
“UNDERTAKING AND AGREEMENT OF APPLICANT”

In consideration of Commerce Bank (“Bank”) Issuing a Letter of Credit (“Credit”) substantially conforming with the request contained in this Agreement, the undersigned (“Applicant”) hereby agrees as follows:

1. As to drafts under or purporting to be under the Credit, or any other payments made or required to be made, whether pursuant to the credit or pursuant to judgement or Court order, Applicant agrees to reimburse Bank at its principal banking office, on the banking day next succeeding the day of presentment or other demand for payment, in United States Currency, the amount of such drafts or payments; or, if so demanded by Bank, at Bank’s election, to pay to Bank at its principal banking office in advance in such currency the amount required to pay such drafts or payments and to pay any instrument executed by Applicant or drawn by Bank on Applicant in payment of such drafts or payments. Sums advanced by Bank shall bear interest from date of advance until reimbursed at the rate of 2% per month, or such other rate as may be set forth in any note or other instrument providing for the payment of Applicant’s reimbursement obligation under this Agreement, but not to exceed the maximum rate allowed by law.
2. Applicant also agrees to pay to Bank, on demand, its commission and any and all charges and expenses paid or incurred by Bank in connection with this Credit, including but not limited to: attorneys’ fees incurred for the interpretation, enforcement or defense of this Agreement, the Letter of Credit, or drafts or accompanying documents drawn thereon. In the event any change or new enactment of law or regulation requires reserves to be maintained by banks against letter of credit liabilities; or imposes any assessment, charge or other fee on or in connection with the issuance of letters of credit generally; or if any other legal or regulatory change, enactment or interpretation, in the judgement of Bank, affects the cost of the Credit, then, in any such event, the Applicant agrees to pay to Bank an additional fee for the Credit, equivalent to the amount of any such increased cost. Applicant also agrees to pay to Bank, on demand, correspondent bank charges, if any, and interest on all sums payable in accordance with this Agreement. If not paid upon demand (the “due date”), any sums payable to Bank hereunder shall bear interest from the due date until paid at the rate of 2% per month, or such other rate as may be set forth in any note or other instrument providing for the payment of Applicant’s reimbursement obligation under this Agreement, but not to exceed the maximum rate allowed by law.
3. Applicant agrees that in the event of any extension of the time for the drawing, negotiation, acceptance, presentation, or of the maturity of any drafts, acceptances, or other documents, or any other modification of the terms of the Credit, or any increase in the amount of the Credit, at Applicant’s request or by operation of law or court order, this Agreement shall be binding upon Applicant with regard to the Credit so increased, extended, or otherwise modified, with regard to drafts, documents and with regard to any action taken by Bank or any of its correspondents in accordance with such extension, increase, or other modification. Applicant further agrees to hold Bank harmless against any and all losses suffered or obligations or liabilities incurred by Bank in following any or all of Applicant’s instructions including Applicant’s instructions modifying the terms or the amount of the Credit, and Applicant’s instructions with respect to the drafts, documents or other property relative to or covered by the Credit.
4. The users of the Credit shall be deemed Applicant’s agents and Applicant assumes all risks relating to their acts or omissions. Applicant agrees that any action taken by Bank or by any correspondent of Bank under or in connection with the Credit or the relative drafts, certificates, statements, documents or property, if taken in good faith, shall be binding on Applicant, shall be at Applicant’s sole cost and expense and shall not put Bank or Bank’s correspondent under any resulting liability to Applicant; and Applicant makes like agreement as to any inaction or omission unless in breach of good faith. Bank will not be responsible for the truth or accuracy of any information, assertion or conclusion contained in any statement or certification or any other document or certification to be submitted to Bank notwithstanding any knowledge or information in actual or constructive possession of the Bank to the contrary. Bank shall not be obligated to look beyond the document, including the certification endorsed thereon, to be submitted by it, or to make any independent investigation as to the truth or accuracy of any information.

_____ Initial _____ Date

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5. Applicant agrees at any time and from time to time, on demand, to deliver, convey, transfer, or assign to Bank as security for any and all of Applicant’s obligations and liabilities hereunder, and also for any and all other obligations and liabilities, absolute or contingent, due or to become due, which are now, or may at any time hereafter be owing by Applicant to Bank, additional security of a value and character satisfactory to Bank, or to make such cash payment as Bank may require, Applicant agrees that all property belonging to it, or in which it may have an interest, of every kind and nature, whatsoever, now or at any time delivered, conveyed, transferred, in the possession of, assigned, or paid to Bank, or coming into Bank’s possession or into the possession of any one for Bank in any manner whatsoever, whether expressly as security for any of the obligations or liabilities of Applicant to Bank, or for safekeeping or otherwise, including any items received for collection or transmission and the proceeds thereof, whether or not such property is in whole or in part released to Applicant on trust or bailee receipt, is hereby made security for each and all of Applicant’s obligations and liabilities hereunder. Applicant agrees that upon Applicant’s failure at all times to keep a margin of security with Bank satisfactory to Bank, or upon the making by Applicant of any assignment for the benefit of creditors, or upon the filing of any voluntary or involuntary petition in bankruptcy by or against Applicant, or upon any application for the appointment of a receiver of any of Applicant’s property, or upon any act of bankruptcy or state of insolvency or suspension of payment on Applicant’s part, Applicant shall be in immediate default

hereof, and, as to property in which Applicant may have any interest, Applicant expressly authorizes Bank in any such event, or upon Applicant's failure to pay any of Applicant's obligations or liabilities hereunder when they or any of them shall become or be made due, to sell immediately, without demand for payment, without advertisement and without notice to Applicant, all of which are hereby expressly waived, any and all such property, arrived or to arrive, at private sale or at public auction or at brokers' board or otherwise, at Bank's option, in such parcels, and at such time or times, and at such place or places and for such price or prices and upon such terms and conditions as Bank may deem proper, and to apply, or to hold for application, the net proceeds of such sale or sales, and any balance of deposits and any sums credited by or due from Bank to Applicant in general accounts or otherwise, to the payment of any and all of Applicant's obligations or liabilities to Bank then existing and hereafter arising. If any such sale shall be at brokers' board or at public auction Bank may itself be a purchaser at such sale, free from any right of redemption, which Applicant hereby expressly waives and releases.

6. Bank shall not be deemed to have waived any of its rights hereunder, unless Bank or its authorized agent shall have signed such waiver in writing. No such waiver, unless so 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.
7. The word "property" as used in this Agreement includes goods, merchandise, securities, funds, choses in action, and any and all other forms of property, whether real, personal or mixed and any right or interest therein.
8. The obligations hereof shall continue in force, notwithstanding any change in the membership of any partnership of the undersigned, whether arising from the death or retirement of one or more partners, or from the accession of one or more new partners.
9. An Irrevocable Credit may be cancelled only with the consent of all parties concerned. Except as otherwise specifically provided herein, the Credit issued pursuant to this Agreement shall be deemed to be IRREVOCABLE.
10. Credits, by their nature, are separate transactions from the contract(s) on which they may be based and Bank is in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the Credit.
11. In the event the Credit is issued for a term in excess of one year, Bank reserves the right to increase its commission rate (issuance fee) annually for the subsequent year(s) after the first year, upon notice of such increase to the Applicant.

_____ Initial _____ Date

12. Any Credit issued pursuant to this Agreement shall be governed by the "International Standby Practices" in effect at the time of issuance.

13. (Check if applicable) This Agreement is secured by a mortgage/deed of trust which secures future advances and obligations of the Applicant.

Very truly yours,

Applicant:

By:

(Please sign with Authorized Signature(s) registered with Bank)

Title:

Date:

Applicant

By:

(Please sign with Authorized Signature(s) registered with Bank)

Title:

Date:

Applicant:

By:

(Please sign with Authorized Signature(s) registered with Bank)

Title:

Date:

“UNDERTAKING AND AGREEMENT OF ACCOUNTEE” *(if other than Applicant)*

In consideration of the making of the foregoing Agreement by the Applicant and in consideration of any action which may be taken under or pursuant thereto by Bank at any time or times, the undersigned hereby agrees with the Applicant and with the Bank, as to any action taken at the request or for the account of the undersigned, to furnish to the Applicant, its successors or assigns, as and when required from time to time, any and all such funds and collateral as may be necessary to fulfill the obligations undertaken by the Applicant in said Agreement and to indemnify and save harmless the Applicant, its successors or assigns, from any and all liabilities incurred by it or them under or by virtue of said Agreement and unconditionally guarantees to the Bank the prompt and full performance by Applicant of each and all of the covenants and promises to be by the Applicant made, observed or performed by virtue of the terms of the said Agreement without any responsibility on the Bank's part to first bring suit or take any other action against Applicant. Notice of the acceptance of this undertaking, and the promptness in making any demand or claim hereunder, are hereby waived.

Name of Accountee *(if other than Applicant)*

By:

(Please sign with Authorized Signature(s) registered with Bank)

Title:

Date: