

**INTERNATIONAL COUNCIL OF SHOPPING CENTRES
2009 CANADIAN LAW CONFERENCE**

**FEELING INSECURE – SECURING THE COVENANT IN TROUBLED
TIMES: PRACTICAL ADVICE FOR LANDLORDS & TENANTS**

**Deceptive Simplicity:
Untangling the Standby Letter of Credit**

Prepared By:

**Laurie J. Sanderson
Gowling Lafleur Henderson LLP**



March 2009

I would like to express my appreciation and thanks to Sheldon Klootwyk, an Articling Student at Gowling Lafleur Henderson LLP, for his assistance in preparing this paper.

Deceptive Simplicity: Untangling the Standby Letter of Credit

I. INTRODUCTION:

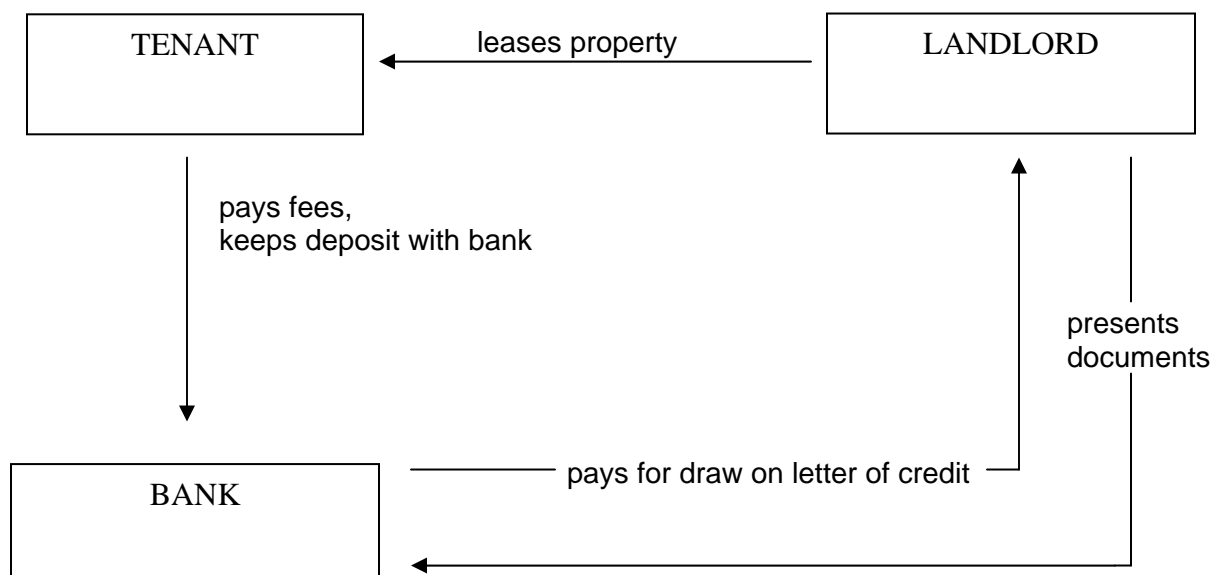
Standby letters of credit are a tool that both commercial landlords and tenants can use as a security device in lieu of cash deposits. A letter of credit is a separate instrument with a distinct personality from the underlying lease that creates the obligation to provide a letter of credit.

A letter of credit comes in a variety of types and forms and its use varies depending upon the underlying commerce to which it relates. In the commercial leasing sector, the letter of credit is commonly used as a means of security where the landlord relies upon the credit of a banking institution as a substitute to relying upon the direct credit of the tenant.

In the commercial leasing context, the letter of credit will typically involve three parties: the beneficiary, the applicant, and the issuer. The beneficiary of the letter of credit will typically be a landlord. The landlord will rely upon the letter of credit as security against the default of a tenant under the terms of the lease. Often the landlord will request a letter of credit in lieu of a cash security deposit.

The applicant for the letter of credit will normally be a tenant. The tenant applies to an issuer, usually the bank of the tenant, and the bank provides the landlord with a letter of credit. Below is an illustration of this relationship.

Figure 1:



In the ordinary course, the tenant will arrange for their bank to issue the letter of credit, which will allow the landlord to draw upon the money represented by the letter of credit. Typically the bank must honour the letter of credit upon the landlord's presentation of the appropriate documents to the bank. The presentation of the requisite documents is sufficient to trigger the bank's obligation to pay.

The letter of credit is normally a short document of 1-2 pages and will contain a number of standard terms. Although the letter of credit appears to be a simple document, if the letter of credit, or the underlying lease, do not correctly set out the rights and obligations of the parties serious problems may arise. The landlord must ensure that the letter of credit and lease are drafted correctly so that if the tenant does not fulfill its obligations under the lease, the money provided in the letter of credit will be paid to the landlord.

II. ADVANTAGES AND DISADVANTAGES OF LETTERS OF CREDIT FOR LANDLORDS AND TENANTS

The motivation behind letters of credit in commercial leasing will vary, depending upon whether one is a landlord or tenant, and the specifics of the underlying lease. With this in mind, the following is a discussion of why landlords and tenants may or may not wish to use a letter of credit in lieu of cash security.

a. Advantages to Landlord

i. Protection from bankruptcy or insolvency

Letters of credit are not the tenant's property and may therefore offer protection to the landlord if the tenant becomes bankrupt or insolvent. Protection in the case of bankruptcy or insolvency is one of the principle motivations behind a landlord's request for a letter of credit as security. In the event of the tenant's bankruptcy or insolvency, the landlord is especially vulnerable. If the landlord's security is something other than a letter of credit, or the letter of credit or lease are improperly drafted, the landlord's recourse for recovery is as a debtor in the bankruptcy process. The letter of credit is an important protection for the landlord in the commercial leasing context. It has been noted that:

"landlords generally prefer to enter into leases with creditworthy tenants – tenants with high and demonstrable net worth, substantial tangible and liquid assets, and a long track record of successful operation and paying bills. Most landlords do not have that luxury. Moreover, even tenants that start out cash flush or rock solid can suffer credit deterioration to the point that they become

high-risk tenants long before the normal commercial lease expires.”¹

A well drafted letter of credit and lease may encourage a landlord to lease to a tenant whom they might not otherwise. Correctly drafted, a letter of credit is a draw against the issuing bank and is not an attempt to realize upon the property of the tenant. This is an important distinction if the tenant becomes bankrupt or insolvent.

ii. Timing issues for landlord

The landlord may draw upon a letter of credit at the time when the landlord deems it necessary to do so. Furthermore, a letter of credit does not necessarily require an act of default in the lease for the landlord to draw upon the letter of credit. To realize upon a letter of credit the landlord must present the documents outlined in the letter of credit, to the issuing bank. The subjective determination as to when to present these documents may be a significant advantage from the perspective of the landlord, and from the alternative perspective, it may be a significant disadvantage to the tenant. The ability to decide when to draw upon the letter of credit provides the landlord with additional leverage over the tenant.

b. Advantages to both landlord and tenant

i. Possibility of increased security amounts available with a letter of credit

The letter of credit allows the tenant to avoid giving a cash security deposit to the landlord and thereby allows the tenant to provide security without unnecessarily tying up large amounts of the tenant’s capital.² The cash outlay avoided by the tenant may then be used for other aspects of their business. From the perspective of the landlord, using a letter of credit allows the landlord to command larger security amounts that they can rely upon should the tenant default. This is particularly advantageous to landlords who are faced with being required to offer ever bigger inducements in order to attract tenants in a tightening market. If the letter of credit is large enough, the landlord may enter into a lease with a tenant that the landlord might otherwise have

¹ Susan Fowler McNally, Carter Klein & Michael Abrams “Letters of Credit in Lease Transactions, Part I: Advantages to Landlord and Landlord’s Lender” (2002) 16:4 Probate and Property at 2.

² Calvin H. Klein, “Using Letters of Credit to Secure Lease Obligations” (2005) 18:4 Commercial Leasing Law and Strategy at 1.

refused, due to the tenant's lack of creditworthiness.³

c. Disadvantages of a letter of credit

i. Potential for fraud

The bank has “an independent, direct legal obligation to pay the beneficiary if the documents called for under the letter of credit are in strict compliance with it. The customer threatens to sue if the credit is paid. The beneficiary will sue if it is not.”⁴ The obligation of the bank to pay the landlord is independent of default under the lease.⁵ It has been stated that this autonomy between the letter of credit and the underlying lease “is an indirect inducement to fraud on the part of the beneficiary.”⁶ The potential for the landlord to commit fraud is at its highest where the breach of the lease to which payment relates is at the subjective determination of the landlord.⁷ From the perspective of the landlord, if there is some question about the tenant's performance under the lease, it may be easier for the landlord to draw upon the letter of credit first and ask questions later. If the lease obligations are eventually found to have been properly performed by the tenant, the tenant will then have to attempt to recover the cash advanced under the letter of credit.

“There is no doubt that it is the right of the beneficiary where there is a legitimate dispute between the beneficiary and the applicant to obtain payment under the letter of credit irrespective of that dispute.”⁸ The bank's obligations when they have evidence of or suspect fraud has been frequently litigated. The courts have generally provided that unless there is clear evidence of fraud, the bank should advance the funds under a letter of credit provided the requisite documents are produced by the landlord.⁹ One author has rationalized the jurisprudence as “if the courts [were to] interfere unduly with the flow of payments under letters of credit (no matter how sincere their concerns may be) then the value of these instruments as

³ Susan Fowler McNally, Carter Klein & Michael Abrams “Letters of Credit in Lease Transactions, Part I: Advantages to Landlord and Landlord's Lender” 16 *Probate and Property* 4 at 2.

⁴ J. Brian Casey, “Letters of Credit Litigation: Pitfalls and Protection” in *Effective Security and Financing Instruments in Commercial Lending* (Paper presented at an Insight conference, March 25, 1997) (Toronto: Insight Press, 1997) at 25-26.

⁵ Kevin Patrick McGuinness, *The Law of Guarantee: A Treatise on Guarantee, Indemnity and the Standby Letter of Credit*, 2nd ed. (Scarborough: Carswell, 1996) at 838 [McGuinness].

⁶ Lazar Sarnia, *Letters of Credit: The Law and Current Practice*, 3rd ed. looseleaf (Toronto: Thomson Carswell, 2005) at 5-3 [Sarnia].

⁷ McGuinness, *supra* note 5, at 838-839.

⁸ McGuinness, *ibid* at 822.

⁹ McGuinness, *ibid* at 830-831.

payment mechanisms also will be substantially undermined.”¹⁰

ii. The tenant and the bank

While the tenant may be able to increase their cash flow by using a letter of credit in lieu of a cash deposit in a commercial lease, it is not a fail proof financial instrument. The tenant will normally be required to provide the bank with cash collateral equal to or greater than the amount pledged by the letter of credit. At the very least, the issuance of a letter of credit will reduce the amount that is available to the tenant under its line of credit.¹¹

Additionally, because the letter of credit is an autonomous obligation upon the bank, the bank in the ordinary course will require the tenant to pay the bank a fee equal to a percentage of the amount of the letter of credit. In addition to the bank’s fee, the issuance of letters of credit tends to increase the dependency of the tenant upon its bank. However, if a tenant has a strong relationship with its bank, the tenant may be able to negotiate better terms with the bank on the issuance of letters of credit.

III. DIFFERENCES BETWEEN A LETTER OF CREDIT AND A LETTER OF GUARANTEE

Letters of credit are often confused with letters of guarantee as these two documents are closely analogous. Nevertheless, there are subtle differences between the two documents that must be understood by the landlord and tenant so that they may choose the appropriate instrument.

In a letter of guarantee, the bank is a surety that “undertakes to indemnify the creditor against loss arising from the non-payment or non-performance of the principal.”¹² In a letter of credit the bank does not examine and determine the loss suffered by the landlord. The bank’s obligations under a letter of credit are autonomous from the underlying document. In a letter of credit scenario, the bank has to satisfy themselves that they have received the executed documents required by the letter of credit. The bank does not need to satisfy itself of a default as it would under a letter of guarantee. The presentation of the requisite documents in the absence of clear proof of fraud is sufficient to trigger the bank’s obligation to pay the landlord. It is a letter of credit’s autonomy of the credit which most clearly distinguishes a letter of credit from a

¹⁰ McGuinness, *ibid* at 831.

¹¹ McGuinness, *ibid* at 839.

¹² McGuinness, *ibid* at 817.

guarantee.¹³

The difference in the issuer's liability is an important distinction between the two types of letters. An American judge explains that:

“This principle relieves parties to a letter of credit transaction from the burden of ascertaining and policing contractual relationships in which they are not involved. As a result the beneficiary of a letter of credit obtains a higher level of security with the letter of credit and need only concern itself with its own contractual relationships.”¹⁴

While letters of credit and letters of guarantee are analogous in many respects, under a letter of credit the obligations of the bank are autonomous from the underlying lease. The role and liability of the bank is diminished with the use of a letter of credit, compared to the guarantor's role in a letter of guarantee.

IV. INCORPORATING THE TERMS OF THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS

It is standard accepted practice to incorporate, by reference, in the letter of credit all terms set out in a codification of practice called the *Uniform Customs and Practise for Documentary Credits* (the “**Uniform Customs**”). The Uniform Customs are drafted by the International Chamber of Commerce, (the “**ICC**”) and the current Uniform Customs are known as Publication 600.¹⁵ The ICC is an international non-government body with constituent members in most countries of the world consisting of industrial federations, trade associations, Chambers of Commerce, as well as industrial and commercial enterprises.¹⁶ The Uniform Customs, once incorporated by reference in the letter of credit, constitute the law between the parties.¹⁷ Typically the letter of credit will simply state that it is subject to the terms of the Uniform Customs.

The Uniform Customs are typically referenced because it provides a uniformly accepted standard of interpretation for the letter of credit. In the absence of an incorporation by reference of the Uniform Customs, the letter of credit itself would have to outline numerous terms and conditions. The Uniform Customs provide a comprehensive framework for the obligations and

¹³ McGuinness, *ibid* at 816-817.

¹⁴ *Re Carley Capital Group* (1990), 119 B.R. 646 (W.D. Wisc.) in McGuinness, *ibid* at 817.

¹⁵ Sarnia, *supra* note 6, at 2-24.

¹⁶ For further information on the ICC please visit their website at: <http://www.iccwbo.org/>.

¹⁷ Sarnia, *supra* note 6, at 2-25.

liabilities of the parties to the letter of credit.¹⁸ Once invoked, the Uniform Customs provides rules of interpretation for the letter of credit which may, to the uninitiated, lead to unanticipated results. These aspects are discussed below with reference to the necessary provisions that must be included in the underlying lease to avoid unwanted surprises.

V. NECESSARY PROVISIONS IN THE UNDERLYING LEASE

The lease should provide that the form and substance of the letter of credit is satisfactory to the landlord. The landlord will want to ensure that the provisions in the letter of credit are correctly drafted to protect the landlord. The landlord will also want to ensure that the letter of credit does not contain provisions that will make it more difficult for the landlord to draw upon the letter of credit.

The lease should explicitly state that the purpose of the letter of credit is to provide security for the tenant's obligations under the lease rather than merely the obligation to pay rent. For example, the lease will probably include provisions requiring the tenant to restore the premises to their initial condition upon termination of the lease, the tenant's liability for damages for breach of the lease, the recapture of capital expended by the landlord on the tenant's inducements and leasehold improvements and commissions paid by the landlord. (Ideally, the landlord should require the tenant to execute an agreement separate from the lease wherein the tenant acknowledges that the landlord has expended a certain amount of money on the tenant and that the tenant has agreed to repay this amount over the term of the lease, and the landlord's outlay of money is secured by the letter of credit.)

The lease should provide that a letter of credit continues until 60 days after the expiration of the lease. This provision will protect the landlord if the tenant damages the premises during the act of moving out, or if the landlord only discovers damages to the property after the lease has expired.

The lease should require that the letter of credit be transferrable. A letter of credit is a non-negotiable instrument and therefore, without the proper provisions in the letter, the transferee is unable to enjoy the same contract rights against the issuer as the original beneficiary. If a landlord wants to sell the property, the purchaser will want to ensure that they have the same security protection as the original landlord. The Uniform Customs provide at Article 38(a) that a

¹⁸ Sarnia, *ibid* at 2-26.

“bank is under no obligation to transfer a credit except to the extent and in the manner expressly consented to by that bank.” It is therefore important that the transferability of a letter of credit is established and negotiated when the letter of credit is drafted. This will save considerable time and headache down the road for a landlord. It should be noted that under Article 38(d) of the Uniform Customs, a letter of credit may only be transferred once. Typically a bank will charge an administrative fee for the transferring of a letter of credit. It would be a prudent practice to determine, at the formation of the lease, whether it is the landlord or tenant who will pay this administrative fee.

The lease should provide that the letter of credit will allow for partial draws without requiring the landlord to forfeit the balance outstanding on the letter of credit. Ordinarily, unless specifically provided otherwise, if a landlord makes a partial draw, it will be the only draw allowed on the letter of credit. If the landlord is only able to make one draw upon the letter of credit it will significantly limit the effectiveness of the letter of credit as a security.

If the lease is in excess of one year, the lease should provide for an automatic renewal of the letter of credit. In the ordinary course a letter of credit is issued for a term of one year. It is unlikely that a bank will issue a letter of credit for the full term of the lease. Therefore the lease should require the tenant to substitute renewal letters of credit for the original. It is therefore recommended that a lease include a clause that provides that the renewal letter of credit must be in the landlord’s possession and be in effect thirty days before the previous letter of credit expires. In addition, the lease should allow that failure to provide the tenant’s renewal letter of credit at such time constitutes an event of default allowing the landlord to draw upon the letter of credit before it expires. The thirty day overlap gives the landlord sufficient time to draw upon the expiring letter if a renewal is not provided. In practice, the renewal is dealt with by including a provision in the letter of credit extending the term of the letter of credit for further one year periods unless the bank gives the landlord thirty days notice that it has elected not to renew the letter of credit.

The lease should provide that the letter of credit be issued by a recognized banking institution. The landlord is relying upon the creditworthiness of the bank as its security. A landlord can protect their interests by stipulating in the lease that the letter of credit must be issued from a Schedule 1 Bank or a Schedule 2 Bank under the *Bank Act*.¹⁹

¹⁹ *Bank Act*, S.C. 1991, c. 46.

The lease should provide that the letter of credit must be payable at an institution in the city in which the landlord is located. The bank will likely prefer that the letter of credit is payable at the main office of the bank. If the bank is unwilling to provide that the letter of credit is payable at a local institution, the landlord should ensure that the letter of credit is payable at an institution in a location that is easily accessible to the landlord. If a letter of credit needs to be drawn upon, the landlord will want to draw immediately, without having to coordinate to travel to another city to draw upon the letter of credit. In the alternative, the landlord should require that the letter of credit provide for the presentation of documents by facsimile. It is usually unnecessary to present the documents or the letter of credit in their original form.²⁰ However, the presumption brought by Article 17 of the Uniform Customs is that documents will be originals. The letter of credit must specifically allow electronic copies of documents, rather than originals, to avoid the Uniform Customs requirement for original documents. Whether the landlord requires that the bank be local, or whether the landlord satisfies itself of the ability to coordinate for electronic document delivery and draws, it is critical that the landlord assure itself of the ability to promptly draw upon the letter of credit should the need arise.

If the letter of credit secures the covenants of a guarantor, the lease should contain a clause that provides that the guarantor's covenants are as a principal debtor and not as a surety and that in the event of termination of the lease, except by surrender accepted by the landlord, or in the event of disclaimer or repudiation of the lease pursuant to any statute, the landlord has the option of requiring the guarantor to execute a new lease on the same conditions as the original lease for the balance of the term. This ensures that the guarantee (and therefore the letter of credit) survives the tenant's bankruptcy. This term is in response to judicial consideration of letters of credit where the secondary obligation of the guarantor ended upon the disclaimer of the lease by the trustee in bankruptcy of the principal tenant. It is an essential clause to ensure that, upon the bankruptcy of the tenant, the landlord retains their security interests under the letter of credit.

VI. CONCLUDING REMARKS

A letter of credit is a useful instrument for landlords and tenants to use in lieu of cash security. Properly drafted, a letter of credit can and will afford a landlord the same protection as cash security. It is imperative, however, to remember that a letter of credit is not the same as cash

²⁰ Carter H. Klein, "Standby Letter of Credit Rules and Practices Misunderstood or Little Understood by Applicants and Beneficiaries" (2007) 40:2 Uniform Commercial Code Law Journal at 135.

security. It necessarily involves the cooperation of a third party – the tenant's bank – who may have a heavily vested interest in not paying out the letter of credit, if at the time of the demand, the perhaps soon to be insolvent tenant is also indebted to the bank.

Appendix "A"
Sample Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE:

AMOUNT: **\$**

CUSTOMER:

TO: **(the "Landlord")**

We, _____, hereby issue in your favour our Irrevocable Standby Letter of Credit for the above-mentioned amount.

This Standby Letter of Credit is available for payment up to the amount of \$_____ which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our Customer to make such demand and without recognizing any claim of our Customer.

Provided, however, that you are to deliver to us at such time as a written demand for payment is made upon us a certificate purported to be signed by an appropriate officer of the Beneficiary confirming that pursuant to the terms of the Lease dated _____ between _____ to _____, as amended by a Lease Amending Agreement dated _____ (collectively referred to as "Lease"), the Beneficiary is entitled to draw down on this Letter of Credit.

The original Standby Letter of Credit (together with any amendments thereto) must accompany the demand for endorsement of any payment thereon.

Partial drawings are permitted.

This Letter of Credit shall expire with the close of business on _____, provided that it is a condition of this Letter of Credit that it shall be deemed to be automatically extended annually without amendment for additional periods of one (1) year from the present or any future expiration date hereof until _____, unless sixty (60) days prior to such date we notify you in writing by registered mail that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw by means of your demand accompanied by your written certification that the amount drawn down will be retained and used by you to meet the obligations incurred or to be incurred in connection with the Lease.

This letter of credit is transferable, in whole but not in part and once only, to a second beneficiary by mean's of beneficiary's letter of direction addressed to _____, and stating

that all your rights, title and interest in and on this letter of credit is transferred to such transferee. The original advice of credit must be surrendered and bank transfer charges be paid.

The rights of the Landlord hereunder in respect of the letter of credit shall continue in full force and effect and shall not be waived, released, discharged, impaired or affected by reason of the release or discharge of the Tenant in any receivership, bankruptcy, insolvency, winding up or other creditor's proceedings, including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act (Canada)* or *the Companies' Creditors Arrangement Act (Canada)*, or the surrender, disclaimer, repudiation or termination of this Lease and any such proceedings and shall continue with respect to the periods prior thereto and thereafter as if the Lease had not been surrendered, disclaimed, repudiated or terminated.

This Standby Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, (Publication 600)" and engages us in accordance with the terms thereof.

For Bank

Customer Signature

Authorized Signature

Appendix "B"
Sample Letter of Guarantee

IRREVOCABLE LETTER OF GUARANTEE

No. _____

To _____

At the request of _____
(Name and address of our customer)

(hereinafter called "our Customer"), we, National Bank of Canada, _____
hereby establish in your favour our Irrevocable Letter of Guarantee for an amount not exceeding
Seventy-five thousand 00/100 ----- (\$ 75,000.00)
(Amount written out and in figures)

to guarantee payment of the sums due to you by _____
(Name of our Customer)

We agree to pay you an amount up to Seventy-five thousand 00/100 -----
----- dollars (\$ 75,000.00)
(Amount written out and in figures)

on presentation of your written demand for payment certifying that _____
(Our Customer)
has defaulted on the payment of his debt to you.

We shall honour your demand for payment made in accordance herewith, without inquiring whether you are entitled to make such demand, notwithstanding all and any disputes or objections between you and our Customer.

This Irrevocable Letter of Guarantee is not transferable and shall remain in force until _____
_____, 19 ____ . No claim shall be paid if received after such expiry date.
(Validity or expiry date)

All correspondence and/or claims shall be addressed to the National Bank of Canada _____

(Complete address)

and shall refer to our Irrevocable Letter of Guarantee No. _____ .

Executed at _____ , on the _____ day of _____ 19 ____ .

 NATIONAL BANK OF CANADA

Per _____

Per _____

Appendix "C"
Sample Lease Clauses

Letter of Credit

- (a) On or before ■, the Tenant shall deposit with the Landlord and shall maintain throughout the Term, as renewed or extended and any period of overholding, an irrevocable unconditional letter of credit payable to the Landlord issued by a Schedule I Canadian Chartered bank in the amount of ■ Canadian Dollars (CDN \$■) (the "Letter of Credit"), substantially in the form attached hereto as Schedule "A". **[NTD: ensure the LC permits partial draws.]** The Letter of Credit shall be held by the Landlord as security for the faithful performance by the Tenant of all the terms, covenants and conditions of this Lease by the Tenant to be kept, observed and performed and irrespective of:
- (i) the unenforceability of this Lease as against the Tenant;
 - (ii) the termination of any obligations of the Tenant under this Lease by operation of law or otherwise; or
 - (iii) the bankruptcy, insolvency, dissolution, winding-up or other liquidation of the Tenant including, without limitation, the repudiation of this Lease by the Tenant or any surrender or disclaimer of this Lease by a Trustee in Bankruptcy of the Tenant.

The obligations of the said Chartered Bank under the Letter of Credit shall be absolute and unconditional and shall be in no way released, discharged or reduced, and the rights of the Landlord under the Letter of Credit shall be in no way prejudiced or impaired by any neglect, delay or forbearance of the Landlord in demanding, requiring or enforcing performance by the Tenant or any other obligated person of any of its obligations under this Lease or by granting any extensions of time for performance, or by waiving any performance (except as to the particular performance which has been waived), or by permitting or consenting to any assignment or by the bankruptcy, receivership, insolvency or any other creditor's proceedings of or against the Tenant, or by the winding-up or dissolution of the Tenant, or any other event or occurrence which would have the effect at law of terminating the existence of obligations of the Tenant prior to the termination of this Lease or by any agreements or other dealings between the Landlord and Tenant having the effect of amending or altering this Lease or the obligations of the Tenant hereunder or by any want of notice by the Landlord to the said Chartered bank of any default of the Tenant or by any matter, thing, act or omission of the Landlord whatsoever.

- (b) If at any time during Term, Rent is overdue and unpaid, or if the Tenant fails to keep or perform any of the terms, covenants and conditions of this Lease to be kept, observed and performed by the Tenant, irrespective of the matters referred to in subsection (a), then the Landlord, at its option, may, in addition to any and all other rights and remedies provided for in this Lease or by law, appropriate and draw upon the Letter of Credit:
- (i) in full in the event of the bankruptcy, insolvency, dissolution, winding-up or other liquidation of the Tenant; or

- (ii) in the event of any other breach on the part of the Tenant, so much thereof as is necessary to compensate the Landlord for loss or damage sustained or suffered by the Landlord due to such breach on the part of the Tenant, and in which case the Tenant shall, within ten (10) days after demand by the Landlord, remit to the Landlord a new Letter of Credit in an amount sufficient to restore the total amount of the Letter of Credit to the original sum deposited.

If the Tenant complies with all of the terms, covenants and conditions and promptly pays all of the Rent and other sums herein provided payable by the Tenant to the Landlord, the Letter of Credit shall be returned in full to the Tenant without interest within sixty (60) days after the expiration of this Lease.

- (c) The Letter of Credit shall provide that it shall be deemed to be automatically extended for one year without amendment from the expiration date thereof, unless at least thirty (30) days prior to any such date, the said Chartered Bank notifies the Landlord in writing by registered mail or courier that it elects not to consider the Letter of Credit to be renewed for such period, in which case the Landlord, at its option, may, in addition to any and all rights and remedies provided for in this Lease or by law, appropriate and draw upon the Letter of Credit in full.
- (d) The Letter of Credit shall further provide that it may be assigned by the Landlord, by notice in writing to the Chartered Bank, to the Landlord's successor in interest whereafter the Landlord shall have no further liability with respect to the Letter of Credit.