

FIRST AMENDED AND RESTATED MUTUAL INDEMNIFICATION AGREEMENT

Now, Witness that the below signatory parties to this First Amended and Restated Mutual Indemnification Agreement, in consideration of their mutual promises and the performance hereunder, do hereby agree with one another, as follows:

I. INDEMNITY.

The undersigned companies (hereafter “Indemnitor(s)” as further defined below) agree to indemnify each other against loss or damage to any signatory hereto (hereafter the “Indemnitee(s)” as further defined below) who may suffer under an Indemnitee’s owners or loan title insurance policy(ies) (hereafter “Indemnitee’s Current Policy”) in reliance upon this First Amended and Restated Mutual Indemnification Agreement (hereafter the “Agreement”) arising by reason of those “DEFECTS” described below, so long as it reasonably appears that the Indemnitor previously has issued an owners title policy to the current title holder or a mortgagee title policy to a lender who subsequently has acquired the insured land and is the seller in the current transaction (hereafter the “Indemnitor’s Prior Policy”) covering some or all of the land insured under Indemnitee’s Current Policy (hereafter “Land”) without exception to the DEFECTS subject, however, to the terms, provision and CONDITIONS of this Agreement.

II. DEFINITION OF TERMS.

The following terms when used in this Agreement mean:

- A. “Indemnitee” means the title insurance company that is insuring title to the Land in a Current Policy dated after the Date of Prior Policy.
- B. “Current Policy” means any policy of title insurance issued by the Indemnitee.
- C. “Date of Prior Policy” means the “Date of Policy” as defined by the Prior Policy.
- D. “Defect” means an alleged item of the type listed in Section IV that was created or existed at the Date of Prior Policy and that may affect the Estate Insured.
- E. “Estate Insured” means the interest in the Land insured by the Indemnitor in the Prior Policy that is all or a portion of the interest to be insured by the Current Policy.
- F. “Land” means the real property described as “Land” in the Indemnitor’s title insurance policy.
- G. “Indemnitor” means a title insurance company that has issued a Prior Policy as defined herein.
- H. “Prior Policy” means either (a) an owners title policy issued by Indemnitor to the current title holder, transferor or mortgagor of the Land in the current transaction; or (b) a loan title policy to a lender who subsequently has acquired the insured Land and is the seller in the current transaction.
- I. “Public Records” means the “Public Records” as defined by the Prior Policy.

III. CONDITIONS:

The indemnity provision of this First Amended and Restated Mutual Indemnification Agreement is subject to the following conditions:

- A. The indemnity is limited to policies issued on South Carolina properties only;
- B. The amount of the indemnity/liability of the Indemnitor is limited to the Face Amount of the Indemnitor’s Prior Policy or \$500,000, whichever is LESS;
- C. The Indemnitor’s Prior Policy must be at least one year old;

- D. The Indemnitor issued a Prior Policy that provides coverage that contains no exception to the Defect, as defined herein. This Agreement shall not apply if the Prior Policy insures against loss arising from the Defect by affirmative language in its Schedule B exception or by an endorsement that expressly identifies the Defect;
- E. There must be no record notice of any proceeding to enforce the judgment, tax lien or mortgage as set forth in "DEFECTS" herein;
- F. There must be no record notice of any proceeding to attack or set aside the title resulting from matters referenced in "DEFECTS" herein;
- G. The policy issuing agent must retain for their files a copy of the Indemnitor's policy.
- H. The Indemnitee is not required to authenticate a policy of the Indemnitor that appears valid on its face; however, if requested by the Indemnitor, the Indemnitee shall be prepared to provide a copy of the policy on demand as a condition to making a claim under this Agreement;
- I. The Indemnitor shall be promptly notified of a claim under this Agreement, at the address listed below, as if the Indemnitee is an insured claimant under the Indemnitor's Prior Policy;
- J. Upon any claim being made under this Agreement, Indemnitor agrees to perform in accordance with the terms hereof, promptly and in good faith; however, until an Indemnitor is notified of a claim hereunder, there is no obligation to take any action allowed or required under the Indemnitor's Prior Policy;
- K. Nothing in this Agreement shall be construed to deprive Indemnitor of any of the rights of Indemnitor as provided by its Prior Policy, including all rights of subrogation and the right to perfect title as insured by settling or litigating;
- L. The Indemnitor shall act diligently and promptly to discharge its responsibilities under this Agreement;
- M. This Agreement may be supplemented or superceded by any specific written indemnity agreements by and between any of the parties hereto, and such specific agreement shall not be deemed to suspend, cancel or otherwise terminate any of the rights or obligations of the parties under this Agreement as to policies which may be written by the Indemnitee in the future;
- N. This Agreement may be canceled by any party hereto, upon written notice given to all other parties after thirty (30) days from the date of the mailing of such notice. However, it is agreed that such cancellation shall not diminish or impair any of the indemnities arising under this Agreement prior to the expiration of such thirty (30) day period;
- O. It is understood and agreed that once the relationship of Indemnitor and Indemnitee is established hereunder, it shall continue in force so long as the Indemnitee has liability under its policy or under its Indemnity(ies) to subsequent insurers for a Defect covered by the Prior Policy of Indemnitor subject to the limitations of this Agreement;
- P. A policy issuing agent should obtain permission from the proposed Indemnitee writing the Current Policy to rely upon the terms and provisions of the Agreement before insuring over one or more of the Defects referred to in items (A) through (D) of Section IV below.
- Q. Nothing in this Agreement prevents a Title Insurer from requiring separate letters of indemnity, requesting the Indemnitor acknowledge coverage under the Agreement, issuing separate letters of indemnity or refusing to indemnify in cases not covered under the Agreement, nor does it require any Title Insurance Company to issue a letter of indemnity, if at all, within the time set for closing.
- R. It is the sole discretion of the Indemnitee to accept that the defect is covered by the Agreement.

IV. DEFECTS:

- A. JUDGMENTS OR FEDERAL OR STATE TAX LIENS OR WARRANTS: Recorded judgment from the face of which it appears that the principal is a sum certain, or a recorded Federal tax lien or State tax lien, or warrant which may have or has attached to the Land prior to the date of the Indemnitor's Prior Policy, (hereafter the "Lien(s)") provided:
 - a. The Lien(s) is not against parties in the insured transaction under the Indemnitor's Policy;
 - b. The face amount of the Lien(s) does not exceed (in the aggregate) \$500,000;
 - c. No notice of any proceedings or levy to collect the Lien(s) appears of record;

- d. The Lien(s) is not a certificate of delinquency for child support; and
 - e. The Lien(s) is not a Mental Health Lien pursuant to SC Code § 44-23-1140.
- B. MORTGAGES: Recorded mortgage(s) which appears of record prior to the date of the Indemnitor's Prior Policy provided:
- a. There appears no foreclosure proceedings respecting the mortgage;
 - b. The mortgage secures a principal amount of not more than \$500,000.00; and
 - c. The mortgage does not appear, from the record, to secure a revolving credit or equity line of credit.
- C. DUE PROCESS ISSUES ARISING OUT OF PAST LITIGATION: Court Proceedings which predate the date of the Indemnitor's Prior Policy and shall mean one or more of the following:
- a. Failure to appoint a guardian or attorney *ad litem* to represent the interest of an absent defendant(s) in a probate, foreclosure, quiet title, partition suit, divorce, or other proceeding which has ended in a final judgment affecting title to the Land prior to issuance of Indemnitor's Prior Policy (hereafter referred to as "the Case").
 - b. Deficiencies in, or the absence of, a diligent search affidavit filed in the Case prior to service upon a defendant by publication as may be required by law.
- D. TRUSTEES AND ATTORNEYS IN FACT:
A conveyance of the Land, prior to the date of the Indemnitor's Prior Policy, insuring the current seller or mortgagor of the Land, where it appears insufficient or no record notice of the power or authority of the grantor to make the conveyance of the Land, provided that there appears no notice of record in the county where the Land lies of any proceeding to attack or set aside the conveyance by the trustee or attorney-in-fact.
- E. LACK OF RECORDED DEATH CERTIFICATE:
An original death certificate is not of record in the county in which the Land is located, in order to eliminate the interest of an individual in the prior chain of title prior to the date of the Indemnitor's Prior Policy.
- F. SOUTH CAROLINA AND FEDERAL ESTATE TAX LIENS:
There is an absence of satisfactory proof of record in the county in which the Land is located that there are no estate tax liens in favor of the state of South Carolina or the United State of America which have attached or could have attached to the insured Land due to death of a party prior to the date of the Indemnitor's Prior Policy.
- G. LACK OF SUBSCRIBING WITNESSES:
Any deed(s) to the Land that appears recorded prior to the date of the Indemnitor's Prior Policy does not contain two (2) subscribing witnesses for each Grantor, as required by Section 30-7-10, Code of Laws of South Carolina (1976), as amended.
- H. INCOMPLETE OR INSUFFICIENT ACKNOWLEDGMENTS:
An instrument affecting the chain of title to the Land contains an acknowledgment with one or more of the following defects:
- a. The failure to affirmatively state that one or all of the parties executing appeared before the individual taking the acknowledgment or probate.
 - b. The failure to include a translation into English of any portion of the acknowledgment or probate that is in a language other than English.
 - c. That an acknowledgment or probate was taken by an individual not having the authority to acknowledge instruments to be recorded in the public records of counties in the state of South Carolina, as set forth in Section 30-5-30 and 23-3-10, et seq., Code of Laws of South Carolina (1976), as amended.
 - d. The failure of the individual taking the acknowledgment or probate to designate in the instrument whether one or more of the parties executing the instrument possessed a statutorily acceptable form of identification or, in the alternative, was personally known to the individual taking the acknowledgment.
 - e. The failure of the instrument to affirmatively state the date of execution of the instrument.
 - f. The failure of the individual taking the acknowledgment or probate to designate on the instrument the expiration date of the notary's commission.

- g. The failure of the individual taking the acknowledgment or probate to designate the date of said acknowledgment or probate on the instrument.
- I. UCC’S AND ASSIGNMENTS OF RENTS AND LEASES: Recorded UCC(s) or Assignment(s) of Rents and Leases which appears of record prior to the date of the Indemnitor’s Prior Policy provided:
 - a. The UCC(s) or Assignment(s) of Rents and Leases was executed contemporaneously with a mortgage to the same creditor (hereafter referred to as “Companion Mortgage”); and
 - b. Said Companion Mortgage has been fully satisfied and canceled of record.
- J. SETBACK LINE VIOLATION(S): Recorded plat(s) which appears of record prior to the date of the Indemnitor’s Prior Policy shows a violation of a setback line provided:
 - a. The violating structure/improvement is more than 10 years old; and
 - b. The degree of violation is five percent (5%) or less.
- K. Doubt as to the validity of any deed in the chain of title due to a lack of a corporate seal as to any grantor in the chain that was a corporation.

V. SIGNATORIES AND EFFECTIVE DATE:

This First Amended and Restated Mutual Indemnification Agreement shall be effective as of January 1, 2010 and the Indemnitors having signed this Agreement by the Effective Date shall be bound thereby. A signed counterpart of this First Amended and Restated Mutual Indemnification Agreement must be returned to the below named person:

Teri Callen Stomski, SC State Counsel
Investors Title Insurance Company
2711 Middleburg Drive, Suite 214
Columbia, South Carolina 29204
(Hereafter referred to as the “Notice Agent”)

Upon her receipt of the last of the respective original signed counterparts, hereof, Notice Agent will send written notice to all Indemnitors advising each of the receipt of the Notice Agent of signed originals from all Indemnitors. By signing this First Amended and Restated Mutual Indemnification Agreement and returning it to the Notice Agent, each Indemnitor agrees that its receipt of the Notice sent by the Notice Agent shall be proof that this First Amended and Restated Mutual Indemnification Agreement is in effect. Each original counterpart will be sent to the office of Investors Title Insurance Company at its office noted above for safekeeping.

The First Amended and Restated Mutual Indemnification Agreement shall apply to all DEFECTS covered by title insurance policies issued both prior to and subsequent to the Effective Date.

As of the Effective Date, the prior Mutual Indemnification Agreement will be superseded by this First Amended and Restated Mutual Indemnification Agreement.

NOW, WITH THE INTENT TO BE BOUND BY ALL THE TERMS AND PROVISIONS, HEREOF, WITNESS the signature of the INDEMNITOR shown below:

INDEMNITOR:

Attorney’s Title Insurance Fund

By: _____

Dated: December ____, 2009

Chicago Title Insurance Company

By: _____

Dated: December ____, 2009

Commonwealth Land Title Insurance Company

By: _____

Dated: December ____, 2009

Fidelity National Title Insurance Company

By: _____

Dated: December ____, 2009

First American Title Insurance Company

By: _____

Dated: December ____, 2009

Investors Title Insurance Company

By: _____

Dated: December ____, 2009

Lawyers Title Insurance Company

By: _____

Dated: December ____, 2009

Security Title and Guarantee Corporation of Baltimore

By: _____

Dated: December ____, 2009

Stewart Title and Guaranty Insurance Company

By: _____

Dated: December ____, 2009

Ticor Title Insurance Company

By: _____

Dated: December ____, 2009

Ticor Title Insurance Company of Florida
(formerly American Pioneer Title Insurance Company)

TransUnion National Title Insurance Company

By: _____

Dated: December ____, 2009