek any waiver of discrepancies from Applicant or to grant any waiver of discrepancies which Applicant approves or Instructions.

(f) Applicant will (i) comply with all foreign and domestic laws, rules and regulations (including foreign exchange control regulations, foreign asset control regulations and other trade-related regulations) now or hereafter applicable to the Credit, the transactions underlying the Credit or Applicant's execution, delivery and performance of this Agreement and (ii) to the extent not provided to Issuer under other agreements, upon Instruction, furnish Issuer with Applicant's most recent year-end, quarterly and monthly (if any), financial statements (as audited) and such other information as Issuer shall reasonably request regarding the financial condition, business or operations of Applicant.

(g) Applicant acknowledges that this Agreement and the Credit is entered into (or will be entered into) for commercial purposes and hereby irrevocably waives any immunity from jurisdiction of any court or from any legal process, including from any writs of attachment, with respect to itself or its property that it may have or may hereafter acquire to the maximum extent permitted by applicable law.

5. Representations and Warranties. Applicant hereby represents and warrants as of the date of this Agreement (and with each Instruction for the issuance of the Credit represents and warrants as of the date of the Instruction) that: (a) it has all necessary power and authority to enter into and perform under this Agreement; (b) it has obtained all authorizations, consents and approvals required for it to enter into this Agreement and has or shall, in a timely

manner, file such notices or filings or obtain such other approvals as may be required for it to perform this Agreement in accordance with its terms; (c) this Agreement constitutes the legal, valid and binding obligation of Applicant, enforceable against it in accordance with its terms; (d) the execution, delivery and performance of this Agreement by Applicant does not and will not contravene (i) its charter, by-laws or other organizational documents, (ii) any order or writ binding on or affecting Applicant or its properties, or (iii) any agreement or arrangement to which Applicant is a party or by which it or its properties may otherwise be bound, the contravention of which agreement or arrangement would have a material adverse effect on Applicant; (e) the financial statements most recently furnished to Issuer by Applicant fairly present the financial condition of Applicant in accordance with generally accepted accounting principles, and there has been no material adverse change in Applicant's business, condition (financial or otherwise) or results of operation since the date of Applicant's most recent annual financial statements; (f) no information now or hereafter furnished by Applicant to Issuer in connection with this Agreement or the Credit is or shall be materially false or misleading when furnished; (g) there is no pending or threatened action which may materially adversely affect its financial condition or business or which purports to affect the validity or enforceability of this Agreement, the Credit or any transaction related to the Credit; and (h) Applicant is acting for itself and for no other Person or entity in instructing issuance of the Credit.

6. Pledge and Assignment of Security. (a) As security for the payment and performance of any and all obligations and liabilities of Applicant to Issuer in respect of the Credit and under this Agreement, whether matured or unmatured, absolute or contingent, now existing or hereafter incurred ("**Obligations**"), Applicant hereby grants to Issuer a continuing lien and security interest in, and pledges and assigns to Issuer all of Applicant's present and future right, title and interest in, to and under all of the following personal property (whether now existing or hereafter created or acquired): (i) the balance of all deposit accounts and all securities accounts with any office of Issuer or any affiliate or subsidiary thereof, wherever located, and any other claims of Applicant against Issuer or any affiliate or subsidiary or correspondent thereof; (ii) all Property which has been or at any time shall be delivered to or otherwise come into the possession, custody or control (actual, constructive or as "control" is defined in Article 8 or 9 of the Uniform Commercial Code as adopted by the State of New York, as revised from time to time (the "Code")) of any office of Issuer or any affiliate or subsidiary thereof or any correspondent of any such entity (and Applicant acknowledges that any such entity shall be deemed a collateral agent or a bailee of Issuer for the purpose of perfecting a security interest in the Property) for any purpose, whether or not for the express purpose of being used by any such entity as collateral security or for safekeeping, custody, pledge, transmission or otherwise; (iii) all Property received or receivable by Issuer or its correspondents under or in connection with the Credit; (iv) all Property received or receivable by Applicant in connection with the transaction underlying the Credit giving rise to the Obligations; (v) all present and future claims and rights of Applicant against any beneficiary of the Credit arising in connection with the Credit or the transaction underlying the Credit; and (vi) all products and proceeds of the foregoing (collectively, the "**Collateral**"). Property" means all personal property of any kind whatsoever (now existing or hereafter acquired) including, without limitation, any and all right, title and interest of Applicant in any goods, equipment, inventory, money, documents, letters of credit, warehouse receipts, instruments, securities, security entitlements, financial assets, investment property, precious and base metals, chattel paper, electronic chattel paper, accounts, commercial tort claims, deposit accounts, general intangibles (including any claims for breach of contract, breach of warranty claims and any insurance policies and proceeds), letter of credit rights, choses in action and the proceeds of any and all thereof (including any and all of the aforesaid referred to in the Credit or the Drawing Documents relating thereto).

(b) Applicant shall hold all payments of the Obligations and all proceeds of Collateral in trust for Issuer. Issuer shall be deemed to have possession, custody or control of all Collateral actually in transit to or set apart for it or for any of its affiliates or subsidiaries (or any of their agents, correspondents or others acting in their behalf), it being understood that the receipt at any time by Applicant (or any of its agents, correspondents, or others acting in its behalf), of Collateral of whatever nature, including cash, shall not be deemed a waiver of any of Issuer's rights or powers.

(c) If at any time there shall occur and be continuing (i) any Event of Default, (ii) any material adverse change in the condition (financial or otherwise), business, operations or prospects of Applicant or any Person that has guaranteed or provided credit support for all or part of the Obligations ("**Guarantor**"), (iii) any action for a temporary restraining order, preliminary or permanent injunction, beneficiary wrongful dishonor action or the issuance or commencement of any similar order, action or event in connection with the Credit or any Drawing Document or this Agreement, which order, action or event may apply, directly or indirectly, to Issuer or which otherwise threatens to extend or increase Issuer's contingent liability beyond the time, amount or other limit provided in the Credit or this Agreement; or (iv) any other event or condition which provides a basis for Issuer in good faith to deem itself insecure, then, Applicant, shall, upon Issuer's demand, deliver to Issuer, as additional security for the Obligations, cash in an amount required by Issuer.

(d) Issuer is authorized to sign and file financing statements, naming Applicant as debtor and Issuer as secured party, with respect to any or all of the Collateral hereunder. In any such event, a photographic or other reproduction of this Agreement shall be sufficient as a financing statement, and Applicant shall reimburse Issuer for the filing or recording fees. Issuer is further authorized to take any action necessary to protect its rights in the Collateral (whether or not a drawing, claim or demand for payment has been made under the Credit), including but not limited to segregating all or any part of any deposit or securities account. Applicant will, at its own expense upon Instruction by Issuer from time to time, sign any other instrument or document (including any security agreement, financing statement or control agreement) and take any other action as Issuer may reasonably deem necessary or desirable to preserve, perfect, protect or maintain the Collateral and the priority of Issuer's security interest therein and to realize upon Issuer's rights and remedies as a secured party.

(e) To the extent Issuer honors a presentation for which Issuer remains unpaid, Issuer may assert rights of Applicant and Applicant shall cooperate with Issuer in its assertion of Applicant's rights against the beneficiary, the beneficiary's rights against Applicant and any other rights that Issuer may have by subordination, subrogation, reimbursement, indemnity or assignment.

7. Events of Default; Obligations Due; Remedies. (a) Each of the following shall be an **"Event of Default"** under this Agreement: (i) Applicant shall fail to pay any sum payable upon or in respect of any of the Obligations when due; (ii) Applicant shall fail to perform any agreement contained herein; (iii) Applicant or any Guarantor shall fail to pay any taxes when due and such taxes shall not be contested in good faith and the amount thereof reserved for in accordance with GAAP; (iv) there shall be commenced against Applicant or any Guarantor any proceeding for enforcement of a money judgment, which proceeding shall not have been stayed within ten (10) Business Days; (v) any statement made, or any information, report or Instruction furnished by or for Applicant to Issuer contains any misstatement of a material fact or omits to state a material fact or any fact necessary to make any statement contained therein not materially misleading; (vi) the dissolution, termination or, if an individual, death of Applicant or a Guarantor; (vii) any indebtedness, obligation and/or liability of Applicant or a Guarantor to any Person, including but not limited to Issuer, shall not be paid or performed when due or any event or condition shall occur that shall result in any indebtedness, obligation or liability becoming due prior to its scheduled maturity or settlement date or permits (with or without the giving of notice, the lapse of time or both) the holder of such indebtedness or obligee to cause such indebtedness, obligation or liability to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or settlement date; (viii) any Person shall contest the validity or enforceability of any guaranty supporting the Obligations; (ix) Applicant or any Guarantor shall become insolvent (however such insolvency may be evidenced or defined) or generally not be able to pay its debts as they become due, shall make a general assignment for the benefit of creditors, or shall suspend the transaction of its usual business or be expelled or suspended from any exchange, or if an application is made by any judgment creditor of Applicant or a Guarantor for any order directing Issuer to pay over money or to deliver other property, or a petition in bankruptcy shall be filed by or against Applicant or a Guarantor or any proceeding shall be instituted by or against Applicant or a Guarantor for any relief under any bankruptcy or insolvency laws or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extensions or if any governmental authority or any court at the instance of any governmental authority, shall take possession of any substantial part of the property of Applicant or any Guarantor or shall assume control over the affairs or operations of Applicant or any Guarantor, or if a receiver or custodian shall be appointed for, or a writ or order of attachment or garnishment shall be issued or made against, any of the property or assets of Applicant or a Guarantor or Applicant or a Guarantor shall indicate that any of the foregoing has occurred or will occur; or (x) there shall occur in one or a series of transactions (A) the sale or transfer of, or the creation or assertion of a lien over, a substantial portion of the assets of Applicant or of any Guarantor, (B) any transaction or event which results in the reduction in shareholder's equity (or partnership capital, net worth or similar equivalent term) of the Applicant or any Guarantor of 50% or more (measured against such equity as of the date hereof), (C) an acquisition, directly or indirectly, of the power to direct or cause the direction of the management or policies of Applicant (or any Guarantor), whether by means of contract, voting power or otherwise, or (D) the merger or consolidation of Applicant or any Guarantor.

(b) Upon an Event of Default, all of the Obligations shall be due and payable forthwith without notice or demand (as if payment had been made under the Credit, whether or not a drawing or claim had in fact been made) and Issuer may, in addition to all other rights and remedies it may have at law or in equity, (i) exercise the remedies of a secured party under the Code in respect of the Collateral, (ii) charge, debit and/or set-off against any general or special account of Applicant maintained at any office of Issuer or at any subsidiary or affiliate of Issuer (whether matured or unmatured) for the amount of the Obligations, (iii) amend or terminate, or transfer drawing rights or cure one or more discrepancies under, the Credit, and/or (iv) Issuer may, at its option, make payment in satisfaction of the Obligations or may hold all amounts, proceeds and Collateral as security for the Credit. Upon an Event of Default,

Applicant shall assemble all Collateral and make it available to Issuer at a place designated by Issuer which is reasonably convenient to Issuer and Applicant, and Issuer shall be authorized to liquidate or sell immediately, without demand for payment, advertisement or notice to Applicant, all of which are hereby expressly waived (except such notice as is required by applicable law and cannot be waived, in which event such notice shall be deemed proper if mailed at least five Business Days before disposition or other action) any and all Collateral (whether received pursuant to paragraph 5(c) hereof or otherwise) at private sale or at public auction or at brokers' board or upon any exchange or otherwise, at Issuer's option, in such parcels and at such time and at such place and at such price and upon such terms and conditions as Issuer may deem proper, and to apply the net proceeds of such sale or sales, together with any balance of deposits and any sums credited by or due from Issuer to Applicant in general account or otherwise, to the payment of any and all of the Obligations, all without prejudice to the rights of Issuer against Applicant with respect to any and all amounts which may be or remain unpaid and if any such sale be at broker's board or public auction or upon any exchange Issuer may itself be a purchaser at such sale, free from any right of redemption, which Applicant hereby expressly waives and releases.

8. Continuing Rights and Obligations. Issuer's rights and liens hereunder shall continue unimpaired, and Applicant shall be and remain obligated in accordance with the terms and provisions hereof, notwithstanding the release and/or substitution of any Property which may be held as security hereunder at any time, or of any rights or interest therein. Applicant waives any defense whatsoever which might constitute a defense available to, or discharge of, a surety or a guarantor. If more than one Person signs this Agreement or an Application hereunder, each of them shall be jointly and severally liable hereunder and thereunder and all the terms and provisions regarding liabilities, obligations and Property of such Persons shall apply to any liabilities, obligations and Property of any and all of them.

9. Jurisdiction; Waiver of Jury Trial. (a) Applicant submits to the nonexclusive jurisdiction of any state or federal court located in the Borough of Manhattan, City of New York, State of New York, for itself and its Property and agrees that any such court shall be a proper forum for any action or suit brought by Issuer. Service of process in any legal action or proceeding arising out of or in connection with this Agreement, any Instruction or the Credit may be made upon Applicant by mailing a copy of the summons to Applicant either at the address set forth in the applicable Application or at Applicant's last address appearing in Issuer's records. In addition, if Applicant is organized or incorporated in a jurisdiction outside the United States of America, Applicant designates CT Corporation located at 111 8th Avenue, New York, New York as the true and lawful agent and attorney-in-fact of Applicant for receipt of the summons, writs and notices in connection with any such action or suit.

(b) No legal action or proceeding arising out of or in connection with this Agreement, any Instruction or the Credit may be brought by Applicant against Issuer (i) except in a state or federal court located in the Borough of Manhattan, City of New York, State of New York and (ii) unless commenced within one (1) year after (X) the expiration date of the Credit or (Y) the alleged breach shall have purportedly occurred, whichever is earlier.

(c) APPLICANT WAIVES (I) THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION OR PROCEEDING IN WHICH ISSUER AND APPLICANT ARE PARTIES (WHETHER OR NOT THE ONLY PARTIES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY INSTRUCTION OR THE CREDIT AND (II) THE RIGHT TO INTERPOSE ANY CLAIM, SETOFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION.

10. Applicable Law; Severability. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws. The Credit shall be issued subject to either the UCP, or if elected by Issuer, the ISP, and whichever is chosen to govern the Credit is incorporated by reference into this Agreement and is evidence of Standard Letter of Credit Practice with respect to matters covered therein; provided, however, that to the extent permitted by applicable law, this Agreement shall prevail in case of a conflict between this Agreement, the Code and Standard Letter of Credit Practice and the UCP or ISP, whichever governs the Credit shall prevail in case of conflict between the UCP/ISP and the Code or other Standard Letter of Credit Practice. Any provisions of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Applicant hereby waives any provision of law which prohibits or renders unenforceable any provision of this Agreement.

11. No Third Party Benefits; Successor; Assignment; Integration; Delivery by Facsimile; Notices. This Agreement shall be binding upon and inure to the benefit of Issuer and Applicant and their respective successors and

permitted assigns. This Agreement shall not confer any rights or benefits upon any Person other than the parties to this Agreement, and their respective permitted successors and assigns. Issuer may assign or sell participations in all or any part of the Credit or this Agreement to another entity and Issuer may disseminate credit information relating to the Applicant in connection with any proposed participation. This Agreement may not be assigned by Applicant without the prior written consent of Issuer. This Agreement constitutes the entire contract among the parties relating to the subject matter of this Agreement and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may be signed and delivered by facsimile transmission. Notices to Issuer shall be sent to the address of Issuer as set forth on the Application and shall be delivered by hand, overnight courier or certified mail, return receipt requested. Notices to Applicant shall be sent to the address set forth below the signature line hereto.

12. Continuing Agreement. This Agreement is a continuing agreement and may not be terminated by Applicant except upon (i) payment of all Obligations and (ii) the expiration or cancellation of the Credit.

THE UNDERSIGNED HEREBY AGREES TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT, ALL OF WHICH HAVE BEEN READ AND UNDERSTOOD BY THE UNDERSIGNED.

(Applicant)

(Address)

(Authorized Signature) (Title)

(Date)

THE FOLLOWING IS TO BE EXECUTED IF THE CREDIT IS TO BE ISSUED FOR THE ACCOUNT OF A PERSON OTHER THAN THE PERSON SIGNING ABOVE:

AUTHORIZATION AND AGREEMENT OF ADDITIONAL PARTY NAMED AS ACCOUNT PARTY
To: THE ISSUER OF THE CREDIT

We join in this Application, naming us as Account Party, for the issuance of the Credit and, in consideration thereof, we irrevocably agree (i) that the above Applicant has sole right to give instructions and make agreements with respect to this Application, the Agreement, the Credit and the disposition of documents, and we have no right or claim against you, any of your affiliates or subsidiaries, or any correspondent in respect of any matter arising in connection with any of the foregoing and (ii) to be bound by the Agreement and all obligations of the Applicant thereunder as if we were a party thereto. The Applicant is authorized to assign or transfer to you all or any part of any security held by the Applicant for our obligations arising in connection with this transaction and, upon any such assignment or transfer, you shall be vested with all powers and rights in respect of the security transferred or assigned to you and you may enforce your rights under the Agreement against us or our Property in accordance with the terms hereof.

(Account Party)

(Address)

(Authorized Signature) (Title)

(Date)