

*Handwritten initials and scribbles*

*15:17:47M*

**Recorded By TICOR TITLE**

**STATUTORY WARRANTY DEED**

DATED: November 8, 1995

SEND TAX STATEMENTS TO:

NO CHANGE

AFTER RECORDING RETURN TO:

City of Sherwood  
90 N.W. Park  
Sherwood, OR 97140

STATE OF OREGON

County of Washington

95

I, Jerry B. Hermon, Director of Assessment and Auction and Washington County Clerk for 1995, do hereby certify that the within instrument is a true and correct and recorded copy of the records of said county.



Doc : 95085732

Rect: 154491

28.00

11/21/1995 10:04:57AM

**BETWEEN:**

David K. Coster and  
Charlene A. Coster  
1290 NW Meinecke Road  
Sherwood, OR 97140

and

City of Sherwood, an Oregon  
municipal corporation  
90 N.W. Park  
Sherwood, OR 97140

Grantor

Grantee

THE TRUE AND ACTUAL CONSIDERATION IS \$3,900.00.

DAVID K. COSTER and CHARLENE A. COSTER, husband and wife, Grantor, conveys and warrants to CITY OF SHERWOOD, an Oregon municipal corporation, Grantee, the following described real property free of encumbrances except as specifically set forth herein situated in Washington County, Oregon, to-wit:

A tract of land for roadway purposes located in Northeast 1/4 of Section 31, Township 2 South, Range 1 West of the Willamette Meridian, City of Sherwood, Washington County, Oregon, being more particularly described as follows:

1 - STATUTORY WARRANTY DEED

(/sr/sherwood.deed)

*1-4*

Beginning at the Southwest corner of that certain tract of land conveyed to David and Charlene Coster, by deed recorded March 18, 1992, Fee Number 92017418, which point is South 89°18' West 1,116.72 feet and South 660.00 feet and South 89°18' West 396.00 feet from the Northeast corner of said Section 31, said point also being on the East line of a tract of land conveyed to W. S. Bowen, et ux, by deed recorded January 11, 1946, in Book 253, Page 569; thence along the West line of said Coster tract, North 20.00 feet to the Northerly right-of-way of Meinecke Road and the TRUE POINT OF BEGINNING; thence from said TRUE POINT OF BEGINNING, continuing along the west line of said Coster tract, 15.00 feet; thence leaving said West line, North 89°18' East parallel to said Northerly right-of-way line, 102.00 feet to a point on the East line of said Coster tract thence along said East line, South 15.00 feet to a point on said Northerly right-of-way line; thence along said Northerly right-of-way line, South 89°18' West 102.00 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH any portion of said tract of land conveyed to David and Charlene Coster by deed recorded as Fee Number 92017418 lying South of the above described strip, it being Grantor's intention to convey said strip and any part of Grantor's tract lying South of said strip or lying within the existing right-of-way of Meinecke Road.

The property is free from encumbrances except rights of the public in and to that portion lying within streets, roads and highways.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND

2 - STATUTORY WARRANTY DEED (sr/sherwood.deed)

*Ken  
Bauer  
846  
3403*

*2*

WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

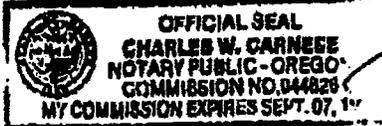
Dated this 8 day of Nov, 1995.

*David K. Coster*  
David K. Coster

*Charlene A. Coster*  
Charlene A. Coster

STATE OF OREGON )  
County of Washington ) ss.

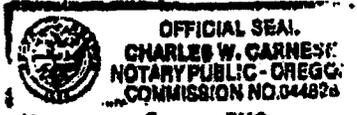
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 1995, by David K. Coster.



*Charles W. Carnese*  
Notary Public for Oregon  
My Commission Expires: 9/7/97

STATE OF OREGON )  
County of Washington ) ss.

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of Nov, 1995, by Charlene A. Coster.



*Charles W. Carnese*  
Notary Public for Oregon  
My Commission Expires: 9/7/97

Fleet Mortgage Corp. INC  
F/K/A Fleet Real Estate Funding Corp., as assignee of that certain Deed of Trust executed by David K. Coster and Charlene A. Coster, husband and wife, dated March 17, 1992, and recorded March 19, 1992, as Recorder's Fee No. 92017419, wherein Chicago Title Co. was trustee and West One Bank, Oregon S.B. was beneficiary, and said assignment having been recorded May 15, 1992, Recorder's Fee No. 92033296, joins in this conveyance solely for the purpose of releasing the strip of land conveyed hereby for right-of-way purposes, from the lien and in compliance of said deed of trust. Only said described strip of land is released and the remainder of

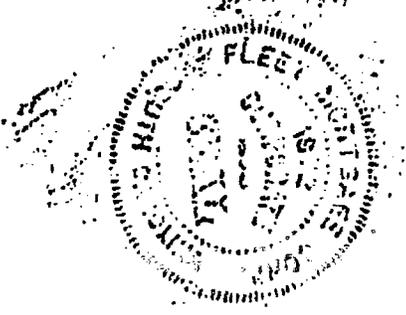
3 - STATUTORY WARRANTY DEED (/ar/sherwood.deed)

Grantor's premises remains subject to the terms and provisions of the deed of trust.

Fleet Mortgage Corp. Inc. F/K/A  
FLEET REAL ESTATE FUNDING CORP.

By: *Joan Weerts*

Title: Vice President - Joan Weerts



Recorded Document

1995-085732

Warranty Deed for Road Section  
31, T2 South, R1W, David Coster  
to City  
Reference pages

Not a part of record. For reference use only.

## Chris Wiley

---

**From:** Chris Wiley  
**Sent:** Thursday, February 08, 2001 11:30 AM  
**To:** Nicki Colliander  
**Subject:** RE: Recorded docs

We have the document on file. One of us will drop it in your mailbox this afternoon.

-----Original Message-----

**From:** Nicki Colliander  
**Sent:** Wednesday, February 07, 2001 4:02 PM  
**To:** Chris Wiley  
**Subject:** Recorded docs

Chris,

I am looking for an original recorded document number 95085732 dated 11-21-95 in the name of David and Charlene Coster.

This was recorded but not accepted by the City through signature and needs rerecording. Crossing my fingers we have the original. Makes life a lot easier if I can get the original and have rerecorded.

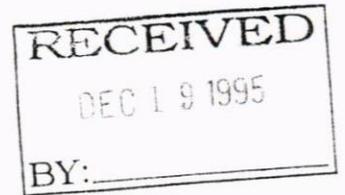
Thanks for your help.

*Nicki Colliander*  
*Engineering Coordinator*  
City of Sherwood  
20 NW Washington St.  
Sherwood, OR. 97140  
503-625-4215  
Fax: 503-625-0679  
colliann@sherwood.or.us

*Original to Nikki*

 **TICOR TITLE INSURANCE**

1629 SW SALMON  
PORTLAND, OREGON 97205  
(503) 224-0550



CITY OF SHERWOOD  
90 NW PARK  
SHERWOOD, OR 97140

*I HAVE NO  
IDEA  
JB*

Re: Policy No. W637159  
1290 NW Meinecke Road  
Sherwood, Oregon 97140  
Coster to City of Sherwood

Thank you for allowing Ticor Title Insurance Company to be of service and to provide you with Title Insurance (policy enclosed).

We are happy to offer you not only good service and a friendly staff, but also an additional savings of up to 20% if the property is sold or refinanced within the next three years.

We hope you will allow us to be of service to you in the near future.

Yours very truly,

Ticor Title Insurance  
Reva E. Butler  
Senior Title Officer

Enclosure

**KEEP THIS POLICY IN A SAFE PLACE**

For faster service on future sales or loans on your property  
present this slip to your broker or loan company showing:

**TICOR TITLE INSURANCE**

Policy No. W637159

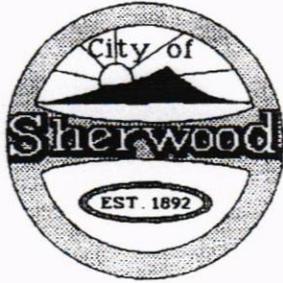
We appreciate your business and will continue giving  
you the best service possible.



**TICOR  
TITLE INSURANCE**

1629 S.W. Salmon Street  
Portland, Oregon 97205-1787

Phone (503) 224-0550



November 20, 1995

12-20-  
Fu  
\_\_\_\_\_

TO: Meinecke Road Right-of-Way File

FROM: Jon Bormet, City Manager 

I received a note from Polly, today, along with a check in the amount of \$4,968, which I am told was to be provided to Ticor Title for the purchase of the Meinecke Road right-of-way.

Since I didn't know anything about the Meinecke Road right-of-way, (Larry Cole didn't tell me anything about it), I contacted City Attorney Derryck Dittman. Mr. Dittman stated that he had reviewed the closing documents, and that they were in order. He stated that I should go ahead and sign them, and render the check to Ticor Title for the Meinecke right-of-way acquisition.

 **TICOR TITLE INSURANCE**

7587 S.W. MOHAWK ST.  
TUALATIN, OREGON 97062  
(503) 692-1555

November 21, 1995

CITY OF SHERWOOD  
90 NW PARK  
SHERWOOD, OR 97140

Re: Escrow Number W637159-LI  
Coster to City of Sherwood  
1290 NW Meinecke Road  
Sherwood, Oregon 97140

Enclosed please find your Final Settlement Statement for the above referenced transaction. Any other documents to which you are entitled will follow.

Please call if you have any questions or if we can assist you in the future.

Sincerely,

TICOR TITLE INSURANCE COMPANY

  
LAUREL LINDA  
ESCROW OFFICER

SMM

BUY. SETTLEMENT STATEMENT

FILE NO. W637159

ESCROW OFFICER: LAUREL INDA

BUYER: CITY OF SHERWOOD  
90 NW PARK  
SHERWOOD OR 97140

SELLER: DAVID K. COSTER CHARLENE A. COSTER  
1290 NW MEINECKE RD.  
SHERWOOD OR 97140

PROPERTY: 1290 NW Meinecke Road Sherwood Oregon 97140

SETTLEMENT DATE: 11-21-95 PRORATION DATE: SALE PRICE: 3,900.00

=====

	DEBIT	CREDIT
SALE PRICE.....	3,900.00	
DEPOSIT(S) IN ESCROW.....		4,968.00
FLEET MORTGAGE DOCUMENT REVIEW FEE.....	100.00	
ESCROW FEES.....	150.00	
to TICOR TITLE INSURANCE		
CITY LIEN SEARCH FEE.....	20.00	
to TICOR TITLE INSURANCE		
OWNER'S/PURCHASER'S POLICY.....	150.00	
to TICOR TITLE INSURANCE COMPANY		
RECORDING DEED.....	48.00	
ATTORNEY FEES.....	600.00	
to CHARLES W. CARNESE, P.C.		
	-----	
GROSS DUE FROM BUYER.....	4,968.00	
		-----
TOTAL PAID BY/FOR BUYER.....		4,968.00
		-----
GROSS DUE FROM BUYER.....		4,968.00
TOTAL PAID BY/FOR BUYER.....		4,968.00
		=====

WE CERTIFY THAT WE HAVE DELIVERED COPIES OF THE APPLICABLE ESCROW ACCOUNT STATEMENTS TO THE ABOVE PARTIES.

*Laurel Inda*

SCHEDULE A

AMOUNT: \$3,900.00  
PREMIUM: \$150.00

DATE: November 21, 1995  
At: 10:04 A.M.  
POLICY NUMBER: W637159

1: NAME OF INSURED:

CITY OF SHERWOOD,  
an Oregon municipal corporation

2. THE ESTATE OR INTEREST IN THE LAND WHICH IS COVERED BY THIS POLICY IS:

Fee

3. TITLE TO THE ESTATE OR INTEREST IN THE LAND IS VESTED IN:

CITY OF SHERWOOD,  
an Oregon municipal corporation

4. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS FOLLOWS:

A tract of land for roadway purposes located in Northeast one-quarter of Section 31, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Sherwood, County of Washington and State of Oregon, being more particularly described as follows:

Beginning at the Southwest corner of that certain tract of land conveyed to David and Charlene Coster, by deed recorded March 18, 1992, Fee No. 92017418, which point is South 89° 18' West 1116.72 feet and South 660.00 feet and South 89° 18' West 396.00 feet from the Northeast corner of said Section 31, said point also being on the East line of a tract of land conveyed to W.S. Bowen, et ux, by Deed recorded January 11, 1946 in Book 253 page 569; thence along the West line of said Coster tract, North 20.00 feet to the Northerly right of way of Meinecke Road and the true point of beginning; thence from said true point of beginning, continuing along the West line of said Coster tract, 15.00 feet; thence leaving said West line North 89° 18' East parallel to said Northerly right of way line, 102.00 feet to a point on the East line of said Coster tract; thence along said East line, South 15.00 feet to a point on said Northerly right of way line; thence along said Northerly right of way line, South 89° 18' West 102.00 feet to the true point of beginning.

TOGETHER WITH any portion of said tract of land conveyed to David and Charlene Coster by Deed recorded as Fee No. 92017418 lying South of the above described strip, it being Grantor's intention to convey said strip and any part of Grantor's tract lying South of said strip or lying within the existing right of way of Meinecke Road. -----

CONTINUED

## S C H E D U L E B

## EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fees or expenses) which arise by reason of:

## GENERAL EXCEPTIONS:

1. a. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- b. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. a. Easements, liens, encumbrances, interests or claims thereof which are not shown by the public records.
- b. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
4. a. Unpatented mining claims;
- b. Reservations or exceptions in patents or in Acts authorizing the issuance thereof;
- c. Water rights, claims or title to water; whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
5. Any lien or right to a lien, for services, labor or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Rights of the public in and to that portion lying within streets, roads and highways.
7. Agreement, including the terms and provisions thereof,  
 Between: David K. and Charlene A. Coster  
 And: Eugene C. and Carole M. Nemish, husband and wife  
 Dated: September 29, 1995  
 Recorded: October 23, 1995  
 Fee: 95077100  
 Records of Washington County, Oregon.-----



# TICOR TITLE INSURANCE

## Policy of Title Insurance

American Land  
Title Association  
Owner's Policy  
(10-17-92)

**SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, TICOR TITLE INSURANCE COMPANY**, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title.
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

This policy shall not be valid or binding until countersigned below by an authorized signatory of the Company.

TICOR TITLE INSURANCE COMPANY

Issued by:  
TICOR TITLE INSURANCE COMPANY  
1629 S.W. SALMON STREET  
PORTLAND, OREGON 97205-1787  
(503) 224-0550

By



President

Attest



Secretary

  
\_\_\_\_\_  
Authorized Signatory

## Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

## Conditions and Stipulations

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, or in Schedule C if not provided for in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in the applicable Schedule, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. Defects, liens, encumbrances, adverse claims or other matters:

- (a) created, suffered, assumed or agreed to by the insured claimant;
- (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
- (c) resulting in no loss or damage to the insured claimant;
- (d) attaching or created subsequent to Date of Policy; or
- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
  - (a) to timely record the instrument of transfer; or
  - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever

requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

### 5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

#### (a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

#### (b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

## 7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

## 8. APPORTIONMENT

If the land described in applicable Schedule consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

## 9. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

## 11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

## 12. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. SUBROGATION UPON PAYMENT OR SETTLEMENT**

**(a) The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(b) The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

**14. ARBITRATION**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All

arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

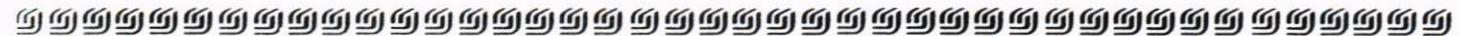
(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**16. SEVERABILITY**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**17. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Ticor Title Insurance Company, Claims Department, P.O. Box 2233, Los Angeles, California 90051.



**TICOR TITLE INSURANCE**

**Policy  
of  
Title  
Insurance**

**Ticor Title Insurance Company**