

**BLANK TITLE INSURANCE COMPANY****TIRSA OPTION ENDORSEMENT**

Attached to and made a part of Policy Number \_\_\_\_\_

The Policy hereby insures that \_\_\_\_\_ (the Insured) has a valid and enforceable interest as Optionee under an option to purchase (the "Option") the land or other interest therein (the "Land") contained in the Lease or other Agreement (the "Agreement") dated \_\_\_\_\_ made between \_\_\_\_\_ (the "Optionor") and the Insured (which Agreement or a memorandum thereof is to be recorded in the County in which the Land is located) and

Policy further insures against loss or damage incurred by the Insured following exercise of the Option by reason of:

- (a) the unenforceability of the right to receive an instrument of conveyance under the Agreement except to the extent that such unenforceability is based on the failure of the Insured to have fulfilled the terms, conditions and provisions of the Agreement by reason of other than a matter insured against under the Policy and any endorsements thereto;
- (b) the refusal of a trustee or a debtor in possession, in the event of a bankruptcy of the Optionor, or the then record title owner, following exercise of the Option, to issue an instrument of conveyance under the terms of the Agreement unless the Insured is not in possession of the Land, within the meaning of the Bankruptcy Code;
- (c) the inability of the Insured at the time when payment of the balance of the purchase price under the Agreement is due to obtain title to the Land free of adverse interests, liens or encumbrances except as provided for in the Policy and any endorsements thereto.

For the purpose of the coverages provided under this endorsement, paragraph 8(a) of the Conditions of the Policy is amended to read as follows:

- (a) The liability of the Company under this endorsement shall not exceed the least of:
  - (i) \$ \_\_\_\_\_; or
  - (ii) the sum of:
    - (A) the excess of the fair market value of the Land (less the actual cost of the buildings and improvements on the Land made by the Insured and related costs addressed in paragraph (D) below) at the time when payment of the balance of the purchase price for the Land under the Agreement is due above the price at which the Insured could have acquired the Land under the terms of the Agreement, but in no event shall the amount under this paragraph (A) be a negative number; and
    - (B) the unreimbursed portion of the consideration paid by the Insured for the Option and on account of the purchase price for the Land under the Agreement; and
    - (C) the actual cost of the construction of buildings and improvements on the Land made by the Insured under the terms of the Agreement; and
    - (D) actual costs directly related to the acquisition of the Land and to the construction of the buildings and improvements on the Land, which related costs include, and are limited to, reasonable legal fees and other expenses incurred in obtaining building and occupancy permits; architectural, engineering and construction management fees; environmental testing and review; landscaping; and interest on loans for construction of the buildings and improvements.

Liability under paragraph 8(a)(ii)(B), (C) and (D) above is limited to amounts paid and costs incurred prior to the Insured having actual or constructive notice of any defect in or objection to title arising after the policy date or any redate thereof ("Date of Policy"), but in no event shall the Company be liable for an amount greater than as set forth in paragraph 8(a) of the Conditions of the Policy, as amended above, and costs which the Company is obligated under the Conditions thereof to pay. At the request of the Insured, title may be continued down to the date on which a payment is made or costs are incurred. The Company shall then furnish in writing to the Insured a continuation report updating and redating the Date of Policy which shall set forth any changes in the ownership of the Land, any notices, liens or encumbrances affecting the Land filed or recorded in the Public Records, and real estate taxes, assessments, water charges and sewer rents against the Land which are unpaid. Each continuation report shall not impair the insurance afforded under the Policy prior thereto.

This endorsement does not insure against loss or damage by reason of:

- (1) real estate taxes, assessments, water charges and sewer rents becoming a lien after Date of Policy;
- (2) any statutory lien for services, labor or materials filed after Date of Policy;
- (3) federal tax liens and other federal liens filed after Date of Policy;
- (4) liens of the State of New York or any of its political subdivisions filed or first affecting title subsequent to Date of Policy which by law obtain priority over the interest insured hereunder;
- (5) liens and encumbrances, other than as set forth in items (1) through (4) above, arising subsequent to Date of Policy but prior to the exercise of the Option;
- (6) any change in the state of facts that an accurate survey would disclose since the date of the last survey reading;
- (7) the effect of any change in federal, state or applicable municipal law subsequent to the original Date of Policy without redate;
- (8) possible imposition of mortgage recording tax pursuant to Article 11 of the Tax Law of the State of New York if the Insured has entered into or is entitled to possession of the Land;
- (9) attorneys' fees and expenses incurred in connection with any action or proceeding to enforce the Option or to secure a final court order or judgment which determines the persons entitled to receive payment from the Insured, to secure releases from other persons having an interest in, or lien or encumbrance on, the title to the Land, or to secure instruments of conveyance, except those attorneys' fees and expenses incurred to defend an attack on the validity or enforceability of the Option; or
- (10) the consequences of the failure to comply with the notice provisions of Real Property Law Section 294 subdivision (7).

This endorsement is made a part of the Policy and is subject to and does not modify the Exclusions From Coverage, the Exceptions From Coverage contained in Schedule B and the Conditions thereof and any other endorsements thereto. The insurance contained herein shall cease and terminate upon the earlier to occur of (i) delivery of title to the Insured by an instrument of conveyance or (ii) the release or termination (by lapse of time or otherwise) of the Option.

[FORM OF VALIDATING LANGUAGE AT COMPANY OPTION]

**DATED:**

**BLANK TITLE INSURANCE COMPANY**

TIRSA OPTION ENDORSEMENT (5/1/07)