**LETTER OF CREDIT INDEMNITY AGREEMENT**

THIS AGREEMENT is made this ⚫ day of ⚫ , ⚫.

**BETWEEN:**

EQUITABLE BANK

30 St. Clair Ave W., Suite 700

Toronto, ON M4V 3A1

(hereinafter called the ‘Lender’)

 OF THE FIRST PART,

- and -

⚫ - name and address required

(hereinafter called the ‘Borrower’)

 OF THE SECOND PART.

# CONSIDERATION

## For valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the Borrower enters into this letter of credit indemnity agreement (the ‘**Agreement’**) with the Lender.

# AUTHORIZATION TO ISSUE LETTER(S) OF CREDIT:

The Borrower hereby authorizes and requests the Lender to obtain and issue a Letter of Credit in the sum of $⚫ (the ‘**Letter of Credit**’) in accordance with the terms of the Commitment dated ⚫, as amended, supplemented, replaced or restated from time to time (collectively, the ‘**Commitment**’) and the terms hereof.

# LETTER OF CREDIT FEES

In consideration of the issuance of a Letter of Credit, the Borrower agrees to pay to the Lender the fees as indicated below. The fees specified below are referred to in this Letter of Credit Indemnity Agreement as the ‘**Letter of Credit Fee**’.

1. The Borrower will pay a fee equal to ⚫% per cent per annum on the face amount of the Letter of Credit. In addition, the Borrower will pay a set-up fee for the issuance of the Letter of Credit in the amount $⚫which fees shall be paid in advance at the time of the initial advance of the Loan as per the Commitment. The Borrower will pay a $⚫ fee for any amendment, reduction of cancellation of the Letter of Credit.
2. In the event that the Letter of Credit is terminated or cancelled prior to its scheduled expiry date for any reason whatsoever, no part of the Letter of Credit Fee shall be refunded by the Lender.

# RENEWALS

The Lender may extend or renew any Letter of Credit beyond two years without requiring a further authorization or request from the Borrower and the indemnity herein shall apply to such extension or renewal as if the same were the original Letter of Credit.

For each Letter of Credit renewed, the Borrower agrees to pay the Lender the Letter of Credit Fee as indicated in Section 3.

# AMENDMENTS

The indemnity herein shall apply to any and all amendments to the Letter of Credit as if the amended letter of credit were the original Letter of Credit.

# ISSUANCE OF LETTER OF CREDIT

The Letter of Credit will be issued in favour of ⚫ in accordance with the requirements of the Agreement between ⚫ and the Borrower. Upon the Letter of Credit becoming releasable, the Borrower hereby directs ⚫ to release the Letter of Credit to the Lender.

# INDEMNITY AND REIMBURSEMENT

The Borrower unconditionally and irrevocably authorizes the Lender to pay any amount of any demand made on the Lender under and in accordance with the terms of the Letter of Credit. Any demand or request made upon the Lender for payment under any Letter of Credit or any renewal thereof will be the Lender's sufficient authority to pay thereunder and the Lender shall not be required to determine the validity or sufficiency of such demand or request.

The Borrower hereby agrees that any drawings under the Letter of Credit shall be converted to direct borrowings pursuant to the Commitment and shall bear interest at the rate set forth in the Commitment.

The Borrower hereby agrees to indemnify and save the Lender and its successors and assigns harmless from and against any and all losses, costs, damages and expenses which the Lender may suffer or incur in any manner whatsoever by reason of the Lender issuing the Letter of Credit or taking any action in connection with the Letter of Credit, including but not limited to legal fees and court costs however incurred by the Lender with respect to the Letter of Credit or in connection with collecting any sums due from the Borrower hereunder on a solicitor and his own client, full indemnity, basis. The Borrower covenants, undertakes and agrees that it will, if requested by the Lender, at its expense, retain counsel acceptable to the Lender in order to intervene in and defend any action, law suit or proceeding which may be brought against the Lender with respect to the Letter of Credit or any payment made or to be made thereunder.

The Borrower's obligation to reimburse the Lender under this Letter of Credit Indemnity Agreement for payments and disbursements made by the Lender under the Letter of Credit is absolute and unconditional under any and all circumstance and irrespective of any set-off, counterclaim or defence to payment which the Borrower may have or have against the Lender or the beneficiary of the Letter of Credit.

The Lender shall not have any responsibility or liability for, or any duty to inquire into, the authorization, execution, signature, endorsement, correctness, genuineness, or legal effect of any certificate or other document presented to the Lender pursuant to the Letter of Credit and the Borrower fully and unconditionally assumes all risks with respect to same. The Lender shall not be responsible for:

1. the validity of certificates or other documents delivered under or in connection with the Letter of Credit that appear on their face to be in order, even if such certificates or other documentation should in fact prove to be invalid, fraudulent or forged;
2. errors, omissions, interruptions or delays in transmission or delivery of any messages by mail cable, telegraph, telefax, or otherwise;
3. errors in transaction or errors in the interpretation of technical terms or for errors in the calculation of amounts demanded under the Letter of Credit;
4. any failure or inability of the Lender to make payment under the Letter of Credit as a result of any requirement of law or by reason of any control or restriction rightfully or wrongfully exercised by any person, asserting or exercising governmental or permanent powers; or
5. for any other consequences arising in respect of a failure by the Lender to honour the Letter of Credit due to reasons beyond the control of the Lender and none of the above shall affect or impair any of the rights or powers of the Lender hereunder or the obligations of the Borrower.

Without limiting the generality of the foregoing, it is agreed that any payment made by the Lender in good faith under and in accordance with the terms of the Letter of Credit shall be binding upon the Borrower and shall not result in any liability of the Lender to the Borrower and shall not lessen the obligations of the Borrower under this Letter of Credit Indemnity Agreement.

# DISCHARGE OF LOAN

Prior to the final discharge of the mortgage, the Borrower shall cash collateralise any outstanding Letter of Credit and grant to the Lender a security interest in all amounts on deposit pursuant to the Lender’s assignment of cash collateral agreement to be entered into at such time.

# ASSIGNMENT

The Lender may assign this Letter of Credit Indemnity Agreement without the Borrower's consent.

# ENTIRE AGREEMENT

This Letter of Credit Indemnity Agreement and the Commitment are the entire agreements as it relates to the Borrower's obligation to indemnify the Lender for the Letter of Credit. In the event of any inconsistency between this Letter of Credit Indemnity Agreement and the Commitment, the terms and conditions of this Letter of Credit Indemnity Agreement shall govern.

# GOVERNING LAW

This Letter of Credit Indemnity Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Each party hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

# AGREEMENT BINDING UPON SUCCESSORS

This Letter of Credit Indemnity Agreement and all rights and obligations arising from same shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**IN WITNESS WHEREOF** this Agreement has been accepted and delivered on the date set out above.

|  |  |  |
| --- | --- | --- |
| SIGNED & DELIVEREDIn the presence of: |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: ⚫ |
| Witness: ⚫ |  |

**OR**

**⚫**

Per: ⚫

Per: ⚫

I/We have the authority to bind the corporation.