

## TERTIARY REINSURANCE AGREEMENT T-21

by and between the Corporation designated as Ceder and the Corporations named as Reinsurers, all as set forth in Schedule A attached hereto and made a part hereof.

WHEREAS, Ceder has assumed or is about to assume a title insurance or guaranty risk pursuant to its policy or policies identified on Schedule A; and

WHEREAS, Ceder, to effect a distribution of risk and give additional assurance to the party or parties entitled to the protection of said policy or policies, hereinafter called the insured or insureds, desires to retain, unceded, a primary loss risk under said policy or policies, and to cede and reinsure a part of the excess of such loss risk (herein called the secondary loss risk) with the Secondary Reinsurers and the balance of the excess of such loss risk (herein called the tertiary loss risk) with the Tertiary Reinsurers in the proportions set forth on Schedule A; and

WHEREAS, Ceder shall execute with each Reinsurer (Secondary Reinsurers and Tertiary Reinsurers) a separate counterpart hereof for each ceded, reinsured and assumed portion of the excess loss risk set forth on Schedule A, all of which shall constitute one and the same agreement of which the attached conditions of this Agreement shall be a part.

NOW, THEREFORE, it is mutually agreed between Ceder and the undersigned Reinsurer as follows:

### 1. Ceder's Retention

The entire amount of the primary loss risk and the unceded portion, if any, of the secondary loss risk, as set forth on Schedule A, are retained by Ceder without reinsurance.

### 2. Assumption of Liability

The proportion of the secondary loss risk ceded to, reinsured with and assumed by each Secondary Reinsurer is the proportion set opposite its name on Schedule A hereof. The proportion of the tertiary loss risk ceded to, reinsured with and assumed by each Tertiary Reinsurer is the proportion set opposite its name on Schedule A hereof. The liability so assumed by said Reinsurers shall inure to the benefit of the insured or insureds in the aforesaid policy or policies of Ceder, subject to and only in accordance with the terms, provisions, conditions and stipulations of such policy or policies and provisions hereof.

### 3. Proportion of Risk

The share of Ceder, if any, and the share of each Secondary Reinsurer in the total secondary loss risk and in each and every loss or portion of loss payable after the exhaustion of the primary loss risk is co-ordinate with each other share therein. Each Secondary Reinsurer is bound only for its co-ordinate and proportionate share of each such secondary loss risk as set forth on Schedule A in respect of such Reinsurer and not for the co-ordinate or proportionate share, if any, of Ceder or of any other Reinsurer. The share of each Tertiary Reinsurer in the total tertiary loss risk and in each and every loss or portion of loss payable after the exhaustion of the primary and secondary loss risks is co-ordinate with each other share therein. Each Tertiary Reinsurer is bound only for its co-ordinate and proportionate share of each such tertiary loss risk as set forth on Schedule A in respect of such Reinsurer and not for the co-ordinate and proportionate share of any other Reinsurer.

### 4. Laws Applicable

All claims arising under this Agreement or the risks hereby ceded and reinsured and becoming matters of dispute, litigation or arbitration shall be determined by the laws of the situs of the real property described in Ceder's policy or policies.

### 5. Separate Liability

Nothing contained herein shall constitute an association, partnership or joint liability between Ceder and Reinsurer or between or among the Reinsurers.

IN WITNESS WHEREOF, the undersigned each has caused this instrument to be executed and its corporate seal affixed as of the day and year set forth on Schedule A.

(Ceder)

(Reinsurer)

By \_\_\_\_\_  
Vice President

By \_\_\_\_\_  
Vice President

By \_\_\_\_\_  
Assistant Secretary

By \_\_\_\_\_  
Assistant Secretary

No. \_\_\_\_\_

No. \_\_\_\_\_

**SCHEDULE A**

1. The date of this Agreement is:
2. The parties hereto are:
  - (a) \_\_\_\_\_, a corporation of the State of \_\_\_\_\_, having its principal office at \_\_\_\_\_, as Ceder, and
  - (b) The REINSURER or REINSURERS named in 4(b) hereof.
3. Ceder's policy or policies, identified hereinafter and reinsured hereby, constitute an aggregate title insurance risk in the face amount of \$ (\_\_\_\_\_ Dollars), and cover the stated insured interest or interests in the same premises situated in \_\_\_\_\_.

POLICY NO.	INSURED	INSURED INTEREST	POLICY AMOUNT
	(Name and Address)		\$

4. The distribution of said aggregate title insurance risk is:

**PRIMARY LOSS RISK**

**SECONDARY LOSS RISK**

(Share of each and every excess Loss)

(a) RETAINED BY CEDER \$ \_\_\_\_\_ and \$ \_\_\_\_\_ %

(b) CEDED TO, REINSURED WITH, AND ASSUMED BY:

Reinsurer (Name & Address)	State of Inc.	<b>SECONDARY LOSS RISK</b> (Share of each and every excess loss)	<b>TERTIARY LOSS RISK</b> (Share of each and every excess loss)
		Amount                  Share	Amount                  Share
		\$ _____          _____ % and	\$ _____          _____ %
		\$ _____          _____ % and	\$ _____          _____ %
		\$ _____          _____ % and	\$ _____          _____ %
		TOTAL \$ _____	TOTAL \$ _____

## CONDITIONS OF THIS AGREEMENT

### 1. Effective Date and Payment of Premium

Ceding, reinsurance and assumption of risk hereunder becomes effective simultaneously with the commencement of liability of Ceder under its policy or policies of title insurance described in Schedule A hereof without notice or payment of the reinsurance premium and shall not be cancelable against Ceder for any reason whatsoever. Ceder shall immediately upon issue of said policy or policies forward a conformed copy to each Reinsurer and pay to each its premium for reinsurance.

### 2. Notices, Investigation and Settlement of Claims

Upon receipt of notice from the insured or insureds pursuant to any provision of said policy or policies, or upon learning of a potential claim thereunder, Ceder shall notify each Reinsurer of such claim or potential claim; provided, however, that failure to so notify as herein provided shall in no case defeat the rights of Ceder hereunder unless such Reinsurer shall be actually prejudiced by such failure, and then only to the extent of such prejudice.

Ceder shall have full charge of the investigation, negotiation, litigation, settlement and adjustment of all claims under said policy or policies, but it shall not conclude any settlement which will thereupon exceed the amount of its primary loss risk without giving full opportunity to each Reinsurer to investigate the matters involved with the claim to the extent it desires and at its own expense, and any payment, satisfaction or settlement of a claim which when added to all prior settlements or payments made thereunder and all claims then pending thereunder would exceed the amount of primary liability retained by the Ceder, shall not, if made without the prior written approval of the Reinsurer, prejudice any defense which such Reinsurer may have to a claim hereunder by the Ceder and based upon the claim settled under said policy or policies of title insurance.

Each Reinsurer shall have the right but shall not be obligated to join in any action brought by or against the Ceder under said policy or policies and shall have the right, through such representatives as it may designate, to inspect, at any reasonable time at the office of Ceder, any and all searches, abstracts, certificates, correspondence and other records relating to said policy or policies and to claims of losses and other transactions hereunder. Such right is and shall continue to be a right in rem and shall follow and attach to said documents and records whatever changes occur in their ownership or possession.

### 3. Payment of Losses

Losses of the insured or insureds under said policy or policies, and for which the Ceder becomes liable, inclusive of costs, attorneys' fees and expenses, which do not exceed the amount of primary liability retained, and its proportionate fractional share of the secondary liability, if any, as set forth in Schedule A, shall be sustained and paid by the Ceder, without recourse to the Reinsurer, and shall reduce pro tanto the amounts of such retained liability.

Each Secondary Reinsurer is liable only if the loss suffered by the insured or insureds under said policy or policies and for which the Ceder becomes liable, inclusive of costs, attorneys' fees and expenses, exceeds the amount of primary liability retained as set forth in Schedule A, and then only for its proportionate fractional share of such loss in excess of said retained primary liability as set forth in Schedule A, and without diminution, defense, setoff or counterclaim for any reason whatsoever. Each Tertiary Reinsurer is liable only if the loss suffered by the insured or insureds under said policy or policies and for which the Ceder becomes liable, inclusive of costs, attorneys' fees and expenses, exceeds the amount of primary and secondary loss risk as set forth in Schedule A, and then only for its proportionate fractional share of such loss in excess of said primary and secondary liability as set forth in Schedule A, and without diminution, defense, setoff or counterclaim for any reason whatsoever.

In the event that the loss or aggregate of all losses under said policy or policies exceed the face amount thereof, the Ceder shall pay that portion of such excess as its retained liability, both primary and secondary, bears to the face of said policy or policies, and the balance of such excess shall be divided between the Reinsurers in the proportions that the amount assumed by each of the Reinsurers bears to the face of such policy or policies.

Each Reinsurer shall pay the amount of its liability so fixed and determined hereunder to Ceder within ten (10) days after notice and demand by Ceder. Each such payment by a Reinsurer shall satisfy pro tanto the amount of its liability hereunder and shall be received by Ceder, if not by way of reimbursement, in trust to be paid forthwith to

or for the account of its insured or insureds, together with all other amounts similarly applicable, in satisfaction of the liability of Ceder under the policy or policies of title insurance described herein.

#### **4. Benefits Inure to Insured**

In the event of the temporary or permanent discontinuance of business by Ceder, or if the Ceder be adjudged a bankrupt, or if the Ceder shall fail to pay any loss under said policy or policies within the time provided in said policy or policies, then the insured or insureds under said policy or policies shall have the right to bring an action hereon against the Reinsurer in the state of the Reinsurer's domicile to recover that portion of the loss sustained by such insured or insureds, and for which Ceder would be liable under the terms and provisions of said policy or policies, that exceeds the primary liability retained by Ceder hereunder and that is assumed by the Reinsurer hereunder.

#### **5. Recoupment and Subrogation**

After payment of any loss or losses by a Reinsurer hereunder, it shall be the duty of Ceder, by its right of subrogation or otherwise, to proceed diligently to recoup the losses paid. The net amount, after expenses of collection of any recoupment or salvage, shall be distributed and paid first to the Tertiary Reinsurers in the fractional proportions set forth on Schedule A. Any surplus, after full recoupment of losses sustained on the tertiary loss risk, shall be distributed and paid to the Secondary Reinsurers in the fractional proportions set forth on Schedule A in reduction of the loss or losses paid on the secondary loss risk. Any further surplus, after full recoupment of losses sustained on the tertiary and secondary loss risks, shall be retained by Ceder in reduction of losses paid on its primary loss risk.

In addition to said right of subrogation, which is secured to Ceder by the conditions of its policy or policies described herein, Ceder will retain all the rights secured to it thereby unaffected by this Agreement and the reinsurance effected hereunder. In the event, however, of the temporary or permanent discontinuance of business by Ceder, or if the Ceder is adjudged a bankrupt, or if the Ceder fails to proceed to recoup any loss or losses paid as aforesaid, the Reinsurers shall be and they hereby are subrogated to all rights of Ceder, to recoup any losses paid by them hereunder.

#### **6. Rights of Insured Not Prejudiced**

Nothing herein contained shall be construed as prejudicing the rights of the insured or insureds under said policy or policies of title insurance or conferred upon such insured or insureds under this Agreement, and this Agreement shall not be amended, modified or cancelled without the written consent of such insured or insureds.

#### **7. Notices. Where Sent**

All notices given hereunder shall be addressed to the party to receive such notice at its principal office.