

**Application and Agreement
for Standby Letter of Credit**

L/C No. _____
LOC Approved: _____
Date Issued: _____

TO: **BANK OF THE WEST – Trade Center Operations**

Los Angeles, CA San Francisco, CA

Please issue an irrevocable Standby Letter of Credit as set forth below and forward same to your correspondent for delivery to the beneficiary by: Full Cable Courier Registered/Certified Mail

ADVISING BANK (If left blank, Bank will select advising Bank)	APPLICANT (Complete Name and Address)
IN FAVOR OF (Beneficiary Name and <u>Street</u> Address)	EXPIRY DATE: Drafts to be drawn and presented to the negotiating/paying bank on or before:
Amount: _____ Currency: _____	Partial Drawings are: <input type="checkbox"/> Allowed <input type="checkbox"/> Not Allowed

Available by drafts at sight drawn, at your option, on you or your correspondent when accompanied by the following documents:

1. The original standby letter of credit.
2. Beneficiary's signed statement: in the form shown below or
 as attached (attachment must contain applicant's authorized signature).

Instructions to **Bank of the West**:

THIS STANDBY LETTER OF CREDIT IS TO BE SUBJECT TO AND GOVERNED BY: International Standby Practice 98 (ISP98), International Chamber of Commerce Publication No. 590, OR Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500 (1993 Revision), **ABSENT A SELECTION, THIS LETTER OF CREDIT WILL BE SUBJECT TO ISP98.**

I/We understand that the final form of the Letter of Credit may be subject to such revision and changes as are deemed necessary or appropriate by you and I/We hereby consent to such revisions and changes. The opening of this credit is subject to the Terms and Conditions set forth in this application and in the Agreement appearing on the reverse side, to which I/We agree and accept. You are authorized to debit our account no. _____ for fees and charges.

Applicant's Name

Authorized Signature – Title

Date

Issuance Commission _____ % p.a., plus any other applicable fees and charges pursuant to your most recent Schedule of International Fees & Charges.

Office Name:

Office No.:

Officer Name:

Mail Sort:

Phone Number:

Officer Signature:

STANDBY LETTER OF CREDIT APPLICATION AND AGREEMENT

In consideration of your opening at our request a standby letter of credit in accordance with the terms stated on the reverse side hereof (the "Letter of Credit"), and you or your correspondents accepting or paying, at our request or for our account, drafts drawn and other drawings under the Letter of Credit, we, and each of us, hereby represent, warrant and agree, as follows:

1. We, and each of us, jointly and severally, promise to pay you, upon demand, at the office designated on the reverse side, and in immediately available funds, the amount of the draw on the Letter of Credit, together with interest thereon at the rate set forth below (accruing as of the date on which payment of the draw is made), plus such commissions, charges, and any and all other amounts owed to you or your correspondent in connection with the Letter of Credit. Interest shall accrue at a variable rate equivalent to five percent (5.0%) per annum in excess of an index for a variable interest rate which is quoted, published or announced from time to time, by you as your Prime Rate and as to which loans may be made by you at, below or above such Prime Rate. Interest shall be adjusted concurrent with any change in the Prime Rate Interest shall be computed on the basis of a 360 day year and the actual number of days elapsed. We, and each of us, jointly and severally, authorize and direct you to charge any accounts which any of us may have with you and to make advances against any lines of credit extended by you to any of us for all such payments to be made by us to you hereunder. In addition, we, and each of us agree to pay you all charges, fees, costs and expenses assessed or incurred by you or your correspondent in connection with said Letter of Credit including without limitation such origination fees, draw fees, standby or commitment fees, and similar fees that you charge. We understand that you will disclose the specific amount of these fees upon request.
2. Our obligation to reimburse you for drawings under the Letter of Credit shall be absolute, irrevocable, and unconditional under any and all circumstances whatsoever and irrespective of any set-off, counterclaim or defense to payment which we may have or have had against you (except such as may arise out of your gross negligence or willful misconduct) or any other person, including, without limitation, any set-off, counterclaim or defense based upon or arising out of:
 - (a) any lack of validity or enforceability of this agreement;
 - (b) any amendment or waiver of or consent to departure from the terms of any Letter of Credit;
 - (c) the existence of any claim, set-off, defense or other right which we or any other person may have at any time against any beneficiary or any transferee of any Letter of Credit (or any person for whom any such beneficiary or any such transferee may be acting);
 - (d) any delay or loss in transit of any messages, letters or documents, any delay, interruption, mutilation or other error in the transmission of any telecommunications, or any error in the translation or interpretation of any technical terms or any messages or documents relating to the Letter of Credit, or
 - (e) any allegation that any demand, statement or any other document presented under the Letter of Credit is forged, fraudulent, invalid or insufficient in any respect, or any statement therein being untrue or inaccurate in any respect whatsoever or any variations in punctuation, capitalization, spelling or format of the drafts or any statements presented in connection with any drawing.
3. If at any time the United States currency equivalent of the obligations owed by us hereunder with respect to the Letter of Credit payable in a currency other than United States currency increases as a result of a change in the rate of exchange between United States currency and such other currency, we shall, on demand, grant you a security interest in, and deliver to you, such additional property acceptable to you as you may reasonably require as additional Collateral for our obligations hereunder.
4. If, after the date hereof, the adoption of any applicable law, rule or regulation, or any change therein or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency, or compliance by you with any request or directive (whether or not having the force of law) of any such authority (a "Change of Law") shall have the effect of increasing the cost to you of issuing or maintaining the Letter of Credit beyond any adjustment made by you in determining the pricing therefor (whether because of the imposition of, or a change in or in the amount of, any reserve, deposit, assessment or similar requirement against assets or liabilities of, or commitments or extensions of credit by you, or otherwise) or of reducing the rate of return on your capital as a consequence of your obligations under the Letter of Credit to a level below that which you could have achieved but for such Change of Law (taking into consideration your policies with respect to capital adequacy), then from time to time upon your demand, we shall pay to you such amount or amounts as shall reimburse you for such increased costs or compensate you for such reduction.
5. We are solely responsible for preparing or approving the text of the Letter of Credit as issued by you and as received by the beneficiary. Your recommendation or drafting of text or your use or non-use or refusal to use text submitted by us shall not affect our ultimate responsibility for the final text and its receipt by the beneficiary. We acknowledge that we have not relied on you in any manner in connection with the wording of the Letter of Credit, including the draw conditions or the structuring of the underlying transaction. These are our responsibility, undertaken with the opportunity to consult with our counsel.
6. Any changes or modification with respect to the terms or provisions of the Letter of Credit or any of the matters or things herein contained must be in writing and signed by us, shall be effective only after receipt thereof and agreement thereto by you and all other concerned parties and shall have no effect upon actions taken by you or by your correspondents prior to such receipt and shall have no effect upon the remaining terms or provisions of the Letter of Credit or this agreement. Any such changes or modifications made by any of us shall be deemed to have been made by all of us.
7. Upon any default of any of the undertakings herein set forth, or upon the failure of any of us forthwith, with or without notice, to furnish satisfactory additional collateral or to make payments on account as herein agreed or to perform or comply with any of the other terms or provisions of this agreement, or in the event of the failure in business, dissolution, termination of existence or insolvency of any of us, or in case any petition in bankruptcy should be filed by or against any of us, or any proceeding in bankruptcy or under any Acts of Congress relating to the relief of debtors should be commenced for the relief or readjustment of any indebtedness of any of us either through reorganization, composition, extension, arrangement, or otherwise, or if any of us should make an assignment for the benefit of creditors or take advantage of any insolvency law, or if a receiver of any of our property should be appointed at any time, or if any of our funds or other property which may be in or come into your possession or control or that of any third party acting on your behalf as aforesaid should be attached or distrained or should be or become subject to any mandatory order of court or other legal process, then, or at anytime after the happening of such event, any or all of the aforesaid obligations and/or liabilities of each of us shall, at your option, become due and payable immediately, without demand or notice; and you shall have the remedies of a secured party under the Uniform Commercial Code and full power and authority are hereby given you to the full extent permissible by law to sell, assign, and deliver all or any of the property hereinbefore referred to, or any substitutes therefor, or any additions or accessions thereto, or any other property upon which you have hereinbefore been given a lien or security interest, at any public or private sale, at your option, either for cash or on credit or for future delivery, without assumption of any credit risk, and to the full extent permissible by law, without either demand, advertisement or notice of any kind, all of which are hereby expressly waived. At any such sale you may, at your able discretion, to the full extent permissible by law, purchase the whole or any part of the property sold free from any right of redemption on our part, as such rights being also hereby waived and released. In the event of any sale or other disposition of any of the property as aforesaid, after deducting all costs or expenses of every kind for retaking, holding, care, safekeeping, collection, preparation for sale, sale, delivery or otherwise, including reasonable attorneys' fees and legal expenses incurred by you in connection therewith at trial and on appeal, you may apply the residue of the proceeds of the sale or other disposition thereof to the payment or reduction, either in whole or in part, of all or any of our obligations and/or liabilities, whether then due or not due, making proper allowance for the interest on obligations or liabilities not then due, and returning the surplus, if any, to us or to the person or persons entitled thereto; all without prejudice to your rights as against us with respect to any and all amounts which may be or remain unpaid on any of our said obligations and/or liabilities. No delay on your part or that of any assignee or transferee hereunder in exercising any rights or options under this agreement shall operate as a waiver of any such rights or options or prejudice your rights against us.
8. You are hereby authorized, at your option and without any obligation to do so, to transfer to and/or register in the name of your nominee all or any part of the property which may be held by you as security at any time hereunder, and to do so before or after the maturity of any of the said obligations and/or liabilities and with or without notice.
9. You shall not be deemed to have waived any of your rights hereunder unless you or your duly authorized agent shall have signed such waiver in writing. No such waiver, unless expressly 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.
10. The Letter of Credit shall be subject to and performance by you, your correspondents and the beneficiaries thereunder shall be governed by the ISP98 and, to the extent not inconsistent with the UCP the laws of the State of California, unless otherwise stipulated on the front of this agreement. If so stipulated on the front of this agreement, this Letter of Credit will be governed by the "Uniform Customs and Practice for Documentary Credits" (the "UCP") as most recently published by The International Chamber of Commerce, and, to the extent not inconsistent with the UCP the laws of the State of California.
11. You may assign or transfer this Agreement, or any instrument and/or document evidencing all or any of the aforesaid obligations and/or liabilities, and may deliver all or any of the property then held as security therefor to the transferee, who shall thereupon become vested with all the powers and rights in respect thereto given you herein or in the instrument and/or document transferred, and you shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect thereto, but you shall retain all rights and powers hereby given with respect to any and all instruments, documents, rights or property not so transferred.
12. This Agreement shall be binding upon us as well as upon our legal representatives, successors and/or assigns, shall be construed as the joint and several obligation of each of us where there is more than one, and shall be deemed to be made under and shall be governed by the laws of the State of California in all respects, including matters of construction, validity and performance. The Applicant irrevocably submits to the jurisdiction of any federal or state court in the State of California. The Applicant irrevocably waives any right to object on grounds of inconvenient forum or improper venue. The Applicant agrees that service process pursuant to court rule, will grant personal jurisdiction over the Applicant. If this agreement is signed by one individual, the terms "we"; "our"; and "us" shall be read throughout as "I"; "my" and "me", as the case may be.
13. **WAIVER OF JURY TRIAL.** EACH OF US WAIVE OUR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. WE EACH AGREE THAT ANY SUCH CLAIM OR CAUSE

BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

14. Any action to enforce a right or obligation under or arising out of this Agreement must be commenced within one year of the expiration of the Letter of Credit or one year after the cause of action accrues, whichever is later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. For purposes of this provision, a cause of action against us to indemnify you continues to accrue until the validity and amount of an indemnifiable liability is finally determined against you.
15. If this Letter of Credit is being issued pursuant to a loan or other credit agreement, the terms contained in such agreement shall prevail to the extent inconsistent with this Agreement.
16. The Bank shall not be responsible to us for, and the Bank's rights and remedies against us shall not be impaired by:
 - (a) action or inaction required or permitted under (i) the Uniform Commercial Code, the Uniform Customs and Practice for Documentary Credits, the International Standby Practice 98, or the United Nations Convention on Independent Guarantees and Stand-by letters of Credit, as chosen in or as in effect where and when the Letter of Credit is issued (the "UCC", "UCP", "ISP98", and "UN Convention", respectively), (ii) the law or published practice rules to which the Letter of Credit is subject, (iii) an applicable standard practice of banks that regularly issue letters of credit, (iv) an applicable order, ruling, or regulation of any court, arbitrator, or government agency, (v) a published statement or interpretation on a matter of applicable standard bank practice, or (vi) an opinion received from the Bank's legal counsel on a matter of law or from an expert engaged by the Bank on a matter of practice,
 - (b) honor of any presentation that substantially or reasonably complies with the terms and conditions of the Letter of Credit, even if the letter of Credit requires strict or literal compliance by the beneficiary,
 - (c) honor of a nonnegotiable or informal or unmarked demand or of a demand by the beneficiary presented electronically, even if the Letter of Credit requires that the beneficiary's demand be in the form of a draft and state that it is drawn under the Letter of Credit,
 - (d) honor of a presentation without regard to any non-documentary condition(s) in the Letter of Credit, even if UCP 500 Article 13(c) or ISP 98 Rule 4.11 "Non-Documentary Terms or Conditions" (or any successor provision) does not apply to the Letter of Credit,
 - (e) honor of a presentation up to the amount available under the Letter of Credit against a draft or other documents claiming amount(s) in excess of the amount available,
 - (f) dishonor of any presentation that does not strictly comply or that is fraudulent, forged, or otherwise not entitled to honor.
17. If so stipulated on the front of this agreement, this Letter of Credit will be governed by the ISP98 and, if you are closed due to force majeure or if for any other reason you are prevented from doing business on a normal business day under which Article 3.14 of ISP98 would apply, we acknowledge and agree that we will remain liable for any delayed presentation made in accordance with such Article.
18. We agree to notify you of any objection we may have to your issuance or amendment of the Letter of Credit, your acceptance or rejection of a presentation under the Letter of Credit, or any other action or inaction taken or proposed to be taken by you under or in connection with this Agreement or the Letter of Credit. Our notice of objection must be given to you by expeditious means within 3 banking days after we receive notice of the action or inaction taken or proposed to be taken by you.
19. We represent, warrant, and covenant on a continuing basis that:
 - (a) we (if not an individual) are and shall remain duly organized, validly existing, and in good standing with the power and authority under applicable law and its charter to carry on its business as now being conducted,
 - (b) this Agreement is and shall remain duly authorized, executed, and delivered by us and our legal, valid, and binding obligation, enforceable in accordance with its terms,
 - (c) signing, delivering, and performing this Agreement, the Letter of Credit, and the underlying agreement and underlying transaction by us and the Bank do not and shall not conflict (i) with any charter provision, by-law, or resolution or with any indenture, instrument, agreement, or undertaking of or applicable to us or (ii) with any law, regulation, order, or governmental consent requirement (including, without limitation, any that regulate exports or imports, foreign assets, foreign exchange, investments, margin stock, investment companies, securities offerings, infringement, boycotts, or money laundering) applicable to us or the Bank,
 - (d) we have given and shall timely give the Bank financial statements as requested and shall promptly provide such additional financial and other information (e.g., regarding the status of the underlying transaction) as is available to us and as the Bank may from time to time reasonably request,
 - (e) our name, type and place of organization (if not an individual), and address as shown in this Agreement are, and shall remain until reasonable notice of any change is given to the Bank, our exact full legal name, the correct type and place of organization, and the correct address of the Applicant's residence (if an individual), chief executive office, and principal place of business, and
 - (f) no information now or hereafter furnished by the Applicant to the Bank in connection with this Agreement is or shall be materially false or misleading when furnished.
20. All notices required to be given by us or you shall be addressed to us at the address shown on the reverse side of this Agreement and to you at Bank of the West, Trade Center Operations, 601 S. Figueroa St., 6th Fl (W6-1), Los Angeles, CA 90017 or Bank of the West, Trade Center Operations, 180 Montgomery St., 4th Fl., San Francisco, CA 94104.
21. Telegraphic, electronic mail, or other notice from your correspondence of payment, acceptance, or other action under the Letter of Credit shall be presumptive evidence of our liability to reimburse you.
22. We agree not to initiate or acquiesce in any judicial, administrative, or other proceeding for any injunctive or declaratory relief to block you from paying any of the credits. This clause shall apply notwithstanding any fraud covered by Section 5-114 of the Uniform Commercial Code. We acknowledge that remedies for all such fraud-related risks have been adequately considered in the agreements between the beneficiaries of the Credits and ourselves.
23. No delay on your part in the exercise of any of your rights or remedies shall operate as a waiver, nor shall any single or partial waiver of any right or remedy preclude any other further exercise of that right remedy, or the exercise of any other right or remedy, and no waiver or indulgence by you of any default shall be effective unless it is in writing and signed by you, nor shall a waiver on any one occasion be construed as a bar to, or waiver of, any right on any future occasion.
24. Any provision that may prove unenforceable under any law shall not affect the validity of any other provision. This agreement shall inure to the benefit of, and be enforceable by you and your successors and assigns.