

## **SECOND AMENDED AND RESTATED MUTUAL INDEMNIFICATION AGREEMENT**

**This Second Amended and Restated Mutual Indemnification Agreement (“Agreement”), entered into by and among the Companies that have affixed or shall hereafter affix their signatures hereto, is effective as to title insurance policies issued by an Indemnitee (as defined below) on or after April 1 2006. The First Amended and Restated Mutual Indemnification Agreement, as amended by the First Amendment to the First Amended and Restated Mutual Indemnification Agreement, remains in effect as to policies issued by an Indemnitee prior to April 1, 2006.**

**Each Company signing this agreement is licensed to do business in the State of New York as a title insurance corporation. However, this Agreement shall not create or establish, or be deemed or construed to create or establish, any relationship of partnership, joint venture or similar arrangement.**

**This Agreement does not preclude any Company which is a party to this Agreement from requesting a letter of indemnity, or a letter of indemnity with performance, or any other form of letter of indemnity under the then currently effective Recommended Practices of the New York State Land Title Association, in confirmation of another Company’s obligations, even as to a matter covered by this Agreement.**

**Each Company which is a party hereto has agreed to be bound by the terms and provisions of this Agreement and has caused it to be executed on its behalf by a duly authorized officer.**

### **SECTION 1. AGREEMENT TO INDEMNIFY**

**Each Company, as an Indemnitor, hereby agrees to indemnify and hold harmless each other Company, as Indemnitee, against loss or damage by reason of a Defect, as provided for herein.**

### **SECTION 2. DEFINITIONS**

- (a) “Indemnitor's Policy”, as used herein, means:**
- (i) An Owner’s policy of title insurance, on Land (as defined in the ALTA 1992 policy) within the State of New York, that insured (a) the last deed of record, (b) the latter of the creation of, or last assignment of record of, a leasehold estate (when the transfer, mortgage, or sublease of said leasehold is being insured by the Indemnitee), or (c) the purchase of an interest in an entity owning real property to be insured by the Indemnitee, or**
  - (ii) A Loan policy of title insurance, on Land within the State of New York, that insured a mortgage, open of record, the lien of which is to**

**be insured by the Indemnitee, separately or as a part of a consolidated lien, but only as to a Defect arising prior to the date that the mortgagor (if a bona fide purchaser for value) of the Insured mortgage acquired title to the estate or interest in the Land to be insured by the Indemnitee, or**

- (iii) A Loan policy of title insurance, on Land within the State of New York, that insured a mortgage to a lender that has acquired all or some of the Land to be insured under the Indemnitee's policy as a consequence of a foreclosure or a deed-in-lieu of foreclosure when the lender will be the transferor or mortgagor in the current transaction to be insured by the Indemnitee, or**
  - (iv) A Loan policy of title insurance, on Land within the State of New York, that insured a mortgage to a lender that has brought a foreclosure action where title is being conveyed to a purchaser for value (other than the lender) from a referee in such action.**
  - (v) As to Covered Defect ("h") only, a Loan policy of title insurance, on Land within the State of New York.**
- (b) "Defect", as used herein, means a Covered Defect, (as defined in Section 3 of this Agreement) which is either: a) not shown as an exception to title in an Indemnitor's Policy, or, b) if raised as an exception to title in an Indemnitor's Policy, has been afforded insurance that the Covered Defect will not be collected from or enforced against the Land insured.**
- (c) "Indemnitor", as used herein, means a Company that has signed this Agreement and that has issued, individually or as a coinsurer, an Indemnitor's Policy which either does not set forth a Covered Defect as an exception to title or has afforded insurance that the Covered Defect will not be collected from or enforced against the Land insured.**
- (d) "Indemnitee", as used herein, means a Company that has signed this Agreement, which is issuing, individually or as a coinsurer**
- (i) An Owner's policy insuring (a) a fee conveyance, (b) the creation, assignment, or sublease of a leasehold estate, or (c) the transfer of an interest in an entity owning real property, in each instance made by the Indemnitor's insured, when the Indemnitor issued an Indemnitor's Policy (which was an Owner's policy) to its insured, or**
  - (ii) An Owner's policy insuring (a) a fee conveyance, or (b) the creation, assignment, or sublease of a leasehold estate, when the Indemnitor's insured acquired the estate or interest in the Land in a manner set forth in the situation provided for in subsection (a)(iii) of the definition of Indemnitor's Policy, or**

- iii) **An Owner's policy insuring (a) a fee conveyance, or (b) the assignment of a leasehold estate, in each instance made to a purchaser for value (other than the lender) that is acquiring the estate or interest in the Land from a referee in a manner set forth in the situation provided for in subsection (a)(iv) of the definition of Indemnitor's Policy, or**
- (iv) **A Loan policy insuring a mortgage made by the Indemnitor's insured under an Owner's policy on the same estate or interest in the Land insured by the Indemnitor; or**
- (v) **A Loan policy insuring the assignment, consolidation, extension, modification or spreading of a mortgage insured by an Indemnitor,**

**and which, in each instance, issues its policy without exception for, or insures against collection or enforcement of, a Defect, as in the Indemnitor's Policy.**

**(e) "Judgment" or "Judgments" means, as used herein, New York State and New York City Tax warrants, money judgments, New York City Parking Violation Bureau judgments, Environmental Control Board liens, and Transit Adjudication Bureau judgments**

### **SECTION 3. COVERED DEFECTS**

**The following matters, if neither satisfied, released, or disposed of in the Public Records (as defined in the Conditions and Stipulations of the Indemnitor's Policy) from the Land to be insured by the Indemnitee at the time that it issues a policy of title insurance, are Covered Defects under this Agreement:**

- (a) (i) **As to title policies issued by an Indemnitee prior to April 1 2005: (a) mortgages; and (b) federal tax liens and Judgments, (each federal tax lien or Judgment is individually a "Lien") filed or docketed against a person or entity out of title, the lien of which has not expired by operation of law, provided no execution has been made, or action commenced to foreclose or to otherwise enforce the mortgage or Lien on the Date of Policy of Indemnitee's policy, and the amount of the mortgage or Lien does not exceed \$250,000. In the event that any such mortgage or Lien exceeds \$250,000 and a separate letter of indemnity is obtained as provided in the third unnumbered paragraph set forth in the beginning of this Agreement, then this Agreement shall remain valid as to each other mortgage and Lien not exceeding \$250,000 provided for in this paragraph.**
- (ii) **As to title policies issued by an Indemnitee on and after April 1, 2005: Judgments (each Judgment individually a "Lien"), (but not including federal tax liens) filed or docketed against a person or entity out of title, the lien of which has not expired by operation of law,**

**provided no execution has been made, or action commenced to foreclose or to otherwise enforce the mortgage or Lien on the Date of Policy of Indemnatee's policy, and the amount of the Lien does not exceed \$500,000. In the event that any such Lien exceeds \$500,000 and a separate letter of indemnity is obtained as provided in the third unnumbered paragraph set forth in the beginning of this Agreement, then this Agreement shall remain valid as to each other Lien not exceeding \$500,000 provided for in this paragraph.**

**(iii) As to title policies issued by an Indemnatee on and after April 1, 2005: Federal tax liens filed or docketed against a person or entity out of title, the lien of which has not expired by operation of law, provided no execution has been made, or action commenced to foreclose or to otherwise enforce the federal tax lien on the Date of Policy of Indemnatee's policy, and the amount of the federal tax lien does not exceed \$250,000.**

**(iv) As to title policies issued by an Indemnatee: (a) on and after April 1, 2005 but prior to April 1, 2006, mortgages provided no action has been commenced to foreclose or to otherwise enforce the mortgage on the Date of Policy of Indemnatee's policy and the amount of the mortgage does not exceed \$500,000. In the event that any such mortgage exceeds \$500,000 and a separate letter of indemnity is obtained as provided in the third unnumbered paragraph set forth in the beginning of this Agreement, then this Agreement shall remain valid as to each other mortgage not exceeding \$500,000 provided for in this paragraph; (b) on and after April 1, 2006: mortgages provided no action has been commenced to foreclose or to otherwise enforce the mortgage on the Date of Policy of Indemnatee's policy and the amount of the mortgage does not exceed \$750,000. In the event that any such mortgage exceeds \$750,000 and a separate letter of indemnity is obtained as provided in the third unnumbered paragraph set forth in the beginning of this Agreement, then this Agreement shall remain valid as to each other mortgage not exceeding \$750,000 provided for in this paragraph.**

**(b) Proof of Death, devolution of title, , and federal and New York State estate taxes regarding the estate of a prior owner, when there has been recorded a conveyance for consideration to a bona fide purchaser.**

- (c) Matters relating to the devolution of title, other than those relating to a matter covered by “(b)”, above, arising prior to an Indemnitor’s policy, including, without limitation, (i) errors in the recitation of names of the parties to recorded instruments, (ii) conveyances from an entity when title was last conveyed to a different named entity, (iii) execution of a deed by the purchaser at a foreclosure sale when there is no deed of record out of the referee in the foreclosure, provided that a referee’s report of sale confirming the transfer of title to said purchaser is on file in the foreclosure action, (iv) the absence of a termination or surrender of a life estate, (v) a leasehold interest not excepted in the Indemnitor’s policy where the lease has expired by its terms and there is no recorded termination or surrender agreement, and (vi) outstanding fractional interests of record held by a joint tenant or a tenant in common, (vii) an outstanding interest of a tenant by the entirety. For items (vi) and (vii) ) to be Covered Defects, the property must be improved and all interests in the property must be held of record by a purchaser(s) for value (other than one of the joint tenants, tenants in common, or tenants by the entirety in question) for not less than the last immediately preceding ten years.**
- (d) Proof that as of the date of the death of a tenant by the entirety, the then surviving spouse and the deceased were married and not subject to the terms of a separation agreement when there has been recorded a conveyance for consideration from the surviving spouse, or from the fiduciaries of the estate of the surviving spouse, or from the distributes or devisees of the surviving spouse, to a bona fide purchaser.**
- (e) As to a corporation in the chain of title to the property within the immediately prior ten years, proof of due incorporation, New York State Corporate Franchise tax, and New York City General Business tax, provided no execution has been made, or action commenced to foreclose or to otherwise enforce the lien thereof.**
- (f) Errors in description of the property insured in a deed or conveyance (other than a mortgage) executed prior to the deed or conveyance insured by the Indemnitor under an Owner’s policy provided that the deed insured by the Indemnitor under an Owner’s policy contains the correct description.**
- (g) New York City Sidewalk Violations, but only when the Indemnitor’s Policy is an ALTA policy.**
- (h) A mortgage in the original principal amount of (i) \$500,000 or less when an Indemnitee’s policy is issued on and after April 1, 2005 but before April 1, 2006 or (ii) \$750,000 or less when an Indemnitee’s policy is issued on or after April 1, 2006, open of record, made by the**

**current record owner, and not excepted in the Indemnitor's Loan Policy, when the proceeds of the mortgage insured under the Indemnitor's Loan Policy were used to pay in full said open mortgage. The Indemnitee must obtain a copy of (i) the payoff letter for that open mortgage, (ii) the certified, bank or attorney's escrow account check(s) issued for payment of the amount stated in the payoff letter as due, and (iii) the letter with which payment was sent to the holder of the mortgage or its representative as stated in the payoff letter. This Covered Defect applies when the Indemnitee's policy is either an Owner's Policy or a Loan Policy and it applies to title policies issued by an Indemnitee on and after April 1, 2005.**

#### **SECTION 4. TERMS AND CONDITIONS OF INDEMNITY**

**The Indemnitor's obligations to the Indemnitee for Defects shall not, in the aggregate, exceed the face amount of the Indemnitor's Policy, and legal fees and costs incurred by the Indemnitee. The Indemnitor's obligation to the Indemnitee shall not, however, exceed the Indemnitor's proportion of liability under an Indemnitor's Policy issued as a coinsurer.**

- (a) The Indemnitee may rely on this Agreement only if it receives either a copy of an executed Indemnitor's Policy or a copy of the Indemnitor's marked-up title report. The Indemnitee, on receipt thereof, is not required to take any further action to authenticate the validity of the Indemnitor's Policy.**
- (b) Subject to subparagraph "g" below, an Indemnitor shall remove a Defect for which an Indemnity is given hereunder on written notice from an Indemnitee that claim has been made under the Indemnitee's policy, which notice shall include evidence of said claim. This does not, however, apply to Covered Defect "h" for which there is only an obligation of indemnification.**
- (c) An Indemnitee shall give notice of a claim hereunder to the Indemnitor in the manner required of the Insured under the Indemnitor's Policy. An Indemnitor will process a claim made in accordance with the terms of this Agreement promptly and in good faith. The failure to provide notice as required will not prejudice the rights of an Indemnitee unless the Indemnitor is prejudiced thereby.**
- (d) Once the relationship of Indemnitor and Indemnitee is established under this Agreement, it shall continue in force so long as the Indemnitee may have liability by reason of (i) its policy(ies), (ii) letters of indemnity that it may issue, or (iii) this Agreement to subsequent title insurers for a Defect covered under an Indemnitor's Policy.**
- (e) In the case of a transfer or a mortgage being made by the grantee of a deed in lieu of foreclosure, where the Covered Defect arose prior to issuance of the policy which insured the mortgage made to the grantee of the deed in lieu of foreclosure or its related entity, the Indemnitor is the Company which**

insured the mortgage or, if the deed in lieu of foreclosure was insured, the Company which insured the deed in lieu of foreclosure.

- (f) Any Company may unilaterally withdraw from this Agreement on thirty (30) calendar days written notice to all other Companies that have signed this Agreement. Such withdrawal from this Agreement shall not impair the continuing validity and effectiveness of any indemnity arising under this Agreement prior to the expiration of the thirty (30) day period. The withdrawal by one party shall not affect the mutual rights and obligations of the other parties to this Agreement.
- (g) In the case of a mortgage under Covered Defect "h", the Indemnitor shall not be obligated to remove the Defect, nor shall the Indemnitor be obligated to pay the cost incurred by Indemnitee in removing the Defect. Indemnitor shall, however, use its efforts to procure a satisfaction of said Mortgage and to satisfy said mortgage of record. Nothing in this subparagraph is intended to limit the Indemnitor's obligation to indemnify the Indemnitee for any payments made by Indemnitee to the holder of the mortgage to satisfy and discharge the mortgage of record.

#### SECTION 5. MISCELLANEOUS

Exhibit A, Applications of Mutual Indemnification Agreement, is incorporated herein by reference and made a part hereof.

#### SECTION 6. EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each having the effect of an original.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated Mutual Indemnification Agreement (New York State) on the date(s) set forth below their names on signature pages now or hereafter annexed hereto.

**Chicago Title Insurance Company**

By: \_\_\_/s/\_\_\_\_\_  
Name: Michael P. Miglino  
Its: Regional Counsel  
Dated: March 17 , 2006

**Commonwealth Land Title Insurance Company**

By: \_\_\_/s/\_\_\_\_\_  
Name: Lawrence B. Lipschitz  
Its: Vice-President  
Dated: March 20, 2006