

## ESCROW AND INDEMNITY AGREEMENT

Policy Number \_\_\_\_\_

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between MISSISSIPPI VALLEY TITLE INSURANCE COMPANY and OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, P. O. Box 2901, Madison, MS, 39130-2901, (herein-Company), and \_\_\_\_\_ (herein-Applicant), upon the terms and conditions expressed:

1. **PURPOSE:** The purpose of this agreement is to provide an escrow fund and indemnification to the Company in consideration of Company issuing its mortgagee's and/or owner's title insurance policy(s) in the amount of \$ \_\_\_\_\_ to \_\_\_\_\_ and each successor in ownership of the property or any indebtedness thereon free and clear of certain liens and exceptions with regard to the underwriting problems described below and to define the rights and obligations of the parties with regard to the escrow funds and indemnification.
2. **PROPERTY:** Applicant is the owner of or proposes to acquire title to certain real properties situated in \_\_\_\_\_ County, State of \_\_\_\_\_ more particularly described in Exhibit "A" hereto.
3. **PROBLEM:** Company is unwilling to insure title without exception as to possible loss under said policy because of certain underwriting problems, (herein the underwriting problems), to wit:
  
4. **TITLE INSURANCE POLICY(S):** In consideration of the escrow fund and indemnity, Company hereby agrees to issue, in accordance with the established underwriting procedure of the Company, its mortgagee's and/or owner's policy of title insurance as described above either insuring over or without exception to the underwriting problems. Upon receipt of the escrow funds and this Agreement, proper application, and payment of premium, Company agrees to issue such title insurance policy(s) written by Company upon the standard ALTA title insurance policy form then in effect; except however, no mortgagee's and/or owner's title insurance policy shall provide coverage against unmarketability of the estate insured where such question of marketability arises because of the underwriting problems.
5. **ESCROW FUND:** In order to secure Company against loss by reason by the underwriting problems, applicant shall deliver the sum of \$ \_\_\_\_\_ to Company in escrow. Company shall have the right to deposit said sum with any federally insured bank or savings institution in an interest bearing account. As compensation for handling such accounts, Company shall be paid an escrow fee of the greater of \$100.00 or 5% of the principle of the escrow fund. Such fee shall be paid for each year or part thereof during the life of this agreement. Company may at any time withdraw the funds from deposit to use in payment of loss, cost, or expense in connection with the underwriting problems.
6. **AFFIRMATIVE ACTION:** In the event Company, in its sole discretion, determines that it is desirable or necessary to institute or defend legal proceedings concerning the underwriting problems, the applicant agrees to institute or defend such action within fifteen (15) days (or if any deadline is imposed by any Court in litigation within the time limit of such limitation) from the date of notice by the Company. If applicant fails to take such action after notice, Company may institute such action and use the escrow funds to pay the cost of such action.
7. **USE OF ESCROW FUNDS:** The escrow funds may be used by Company to pay or reimburse itself for any loss, cost or expense to the Company under its policy(s) by reason of the underwriting problems. For

purposes of this Agreement, loss, cost or expense shall include, but shall not be limited to amounts used to pay judgment or settlement claims, the cost of any law suit or litigation, including without limitation, cost of Court, attorneys and witness fees and necessary incidental expense, Company has the sole authority, without the consent of the applicant, to pay such loss based upon the underwriting problems including the following: (i) a claim by Company's insured, which the Company, in its sole judgment, deems to be a valid claim, (ii) or to pay judgment obtained in any suit by or against Company or its insured and to pay any cost, loss or expense as defined above which occurs by reason of the underwriting problems or the cost of any suit to determine the rights of the parties to this Escrow and Indemnity Agreement, including attorneys fees, cost of Court, witness fees and reasonable necessary incidental expense.

- 8. **INDEMNITY:** In addition to the escrow fund, applicant does hereby indemnify and hold Company harmless of any and all claims arising with respect to the underwriting problems and does further agree to indemnify Company against any claims or suits brought directly against the Company as a result of holding said escrow funds or the issuance of its title insurance policy(s), insofar as said claims arise from the underwriting problems. Applicant obligates itself to pay any loss or expense incurred over and above the amount of the escrow funds, including judgment which may result against Company as a result of the underwriting problems, including the cost of said judgment, cost of Court and other defense costs, including, but not limited to, Company attorney's fees, witness fees, Court costs, and other reasonable incidental expense.
- 9. **TERMINATION:** The indemnity shall continue in existence until, (i) it is terminated in writing by agreement of the parties; or (ii) until such time as the underwriting problems have been resolved favorable to Company or its insured by a final judgment, without right of appeal, in a Court of competent jurisdiction or, (iii) unless terminated by reason of the above, until \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.
- 10. **NOTICES:** Notice as required by this agreement shall be sent by Certified or Registered United States Mail, return-receipt requested, postage prepaid to the address set forth above or at such other places as the parties hereto may designate in writing.
- 11. **MISCELLANEOUS:** This agreement incorporates the entire agreement between the parties and no modification thereof shall be binding unless the same is in writing and executed by the parties hereto. This agreement is binding upon the respective heirs, successors and assigns of all parties hereto and shall be construed according to the laws of the State of Mississippi.

EXECUTED in multiple originals at \_\_\_\_\_, State of \_\_\_\_\_, on the day and year herein mentioned.

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY and  
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

BY: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Applicant (Print Name)

\_\_\_\_\_  
Applicant Signature

**NOTE: COMPANY SHALL HAVE NO RESPONSIBILITY TO MAKE THE DEPOSIT CONTEMPLATED BY THIS AGREEMENT NOR SHALL IT HAVE ANY LIABILITY FOR LOSS OF INTEREST THAT COULD BE EARNED UNTIL SUCH TIME AS IT HAS BEEN FURNISHED WITH PROPERLY EXECUTED INTERNAL REVENUE SERVICE FORM W9, A COPY OF WHICH IS ATTACHED HERETO.**