

# **CONSOLIDATED** **MUTUAL INDEMNIFICATION AGREEMENT**

This Agreement, being duly executed by and between the undersigned parties hereto (hereinafter referred to as the "Signatories"), and the parties hereby agreeing to be bound pursuant to the terms, conditions and provisions hereof, as of the effective date hereof, and as more fully described below:

WHEREAS, the Insurers and the Insurers' Agents have found it necessary, as a condition of their normal underwriting practice, to obtain indemnity agreements from each other on a case by case basis in order to insure against title defects which were insured against by the Insurer from whom an indemnity was requested, and

WHEREAS, the Insurers believe it will save time and expense for both the Insurer requesting the indemnity and the Insurer who will provide the indemnity to enter into this Mutual Indemnification Agreement.

NOW THEREFORE, in consideration of their mutual promises and their performance hereunder, each Insurer (the Indemnitor Insurer), hereby agrees to indemnify and hold harmless the other Insurers (the Indemnitee Insurer) against loss or damage including, but not limited to reasonable attorney fees and costs, sustained by Indemnitee Insurer, which loss or damage shall arise as a result of the issuance of any policy of insurance without exception for the "Potential Defects" described below, so long as Indemnitor Insurer has previously issued an owner's title policy of insurance without exception for the defect to the current title holder covering all, or some of, the land insured under Indemnitee's Policy (hereinafter referred to as "The Land"); or has issued a loan policy of insurance without exception for the defect to a lender who is acquiring, or has acquired all, or some of, the Land by foreclosure or deed-in-lieu of foreclosure and will be the seller in the current transaction.

## **POTENTIAL DEFECTS:**

- I. A question exists as to whether the spouse of a prior grantor has a dower interest in the Land, because a deed in the chain of title, prior to, or contemporaneously with, the Indemnitor's Policy does not contain either joinder by the spouse of the grantor, or a statement on the deed that the grantor is a single person; or
- II. A question exists as to whether a recorded levy of execution, notice of judgment lien, homeowner's association lien, attorney's lien, child support lien, construction lien, divorce decree lien, fixture filing, MESC lien, condominium association lien, federal or state tax lien, recorded prior to the date of indemnitor's policy, constitutes an unsatisfied lien against the Land, provided the face amount of the lien(s) does not exceed (in the aggregate) \$250,000.00, and there are no recorded proceedings initiated to foreclose the above-stated interests; or
- III. A question exists as to whether a mortgage recorded prior to the Date of Indemnitor's policy has been satisfied or released as a lien against the Land, provided:
  - the face amount of the lien(s) does not exceed (in the aggregate) \$250,000.00, and

- there are no recorded proceedings initiated to foreclose the above-stated interests; and
  - the mortgage is not a “gap” mortgage or a future advance/revolving credit/equity line mortgage as provided in Paragraph (k) of the Conditions On The Obligation to Indemnify, or
- IV. A question exists as to whether due process was afforded to certain defendants in court cases involving probate, foreclosure, quiet title, bankruptcy or other proceedings, which court proceedings predate the date of the Indemnitor’s Policy, because of failure to appoint a conservator or guardian ad litem to represent the interest of an absent defendant(s), or because of a deficiency in, or the absence of, proper service upon a defendant as may be required by law; or
- V. A question exists as to whether a fiduciary (ex. trustee, conservator, personal representative, attorney in fact, etc...) had the requisite authority to convey the title to, or mortgage, the Property to a bona fide 3<sup>rd</sup> party purchaser or lender for value without notice as a result of insufficient or no record notice of the power or authority of the grantor/borrower to make a conveyance of, or mortgage, the property. Provided, however, that there appears no notice of record in the county where the Land is located of any proceeding to challenge or set aside the conveyance or mortgage.
- VI. A question exists as to the ownership of the property as a result of title being vested, of record, in a party other than the owner of the property as reflected in Schedule A of the Indemnitor’s policy. “Party” is defined for purposes of this provision as being any individual or legal entity.

### **CONDITIONS ON THE OBLIGATION TO INDEMNIFY**

The indemnity provisions of this Mutual Indemnification Agreement are subject to the following conditions:

- a. The Agreement is only applicable to policies issued on Michigan properties.
- b. The Indemnitee Insurer is in possession of, prior to date it is obligated to issue its policy, a copy of Indemnitor’s owner’s policy, or loan policy if the Lender is acquiring or has acquired all, or part of, the Land by foreclosure or deed-in-lieu of foreclosure and will be the seller in the current transaction.
- c. 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.
- d. The liability of the Indemnitor is limited to the face amount and the terms of the Indemnitor’s Policy or \$250,000.00, whichever is less.

- e. The Indemnitor shall be notified of a claim under this Agreement within 30 days of discovery of the claim, at the address listed below.
- f. Indemnitor shall notify Indemnitor insurer of any proposed payments or settlement of a claim arising from a potential defect and shall give Indemnitor insurer reasonable opportunity to investigate the claim at its own expense.
- g. 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 the Indemnitor is notified of a claim, hereunder, there is no obligation to take any action allowed or required under the Indemnitor's Policy.
- h. This Agreement may be supplemented or superceded by any specific written indemnity agreements by and between any of the parties hereto, and such specific agreements 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 Indemnitor in the future; and
- i. 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.
- j. Once the relationship of Indemnitor and Indemnitor is established hereunder, it shall continue in force so long as the Indemnitor has liability under its policy or under its Indemnity(ies) to subsequent insurers for a Potential Defect covered by the policy of Indemnitor subject to the limitations of this Agreement.
- k. In the event that Indemnitor, or its Agents, finds a "gap" mortgage, or an open future advance/revolving credit/equity line mortgage, while conducting its title search of for purposes of issuing a Commitment, the Indemnitor must request a hard copy indemnity from the Indemnitor title company specific to that mortgage. A "gap" mortgage shall be defined as any mortgage that has come of record within 6 months prior to the date of the Policy issued by Indemnitor.
- l. In the event that Indemnitor, or its Agents, determines from a search of title the vesting deed into the borrower on a loan transaction, where a loan policy of insurance has been or is to be issued, is not of record at the time of the insuring of a mortgage foreclosure, a deed in lieu of foreclosure, or the sale out from the foreclosing lender to a new purchaser, then the Indemnitor must request a hard copy indemnity from Indemnitor title company specific to that missing vesting deed.

**Signatories and Effective Date**

See attached Exhibit I for list of signatories to this Agreement.

Each Signatory shall execute this Mutual Indemnification Agreement in eighteen (18) separate counterparts. A duplicate original Agreement will be executed and sent to each Signatory at the addresses provided herein (Exhibit II). The Agreement will become effective as between any two Signatories upon the later date of the receipt of a duly executed Agreement by both Signatories.

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

**INDEMNITOR:**

\_\_\_\_\_  
(SIGNATORY COMPANY)

By: Kimberly S. O'Connor

Its: Assistant V.P.

Date: 8/3/13

# EXHIBIT I

Signatories under the Mutual Indemnification Agreement:

Attorney's Title Insurance Fund, Inc.  
Chicago Title Insurance Company  
Commonwealth Land Title Insurance Company  
Fidelity National Title Insurance Company  
First American Title Insurance Company  
Investors Title Insurance Company  
North American Title Insurance Company  
Old Republic National Title Insurance Company  
Stewart Title Guaranty Insurance Company \*\*  
WFG National Title Insurance Company

\*\* Includes its affiliated companies

[Updated 7- 15-13]

## **EXHIBIT II**

### **ATTORNEYS' TITLE INSURANCE FUND, INC**

Ford MacConnell  
Vice President - Claims  
Attorneys' Title Insurance Fund, Inc.  
6545 Corporate Centre Blvd.  
Orlando, FL 32822

### **CHICAGO TITLE INSURANCE COMPANY**

Meredith H. Weingarden  
Assistant Vice President, State Counsel  
Chicago Title Insurance Company  
1360 East Ninth St., Suite 500  
Cleveland, OH 44114

### **COMMONWEALTH LAND TITLE INSURANCE COMPANY**

Meredith H. Weingarden  
Assistant Vice President, State Counsel  
Commonwealth Land Title Insurance Company  
1360 East Ninth St., Suite 500  
Cleveland, OH 44114

### **FIDELITY NATIONAL TITLE INSURANCE COMPANY**

Meredith H. Weingarden  
Assistant Vice President, State Counsel  
Fidelity National Title insurance Company  
1360 East Ninth St., Suite 500  
Cleveland, OH 44114

### **FIRST AMERICAN TITLE INSURANCE COMPANY**

Kimberly S. O'Connor  
Assistant Vice President, Legal Counsel  
First American Title Insurance Company  
5910 Tahoe Drive SE,  
Grand Rapids, MI 49546

### **INVESTORS TITLE INSURANCE COMPANY**

Michael W. Aiken  
Senior Vice President, Compliance Officer and Senior Counsel  
Investors Title Insurance Company  
121 N. Columbia Street  
Chapel Hill, NC 27514

**NORTH AMERICAN TITLE INSURANCE COMPANY**

Robert N. Meyers  
Vice President, Senior Underwriting Counsel  
Eastern Region  
730 NW 107 Ave.  
Suite 301  
Miami, FL 33172

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

Philip T. Savich  
Vice President, State Counsel  
Old Republic National Title Insurance Company  
616 Petosky St.  
Petosky, MI 49770

**SECURITY UNION TITLE INSURANCE COMPANY**

Meredith H. Weingarden  
Assistant Vice President, State Counsel  
Security Union Title Insurance Company  
1360 East Ninth St., Suite 500  
Cleveland, OH 44114

**STEWART TITLE GUARANTY COMPANY**

Douglas G. Smith  
Vice President, Assistant Senior Counsel  
Stewart Title Guaranty Insurance Company  
26555 Evergreen, Suite 400  
Southfield, MI 48076

**WFG National Title Insurance Company**

Sam Shellhaas  
Vice President, Midwest Underwriting Counsel  
5508 Stockton Way,  
Dublin, OH 43016