

Title and Survey Guidelines

Presented by:

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A. TITLE INSURANCE/SURVEY TYPES

1. Introduction

Title insurance is an essential component of any real estate transaction. Every purchaser and lender should review the status of title and a proper survey of the property to be purchased before making the decision to purchase or in the case of a lender, the decision to finance the purchase.

2. What is Title Insurance?

Title insurance is an indemnity contract providing insurance to the insured to pay the costs of a resulting loss if any interest adverse to the interest of the record owner is not reflected in the policy. The title insurance company promises to defend the title against adverse claims, subject to the provisions of the title insurance policy. **NOTE:** title insurance is not an absolute guarantee as to the status of title; rather, title insurance provides that in the event of loss of possession or other loss, the insured will receive money damages measured by the amount of actual loss or damage sustained, and limited to the face amount of the policy. The title insurance company will also pay the costs, including attorneys' fees, incurred in defending title to the extent provided in the Conditions and Stipulations in the policy.

3. History of Title Insurance in the United States

Title insurance did not exist in the United States prior to 1874. The only assurance a purchaser of real property could obtain regarding the status of title was the opinion of an attorney given based on an abstract of title. If the opinion or abstract was in error the purchaser could maintain an action against the attorney or the abstracter for damages, only if the attorney was negligent in the discharge of his duties. Following an 1868 decision of the Pennsylvania Supreme Court, *Watson v. Muirhead*, the Pennsylvania legislature enacted the first title insurance

statute in the United States, and in Philadelphia in 1876, the first title insurance policy was issued.

4. The American Land Title Association

The American Land Title Association (“ALTA”), founded in 1907, is the national trade association and voice of the abstract and title insurance industry.

ALTA is responsible for the forms upon which nearly all title insurance is written in the United States. These forms provide a great deal of uniformity and they require minimal alteration. By having a standard form for each transaction necessary to a title insurance policy, the system of land exchange remains remarkably smooth throughout the country. There are six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential (plain language), and Construction Loan policies. Additionally, a special policy has been designed for use by the United States Government in its purchases and condemnations.

Major revisions of the ALTA policy forms are made every few years, usually as a result of either a lender’s request, a perceived ambiguity in existing language, or as an answer to a court whose decision interpreted a policy in a different manner than deemed proper within the title industry.

5. The Title Insurance Commitment

The title commitment is the initial document issued by the title company that sets out the company’s conclusions as to the status of the title. The commitment also states the terms on which the insurer will issue the final policy. The seller usually provides a title commitment to the purchaser within ten days of the execution of the purchase agreement. The title commitment will reveal to the purchaser if there are title issues that need to be corrected before purchase and if there are title issues that the purchaser may want to get additional title insurance to cover.

The commitment consists of (1) a pre-printed cover, (2) Conditions and Stipulations of the contract between the underwriter and the customer, (3) Schedules A and B exceptions, and (4) all relevant attachments, such as easement maps or surveys.

(a) Schedule A

Schedule A of the commitment sets forth basic information such as:

- The effective date of the commitment
- The estate or interest covered by the commitment
- The name of the vestee of the estate or interest
- A description of the land referred to in the commitment
- The name of the proposed insured
- The type and amount of each policy to be insured
- The title company's file number

(b) Schedule B

Perhaps the most important component of the title commitment, Schedule B lists all exceptions to coverage under the policy. Exceptions are of two (2) types: general and special.

General exceptions usually appear on all commitments. There five standard general exceptions:

1. rights or claims of parties in possession not shown by the public records;
2. encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises;
3. Easements, or claim of easements, not shown by the public records;
4. Any liens, or right to a lien, for services, labor, or material not shown by the public records; and
5. Matters first occurring after the effective date of the policy and prior to the creation of the interest to be insured.

Special Exceptions typically include items which must be addressed and corrected by the buyer before issuance of the policy, or else the policy will exclude coverage of the items.

Special exceptions often include:

- unpaid taxes or assessments
- existing mortgages
- adverse claims
- defects in description or vesting of title
- defective access or lack of access to property
- any other judgments, liens, easements, restrictions, covenants, conditions, or other encumbrances unique to the property

A sample title commitment is included within the Appendix at Exhibit A.

6. The Title Insurance Policy

The title insurance policy insures estates of ownership and possession against loss or damage due to:

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

A title insurance policy will cover matters that occurred before the effective date of the policy, insuring the lender against damages that may result from unknown defects that stained the title prior to the policy's start date. For example, the title insurance policy could cover losses due to another unknown creditor's priority.

With insurance of title, the insurance policy fixes a maximum amount of coverage for liability on a flawed title. Title policies will automatically insure the lender against later damages that arise due to *unknown* title defects. Unknown defects may include liens or encumbrances recorded during the gap in time between when a document is recorded and when title records get certified. Other examples of unknown defects are forged mortgage satisfaction documents or deeds in the chain of title. In addition to such unknown risks, title insurance companies are often also willing to accept *known* risks. For example, a title insurance company is often willing to provide coverage on a title with a known defect such as a small judgment. The insurance company knows that it will only have to sustain insurable loss in the event of a foreclosure, which is relatively uncommon. An uninsured lender, however, would not be likely to assume the known business risk so freely.

Liability under an owner's policy continues as long as the insured either has an insurable interest or has liability under any conveyance given. Protection under the owner's policy is subject to certain "Exclusions from Coverage" which are pre-printed on the inside front cover of the policy, including:

- Laws or ordinances restricting the use of the land.
- Governmental rights of the police power or of eminent domain.
- Defects created by the insured or known to the insured and not the insurer.
- Defects attaching subsequent to the date of the policy, or loss which would not have been suffered if the insured had paid value for the property.
- Certain claims arising out of the operation of certain creditors' rights laws.

The final title insurance policy is typically issued in one of the uniform policy forms adopted by ALTA. These forms are:

- ALTA commitment

- Standard owner's policy
- Standard loan policy
- Extended loan policy
- Owner's policy

A sample loan policy is included within the Appendix at Exhibit B.

7. Survey Issues

(a) The Use of Surveys in Real Estate Transactions

A mortgage and a security agreement must contain a legal description of the real estate that secures the commercial loan. Title insurance also includes a legal description of the land. A survey, however, provides a different kind of insurance. A survey can confirm that the legal description appearing in the mortgage and title commitment accurately depict the actual property of the transaction. A survey can also provide a detailed account of the conditions that exist on the property that a legal description cannot reveal.

The survey will address the most basic of issues, such as boundary lines. The boundary line survey assures the lender that the structures securing their transactions are actually on the borrower's property. The survey will also assist in understanding how various easements affect the property. For instance, the title commitment may reveal the existence of a utility easement or access easement, but the survey provides further clarification by showing where these easements exist and how they interact with property boundaries, streets and other improvements.

The survey will also address more complicated issues, such as the conditions that exist on the property. With larger structures and properties, the lender or purchaser will benefit from the survey's visual depiction of how municipal codes or ordinances have placed conditions on the real estate. For example, the survey may be able to reveal conditions on setbacks, parking

spaces, or utilities more accurately and clearly than a legal, textual description. Other conditions that are important to be aware of are the existence and location of any easements or riparian interests on the property. The surveyor should draw attention to all such conditions.

Once the survey is complete, the lender or purchaser should have their attorney compare the survey with the legal description of the property. Specifically, the attorneys should look for any ambiguous or erroneous legal descriptions. The attorney will also want to assess whether there are any conditions that may prevent the buyer from conducting their intended business. The diligent lawyer should also become aware of any prior surveys on the real estate, and check to see whether prior surveys conflict with the present survey.

While a survey may be relied upon even if it contains errors, there is a two-year statute of limitations on survey errors, except if fraud is involved. Minn. Stat. § 541.052. Attorneys will also want to maintain the survey certification by keeping it up to date and accurate, and call the insurance company and/or surveyor to update or recertify the survey as needed.

(b) ALTA Land Survey Standards

The American Land Title Association (“ALTA”) has developed a minimum set of standards for boundary surveys. The most recent standards were adopted effective January 1, 2006. The ALTA standards include requirements for both the content and the accuracy of the survey. Therefore, if an ALTA survey was done, a title insurance company will generally remove the standard survey exception, “encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises” (see above section The Title Insurance Commitment, Schedule B) from the title policy. Most of the better surveyors will generally follow the ALTA standards in their surveying, but you must still request an “ALTA Survey” to ensure that you will get one.

An ALTA survey should conform to all elements required by the ALTA Survey Standards, as well as any optional “Table A” items that were requested to be included in the survey. The survey must also be in the form required by the ALTA standards, or any other form required by the parties. The survey should also be addressed to all required parties, be signed by the surveyor, and should reference the current title commitment.

B. BORROWER ENTITY ISSUES

When lending to a borrower entity, such as a corporation or a limited liability partnership, it is important that the lender verify the entity’s existence and that it has been duly formed.

The lender should request the entity’s certificate of good standing or certificate of registration from the Secretary of State’s office. The lender should also request that the borrower provide the organizational documents of the entity. In particular, the lender should check the Resolutions to ensure that the person signing on behalf of the entity has the authority to do so.

C. TITLE ENDORSEMENTS

1. Introduction

Endorsements are added to title insurance policies for a variety of reasons. They may be added for routine corrections, such as to change spelling or correct typos in the policy. Endorsements may also be pre-printed forms, called standard endorsements, which address specific issues or provide certain coverages. Endorsements are typically requested by insureds to provide them with additional title protection.

2. Standard Endorsements

There are twelve standard endorsements – referred to by their ALTA number (1-12) – consisting of:

1. Street Assessments – provides specific coverage against liens for street improvements completed or under construction as of the date of the policy and not excepted in Schedule B
2. Truth in Lending – provides coverage to mortgage lenders who are concerned by the right of rescission given to a borrower under TILA; does not guarantee that lender did not violate the law but insures against termination of the insured mortgage lien or loss of title to the security resulting from the right of the borrower to rescind
3. Zoning – 3 is for land with construction taking place; 3.1 is for land with buildings; insures against forced removal of buildings in order to comply with zoning ordinances
4. Condominium – provides coverage against failures to comply with condominium statutes and present violations of restrictive covenants
5. Planned Unit Development (PUD) – applies to fee simple interests in townhouses, patio homes, or single-family residences with an appurtenant easement over common elements or an undivided interest as co-tenants in common elements. Provides coverage against present violations of any restrictive covenants, priority of any lien for charges and assessments, the enforced removal of any existing structure on the land, and the failure of title by reason of a right of first refusal to purchase the land which was exercised at the date of the policy
6. Variable Rate Mortgage Endorsements – insures lenders with variable rate mortgages who are concerned about challenges to the priority of their mortgage liens
7. Manufactured Housing Unit Endorsement – insures that a manufactured housing unit is actually located on the land purchased or financed
8. Environmental Protection Lien Endorsement – provides assurances that there are no environmental liens filed in the local records
9. Restrictions, Encroachments, Minerals Endorsement – insures against any present violations or notices of violations of any enforceable covenants, conditions, or restrictions; any instruments containing covenants, conditions, or restrictions; encroachments; and damage to buildings constructed on the land resulting from the future exercise of any right to surface mine the land for the extraction of minerals
10. Assignments – extends coverage of the named insured to that of an assignee and insures against the failure of the assignment to vest title in the assignee

11. Modification of Mortgage – insures against the invalidity or unenforceability of the lien of the insured mortgage as a result of a mortgage modification and the lack of priority of the lien of the insured mortgage

12. Aggregation or “Tie-In” Endorsement – provides assurance that two or more title insurance policies are issued in conjunction with one another

3. Non-Standard Endorsements

There are also many non-standard endorsements, depending on the characteristics of the individual property and the how much title insurance coverage the purchaser desires. With the increasing complexity of both the conveyancing and the financing of real estate transactions, there are more and more situations that require specific endorsements. ALTA has created various endorsements or groups of endorsements that include, but are not limited to, coverage for zoning, condominiums and planned unit developments, variable rate mortgages, residential environment liens, and special restriction, easement and mineral problems.

Examples of non-standard endorsements include:

- Access Endorsement – access to a specifically identified physically open street
- Survey Endorsement – land insured under policy is same as land shown on a specific survey
- Usury Endorsement – may be issued where the transaction falls within an exemption of Minnesota’s usury law
- Increased Coverage – guarantees that upon completion of improvements, coverage amount increases to value of property with improvements
- First Loss – allows the insured to recover up to the amount of its insured loss without pursuing other remedies against other collateral prior to tendering a claim (such as marshalling assets)
- Last Dollar Endorsement – requested when the amount insured under the policy is less than the amount stated to be secured by the mortgage (used when the lender holds other collateral as security for the loan)

Appendix

Exhibit A – Sample Title Commitment

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE

Issued by

Blank Title Insurance Company

Blank Title Insurance Company, a _____ corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate _____ (here state the time period)* after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Blank Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.**

BLANK TITLE INSURANCE COMPANY

BY: _____

PRESIDENT

Attest: _____

SECRETARY

Note:

*The time to be stated is optional with the company and should conform to local usage.

**If the Commitment is to be executed by a validating officer, then prior to the "In Witness Whereof" there should be inserted: "This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory." the manner of execution will conform to the company's practice and will of necessity require some modification in the language identifying the manner of execution. This is deemed a matter of format.

SCHEDULE A

1. Effective Date:
2. Policy or Policies to be issued: Amount
 - a. _____ Owner's Policy (Identify form used): \$ _____
Proposed Insured:
 - b. _____ Loan Policy (Identify form used): \$ _____
Proposed Insured:

(Note: The Company, in printing, should set forth and identify the form or forms of policies of title insurance to be used. If Commitment is printed showing more than one type of policy, the amount of the policy or policies should be completed and the box checked as to all forms proposed to be issued. The manner of setting up and identifying the policy or policies to be issued is a matter of format.)

3. The estate or interest in the land described or referred to in this Commitment is _____
(Identify estate covered, i.e. Fee, Leasehold, etc.)
4. Title to the _____ estate or interest in the land is at the Effective Date vested in:
5. The land referred to in this Commitment is described as follows:

*Items 3 and 4 may be combined or item 3 eliminated completely in instances where the estate to be covered has already been created and is the same as the estate reported on as of the Effective Date of the Commitment. If, however, the estate to be covered is less than a fee and has not yet been created and the estate reported on at the Effective Date of the Commitment is the fee, then it would be more appropriate to set forth both items 3 and 4 in the language suggested or in appropriate language, these being matters of format rather than substance.

SCHEDULE B*

1. Requirements:

(Note: Appropriate language should be inserted to set forth the requirements of the Company. In many areas, a subcaption may be used such as: "Instruments in insurable form which must be executed, delivered, and duly filed for record:")

2. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

Note: There should be set forth in paragraph numbered II of Schedule B all matters that would be shown in Schedule B of an Owner's Policy issued on the effective date of the Commitment, including those general exceptions such as rights of parties in possession, survey matters, etc., which in many instances are printed as part of Schedule B of the Policy. It is proper to note that an exception shown may be omitted from the Policy as outside of the coverage of the Policy to be issued, or for some other reason.

* In areas where it is not the custom for title companies to state requirements for insurance, the Commitment would be printed without paragraph numbered I of Schedule B and only paragraph numbered II would be shown as a caption for Schedule B.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this

Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules*
at <http://www.alta.org/>.

Appendix

Exhibit B – Sample Loan Policy

LOAN POLICY OF TITLE INSURANCE

Issued by

Blank Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN [SCHEDULE B](#), AND THE [CONDITIONS](#), BLANK TITLE INSURANCE COMPANY, a Blank corporation (the “Company”) insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title

- (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
- (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: PRESIDENT

BY: SECRETARY

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 that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
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 (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured

Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:

Loan No.:

Address Reference:

Amount of Insurance: \$ [Premium: \$]

Date of Policy: [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:

3. Title is vested in:

4. The Insured Mortgage and its assignments, if any, are described as follows:

5. The Land referred to in this policy is described as follows:

[6. This policy incorporates by reference those ALTA endorsements selected below:

- 4-06 (Condominium)
- 4.1-06
- 5-06 (Planned Unit Development)
- 5.1-06
- 6-06 (Variable Rate)
- 6.2-06 (Variable Rate--Negative Amortization)
- 8.1-06 (Environmental Protection Lien) Paragraph b refers to the following state statute(s):
- 9-06 (Restrictions, Encroachments, Minerals)
- 13.1-06 (Leasehold Loan)
- 14-06 (Future Advance-Priority)
- 14.1-06 (Future Advance-Knowledge)
- 14.3-06 (Future Advance-Reverse Mortgage)
- 22-06 (Location) The type of improvement is a _____, and the street address is as shown above.]

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II,] t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

[PART I

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;

- (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - (viii) the amounts to pay taxes and insurance; and
 - (ix) the reasonable amounts expended to prevent deterioration of improvements;
- but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

- (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
- (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
- (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
- (D) successors to an Insured by its conversion to another kind of Entity;
- (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
- (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value

without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

- (f) "Insured Claimant": An Insured claiming loss or damage.
- (g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (k) "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 Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (l) "Title": The estate or interest described in Schedule A.
- (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation 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 warranties in any transfer or conveyance of the Title. 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 obligation secured by a purchase money Mortgage given to the Insured.

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 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured

Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that 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.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, 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 covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters 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. It 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 that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, 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 to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right 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 securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter 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.

- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that 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 of these records in the custody or control of a third party that 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 any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. 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 or to Purchase the Indebtedness.
- (i) 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 that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- (ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (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. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that 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 that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (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.

8. DETERMINATION AND EXTENT OF LIABILITY

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.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
 - (i) the Amount of Insurance,
 - (ii) the Indebtedness,
 - (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
 - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.
- (d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

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 Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (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, adverse to the Title or to the lien of the Insured Mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to the 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

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. 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 and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

- (b) The Insured's Rights and Limitations

- (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.
 - (ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that 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.
- (c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. 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 in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 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 \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it 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 that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

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

16. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [] material optional