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Seminar 5

Basics of Title Insurance Double Feature:

**Fantastic Endorsements and Where to Find Them
Apocalypse Now (?) - The Interaction of Blockchain with the Title Insurance Industry**

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I The Basics of Title Insurance – Quick Overview

As opposed to other “risk assumption” insurance products, title insurance primarily involves “risk elimination.” As such, it is an important due diligence tool; the process from the initial title search to the issuance of the final policy is designed to raise and then eliminate title issues.

A. **Preliminary Report** – issued in California and other states -- details the condition of the title of the property at the time of the report and is an offer by the title company for the issuance of title insurance based upon the matters shown therein. It cannot be relied upon for the condition of title to the real property upon which it reports and comes with no assurance of liability. See, CA Ins. Code Section 12340.11; *Liberty Nat'l Enters., L.P. v Chicago Title Ins. Co. (2013) 217 CA4th 62, 75*; *Lee v Fidelity Nat'l Title Ins. Co. (2010) 188 CA4th 583, 596*. If there is a matter in the records at the close of the transaction that was not reported, the title company may have exposure where that unreported matter results in a covered loss to the owner or lender.

B. **ALTA Form Commitment** – issued in states that use the ALTA Forms – at paragraph 4 of the ALTA Form (6/17/06) states that “[t]he 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 rights of action that the proposed Insured may have or may bring against the Company arising out of the status of title to the estate or interest or the status of the mortgage thereon must be based on and are limited to the provisions of this Commitment.”

The law in California and the language in the ALTA Form Commitment makes clear that a preliminary report and commitment is not a guaranty of the condition of title at the date of the report and that it cannot be relied upon for that purpose. However, in several states a title insurer may be held liable in tort for negligent failure to discover and disclose a defect, lien or encumbrance on the title in a preliminary report or commitment. ¹

C. **Proforma Policies:** Prior to closing, the parties will receive and review the preliminary report or commitment produced by the title company and provide objections and requirements to the title insurer which will trigger the production of a Proforma Owner's or Proforma Loan Policy. In connection with the preparation of the Proforma Policies, the title insurer will attach requested endorsements that pertain to the transaction.

D. **Title Insurance Policies:** A Title policy is any written instrument or contract whereby title insurance liability is assumed. See, Cal. Ins. Code Section 12340.2 A policy of title insurance is a contract of indemnity between the insurer and the insured, whereby the insurer agrees to indemnify the insured against loss or damage caused, with some exceptions, by any condition of the title that is different than as described in the policy. See, Cal. Ins. Code Section 12340.1. The extent of the insurer's contractual liability is determined by the type of policy issued, the amount of the policy and the risks assumed by the policy. See, Cal. Ins. Code Section 12401-12401-10. In California, the Title Insurance Policy does not represent that a contingency insured against will not occur. When such a contingency does occur, no action for negligence or negligence misrepresentation will lie based upon the policy alone. See, *Lawrence v. Chicago Title Insurance Co.*, 192 Cal App 3d 70.

Generally, ALTA 2006 form of Owner's and Lender's policies are issued throughout the country (with minor regional variations in certain states).

II Fantastic Endorsements for Shopping Center Projects

Initially, endorsements were primarily designed for the residential market. Over time, though, endorsement use spread to commercial transactions and the variety of coverages provided via endorsement expanded greatly. Endorsements are now used to both (i) address exceptions to coverage in either the policy jacket or Schedule B of the policy and (ii) provide additional coverage as to matters that are not necessarily related to title to the property.

¹ Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Indiana, Kansas, Nebraska, Oklahoma, Pennsylvania, and South Dakota all have court rulings finding negligence. See, Title Insurance, a Comprehensive Overview, Third Edition, pp 335-342.

Exhibit A attached, provides a complete list of ALTA endorsement forms.

Exhibit B, attached, provides forms of the ALTA endorsements discussed below.

ALTA 9-06 Series. The so-called “Comprehensive” Endorsement due to the scope of risks covered. Different endorsements in this series (and others such as the ALTA 28-06 series discussed below) now break out the “classic” ALTA 9 coverages into separate endorsements. This allows the title insurer more flexibility in situations where combining coverages might not be appropriate. For example, the current ALTA 9 series of owner’s policy endorsements focus solely on Covenants, Conditions and Restrictions, or Private Rights (such as options to purchase):

- ALTA 9.1-06 – Covenants, Conditions and Restrictions – Unimproved Land
- ALTA 9.2-06 – Covenants, Conditions and Restrictions – Improved Land
- ALTA 9.8-06 – Covenants, Conditions and Restrictions – Land Under Development
- ALTA 9.9-06 – Private Rights

The Land Under Development version of this endorsement is often overlooked by parties, but is a very helpful endorsement in the construction context as it gives coverage over future violations as long as future improvements are constructed pursuant to “Plans” reviewed by the title insurance company prior to closing.

Contiguity – Single Parcel (ALTA 19.1-06). Contiguity is a standard endorsement when insuring a transaction involving multiple adjacent parcels. The 19.1-06 is not often considered, but is a key endorsement to request when a developer is acquiring parcels over time as part of an aggregation for a potential development site because it gives contiguity coverage as to adjacent parcels not covered by the instant policy.

Encroachments over Boundaries and Easements (ALTA 28.1-06, 28.2-06 and 28.3-06). This series of endorsements causes much confusion among practitioners. Simply put, the endorsement provides two main categories of coverage: (i) coverage in the event that there are encroachments other than those raised as exceptions in Schedule B, and (b) coverage as to enforced removal (in certain situations) of encroachments that are raised as exceptions. The ALTA 28.3-06 provides coverage as to encroachments by future improvements, akin to the ALTA 9.8-06 above.

Identified Risk (ALTA 34-06). Most endorsements provide coverage over a specific matter. However, there are often occasions in which a particular risk raised by a title search cannot be addressed by a standard form of endorsement. In such situations, title insurers have historically crafted specific “affirmative insurance” that is set forth after the exception in Schedule B of the policy. However, title insurers have increasingly preferred to provide such specialized coverage in an endorsement format to be consistent with the manner in which other additional coverages are provided (ie, via endorsement). The endorsement gives coverage as to enforcement of the risk in favor of an adverse party, marketability/insurability, and legal fees.

Non-Imputation (ALTA 15-06 series). This endorsement is generally requested when a party is acquiring an interest in real estate via purchase of all or a portion of the entity that owns the real estate. Absent a deed transfer, the buyer does not get the benefit of the recording statute. Therefore, the property owning entity’s (or its members’) knowledge of off-record matters that affect the title may also be imputed to the interest purchaser. Title policies contain an exclusion for matters known by the insured but not disclosed to the title insurer. The endorsement provides the entity purchaser comfort that the title company will not raise a “knowledge of the Insured” defense in the event of a claim concerning such an off-record matter, thus essentially treating the entity purchaser as if it had the.

Mezzanine Financing (ALTA 16-06).

Generally speaking, a Mezzanine Loan is a loan on equity in the project that is secured by an interest in the owner/titleholder of the property (usually a single purpose bankruptcy remote LLC) or an interest in an upstream entity (usually also a single purpose LLC) that holds the ownership interest in the title holder. When a portion of the financing in a transaction is structured with a

mezzanine loan so as to provide funds for updating the newly acquired property, the mezzanine lender may also require title insurance.

The following are key features of the Mezzanine Financing Endorsement:

1. makes the Mezzanine Lender an assignee of payments under the Owner's Policy not to exceed the debt owed to the Mezzanine Lender (but does not name the Mezzanine Lender as an additional insured) in paragraph 2 of the Endorsement
2. provides Nonimputation coverage to the Mezzanine Lender in paragraph 4 of the Endorsement
3. includes "Fairway" coverage in paragraph 5 of the Endorsement, acknowledging that coverage will not be adversely affected because of transfer of ownership interests (direct or indirect) in the insured
4. expressly retains a right to interplead in paragraph 7 of the Endorsement, and
5. reserves the title insurer's subordinate rights of subrogation and indemnity after the Mezzanine Lender has recovered its indebtedness in paragraph 8 of The Endorsement

III The Interaction of Blockchain with the Title Insurance Industry

A. Introduction to Blockchain

- i. Blockchain history
- ii. Blockchain technology overview
- iii. Introduction to the basics of the technology

B. Blockchain and Business

- i. What value does Blockchain bring to business
- ii. What business use cases make sense for Blockchain

C. Why Has Blockchain Been Linked with Real Estate and Title

- i. Blockchain and Real Estate Overview
- ii. Blockchain and Real Estate – Vendors and business models
- iii. Possible Future States with Blockchain

D. Title Insurance and Title

- i. How would Blockchain work with County Recorders
- ii. How would Blockchain work with title?
- iii. Will Blockchain replace Title?
- iv. If it doesn't replace Title, how will it enhance title?
- v. Article on following page.

Excerpted sections of Thomas Hayden and Jordan Kelner, The Value of Title Insurance, Fidelity National Title Group, (2019).

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DISCLAIMER: This paper discusses issues relating to title insurance as well as specific examples of claims and their resolution. While the paper relies on the knowledge and experiences of its authors, it is important to note that nothing herein should be relied on for purchasing title insurance or for guidance for how an individual claim might be resolved. Specifically, not all facts of the examples are provided, and broad generalizations may not apply to specific matters.

- A. Introduction to Blockchain (page. 40-41)
- B. Blockchain and Business (page 50-51)
- C. Why Has Blockchain Been Linked with Real Estate and Title (page 41-42)
- D. The Impact of Blockchain on Title Insurance and Title (page 52-55)
- E. Legal Barriers to Blockchain (p.43-49)

A. Introduction to Blockchain (page. 40-41)

Blockchain is a type of distributed ledger technology. This means the subject data is distributed across a network of computers rather than being held at a single location. Each place where the ledger is held is called a node. Blockchain technology uses cryptography (turning data into a format that can only be read by an authorized person) to secure each transaction. Each transaction generates a hash, which is a set of numbers and letters. The hash depends not only on the current transaction, but also the previous hash. Blockchain technology allows for transactions and data to be recorded, shared, and synchronized across all of the nodes, but only if a transaction is approved by the nodes. Each participant on the blockchain receives a private password or key where ownership of a portion of the blockchain is recorded. When a participant enters into a transaction, the nodes can confirm that the key is the correct key and finalize the transaction, creating the next block in the blockchain.

B. Blockchain and Business (page 50-51)

Blockchain has been one of the most sought after areas of investment for Fortune 500 companies since 2018. Blockchain is being called Cloud 2.0, as it allows users to leverage the computing power and storage of computers all over the world. Companies like Storj are building networks for decentralized cloud storage. Storj operates by “sharding” or separating a stored file into smaller pieces on a blockchain, which can then be used to locate all of the shards of the original file. From the user’s perspective, the shards appear the same as they would on a centralized cloud. However, unlike a cloud, the shards are duplicated throughout the network to greatly reduce the chances of ever losing access to data as a result of an individual server going down. Also, from a security standpoint, the only person that can access a user’s data in a decentralized cloud is the user, because the information is encrypted when it is added to the Storj blockchain, and the user is the sole owner of the encryption key. Not even Storj can view a user’s information.

C. Why Has Blockchain Been Linked with Real Estate and Title (page 41-42)

Blockchain-Based Land Registries

A blockchain-based land registry requires all real estate transactions to be completed through recording on a blockchain. In a video posted in September 2018, Chris Chrysostom, a senior software engineer at Overstock's Medici Ventures, presented a discussion of the value of Overstock's Medici Land Governance, a blockchain-based land registry system. The system requires a map, a place to enter the property name or Assessor's Parcel Number ("APN"), a place to enter the property description, and evidence the owner has of their ownership. Chrysostom revealed that the goals of the blockchain-based land registry system are currently aimed toward digitizing unrecorded land rights or paper rights that are subject to manipulation. Ultimately, the original value addition of a blockchain-based land registry appears to be electronic storage, the open-source nature of the rights, the alleged immutability of the record, and the confirmation of the transactions (which will be confirmed by an as-yet undefined type of voting system).

For a more established public records system, like in the United States, blockchain registries could still have multiple benefits. For instance, a title report or preliminary report is produced using the latest title records available prior to the closing of the real estate transaction for both sales and refinances. This means that items recorded during the gap in time between when the title report is produced and the date of closing, which can be days or even weeks, become the risk of the title insurance company. With blockchain registries, title companies could become nodes with instantaneous access to fully up-to-date property records, reducing the gap period to minutes rather than days. Thus, a blockchain-based land registry could virtually eliminating the risk of gap recordings.

Blockchain-Based Smart Contracts

In addition to blockchain-based land registries, blockchain has also been proposed as a solution for the challenges with smart contracts. Smart contracts are digital agreements that can be enforced automatically without the use of third parties or manual intervention. Blockchain-enabled smart contracts can help simplify complex transactions by limiting how many requirements that are overseen by people. Among these requirements are price negotiations, signature and identity verification, loan approvals, and remittance of funds, which can all be completed by the stakeholders, verified by nodes, and instantaneously updated on the blockchain. Smart contracts can involve as many stipulations as needed to satisfy the participants that the task will be completed satisfactorily. To establish the terms, participants to a blockchain platform must determine how transactions and their data are represented, agree on the rules that govern those transactions, explore all possible exceptions, and define a framework for resolving disputes. It is usually an interactive process that involves both developers and business stakeholders.

An important question must be asked about this proposal: Why does this have to be on a blockchain? The best answer is that blockchain provides an element of trust that is not otherwise available on a platform controlled by a third party. The smart contract would be shared across all participants and would not be changeable by one participant without confirmation from the other participants. Blockchain proponents argue that on the blockchain, there is no question about whether the terms originally agreed to are the same terms that are being performed later in the contract because the parties to the agreement are constantly getting updated ledgers. However, it is unclear whether the stakeholders will feel safer given that the node agreement protocol (the computer code that controls how the transaction operates) is like a foreign language to the participants. If and how blockchain-based smart contracts in real estate transactions will be adopted is yet to be seen.

Blockchain Based Insurance Policy Storage

Title companies are starting to explore the benefits of blockchain. Specifically, one proposal is to have a shared blockchain system to store and share the decisions made on prior title insurance policies. This seems like a natural progression of the paper-based system used between title companies now. The title companies working on this have shared little information about why blockchain technology is preferred for policy storage. However, interpreting the concepts that are discussed above, the benefits of a blockchain system provide a potentially trustworthy and nearly immutable ledger that could lead to greater transparency, efficiency, and accountability between title insurance underwriters. Additionally, if such a system can establish trust across multiple underwriters, more title companies will likely agree to participate.

D. The Impact of Blockchain on Title Insurance and Title (page 52-55)

Risk Assumption and Technology

As discussed above, risk-assumption-model startups suggest that technology will impact title related information to such an extent that an accurate title report could be created by anyone at the press of a button, making a title insurance policy less valuable. However, the creation of the title commitment has always been based on information freely available to the public, and the limiting factor of time and expense has been steadily decreasing. Therefore, the focus should not be on the potential cost reduction of retrieving the title information, but the impact of title insurance after the creation of the commitment.

Technology Will Not Eliminate the Value of Title Insurance

The title insurance policy protects against risks not listed in the commitment (unidentified risks and unknowable risks), which will be true regardless of whether people or machines create the commitment. Risks not identified in the search escape detection because documents may contain errors and be mis-indexed or misinterpreted. For example, some deeds contain automatic reversion interests that are triggered by the occurrence of an action by the new owner, like selling alcohol on the premises. The legal system has a shortfall in that the automatic legal rights vest regardless of the chain of title. Similarly, joint tenancy (whereby one owner takes title automatically upon the death of the other joint tenant) operates the same way. Thus, ownership by grantor-grantee transfer in the record chain of title does not take into account how these properties are owned and how they can be transferred outside the record chain of title.

Other risks are not knowable because they arise from information that is not publically available; however, modern policies still cover those risks. For example, state statutes allow for mechanic's liens to be recorded up to a certain amount of time after construction work has been completed on a property. Work is often finished shortly before closing, but the mechanic's lien not recorded until weeks later. Due to this shortfall of the legal system, title insurance has stepped in to mitigate this risk for stakeholders and protect what would be considered a bona fide purchaser under any other circumstance.

Furthermore, there is the ever-present risk of fraud and manipulation, and fraudsters will likely invent new ways to facilitate fraud despite additional technological improvements. Blockchain would not directly resolve the fraud problem. Existing legal structures would still govern how new transactions would be entered into the blockchain, including notary, acknowledgement, and deed requirements. If a document has all of the elements to create the next block in the blockchain, it will still be recorded in the blockchain. This is because the blockchain solely memorializes the fact that the transaction has occurred, but does not verify the validity of the transaction. Therefore, fraud, forgery, and incompetence are not necessarily resolved by the blockchain process.

Even if new requirements were set up to resolve potential fraud on the blockchain, it is likely that people will come up with new ways to perpetuate fraud and abuse the system. For example, fraudsters may discover ways to deceive the identity verification procedures that are put in place to allow for fully automated and online transactions. For instance, imagine that a party was operating under a fraudulently created power of attorney. The verification process would verify the holder of the power of attorney, but not that the power of attorney document itself was sufficient. In such a case, the current policy would still provide coverage for the unenforceability of the lender's loan. Thus, the title insurance policy retains its value in protecting against fraud.

Technology Will Improve Title Insurance Value

Furthermore, title insurance is a regulated industry, so margin expansion as the result of technological improvement is more likely to result in lower costs or more value for customers. ALTA is already considering proposals that include changes in preparation for additional technological improvements in title and escrow, such as coverage for attacks on title based on the invalidity of electronic signatures under applicable statutes. Thus, there is no indication that the value of title insurance will ever be eliminated as most claims are not resolved by the technologies discussed herein.

E. Legal Barriers to Blockchain (p.43-49)

The legal barriers to blockchain implementation stem from the foundations of property transfer laws in the United States. The legal barriers include the laws governing the recording systems, laws governing the validity of property transfers, state-specific regulatory schemes governing the unauthorized practice of law, the requirement that courts and governments have the ability to amend property records, and monoline insurance laws.

The Recording Systems

As discussed in Section I, Part 3, there are two main types of recording systems: a race-notice system and a Torrens/Land Court system. The purpose of recording a document in a non-Torrens jurisdiction conflicts with the benefits promulgated by the proponents of a blockchain recording system. Specifically, blockchain proponents argue that, because the only person able to transfer or encumber the property is the owner of record, the title chain will become more accurate and accessible, which in turn will reduce fraud. However, imagine that an owner in a race-notice jurisdiction agreed in a signed writing to convey a portion of the property to Person A, and this agreement is known to Person B, but the document is not recorded. Later the owner records a second document conveying the property to Person B and this document is recorded. In the race-notice system, Person A would have the better claim to the property because Person B had knowledge of the earlier document. However, blockchain technology does not have the capacity to account for circumstances involving personal knowledge, as only Person B would have a recorded document, and only Person B would be able to convey the property again to fix the transaction.

Additionally, states require most documents submitted for recording to be notarized. As a blockchain system does not provide for gatekeeping of documents in this way, the existing laws would need to change. It is likely the laws will be updated whether or not blockchain is implemented. Facial recognition, fingerprinting, and other identity verification procedures are simply better at preventing fraud than notarization.

The other main type of recording system is a Torrens or Land Court system. Each time an owner transfers property, a master certificate maintained by a central office is updated to reflect new ownership information. Only information that is currently relevant to title is shown; these are called memorials or recitals on the certificate. Proponents of blockchain compare it to the Torrens and Land Court systems, in that the status of title on the blockchain is considered conclusive. However, blockchain would exhibit the same problems as the Torrens and Land Court systems when the record keeper fails to properly recognize documents on the certificate and stakeholders rely on the conclusive nature provided by the certificate.

Legal Description

In the United States, the same property can be identified several different ways, including by legal description, assessor's designation, and government maps. All states have a codified "statute of frauds," which generally require that a transfer of property must provide a means to identify the property with reasonable certainty. However, "reasonable certainty" is a nebulous standard that can be established without a legal description at all, so long as a person can identify the land. As such, property descriptions can be vague and yet still provide constructive notice.

Blockchains are inherently "yes or no" answering systems, which makes confirming title to property with ambiguous legal descriptions impractical. Ambiguous legal descriptions are subject to drawn-out litigation, which would seem to undercut the idea of a sophisticated, peer-to-peer, real estate blockchain transferring system, since boundaries could not truly be certain. Thus, without the technological ability to allow the nodes to confirm the land described, the blockchain system of recording is nothing more than a convenient place to store records electronically.

Unauthorized Practice of Law

Roughly twenty percent of states require that an attorney be involved in a real estate closing, while some specifically require that the closing attorney perform nearly all aspects of the closing. For example, the Supreme Court of Georgia has said it is the unauthorized practice of law for someone other than a licensed Georgia attorney to close a real estate transaction or to prepare or facilitate the execution of deeds for the benefit of a seller, borrower, or lender. The State of Georgia understands this adds to the cost of the transaction, but stands by the importance of attorneys in real property transactions.

For blockchain to be used in real estate closings, the nodes would need to review elements of the transaction (i.e. the parties, the property, and potentially even a full commitment) and then approve the transaction. However, approving elements of real estate transactions requires a licensed attorney in attorney-agent states. Thus, the parties hosting the nodes may be considered to be unlawfully practicing law. Further, anyone using the blockchain platform, including the creators of the platform, could be considered to be assisting with the unauthorized practice of law. Thus, either the nodes need to have a more limited function (which would limit the utility of a blockchain platform) or the legal framework would need to be changed prior to implementing blockchain.

Courts, Registries, and Government Oversight

The idea of enhanced technologies making property more accessible and transferable has its limitations. Both the courts and the registrar need the ability to adjust the blockchain ledger to resolve disputes. For instance, if bad data was entered and discovered, someone would need the ability to change it. Legal actions are often asserted against people who are either unavailable or unwilling to engage in transacting property. The courts need the ability to adjust the blockchain to reflect the status of title through the power of a court order. In addition, the government has eminent

domain power and can transfer property from a private individual to itself. Presently, a blockchain transaction requires each party to a transaction to approve it through the application of their private key. In other words, a court could not unilaterally alter an existing blockchain transaction. A procedure for government entities to create and update the blockchain would have to be in place before a blockchain-based system could govern titled property.

EXHIBIT A
COMPREHENSIVE ALTA ENDORSEMENTS LIST

ALTA 1[-06] Street Assessments	ALTA 1[-06] Street Assessments (A 06-17-2006)
ALTA 3 SERIES: Zoning	ALTA 3[-06] Zoning—Unimproved Land (A 06-17-2006)
	ALTA 3.1[-06] Zoning—Completed Structure (R 10-22-2009)
	ALTA 3.2[-06] Zoning—Land Under Development (R 04-02-2012; TC 10-18-2012 & 12-01-2015)
	ALTA 3.3[-06] Zoning—Completed Improvement—Non-Conforming Use (A 12-01-2018)
	ALTA 3.4[-06] Zoning—No Zoning Classification (A 12-01-2018)
ALTA 4 SERIES: Condominium	ALTA 4[-06] Condominium—Assessments Priority (R 02-03-2010; TC 12-01-2016)
	ALTA 4.1[-06] Condominium—Current Assessments (R 10-16-2008; TC 12-01-2016)
ALTA 5 SERIES: Planned Unit Development	ALTA 5[-06] Planned Unit Development—Assessments Priority (R 02-03-2010; TC 12-01-2016 & 12-01-2017)
	ALTA 5.1[-06] Planned Unit Development—Current Assessments (R 10-16-2008; TC 12-01-2016 & 12-01-2017)
ALTA 6 SERIES: Variable Rate Mortgage	ALTA 6[-06] Variable Rate Mortgage (R 10-16-08)
	ALTA 6.2[-06] Variable Rate Mortgage—Negative Amortization (R 10-16-2008)
ALTA 7 SERIES: Manufactured Housing Unit	ALTA 7[-06] Manufactured Housing Unit (A 06-17-2006)
	ALTA 7.1[-06] Manufactured Housing Unit—Conversion: Loan (A 06-17-2006)
	ALTA 7.2[-06] Manufactured Housing Unit—Conversion: Owner's (A 06-17-2006)
ALTA 8 SERIES: Environmental Protection Lien	ALTA 8.1[-06] Environmental Protection Lien (A 06-17-2006)
	ALTA 8.2[-06] Commercial Environmental Protection Lien (A 10-16-2008)
ALTA 9 SERIES: Restrictions, Encroachments, Minerals, CC&Rs; & Private Rights	ALTA 9[-06] Restrictions, Encroachments, Minerals—Loan Policy (R 04-02-2012; TC 08-01-2016 & 12-01-2018)
	ALTA 9.1[-06] Covenants, Conditions, and Restrictions—Unimproved Land—Owner's Policy (R 04-02-2012)
	ALTA 9.2[-06] Covenants, Conditions, and Restrictions—Improved Land—Owner's Policy (R 04-02-2012)
	ALTA 9.3[-06] Covenants, Conditions, and Restrictions—Loan Policy (R 04-02-2012)
	ALTA 9.6[-06] Private Rights—Loan Policy (R 04-02-2013)
	ALTA 9.6.1[-06] Private Rights—Current Assessments—Loan Policy (A 04-02-2015)
	ALTA 9.7[-06] Restrictions, Encroachments, Minerals—Land Under Development—Loan Policy (A 04-02-2012; TC 08-01-2016)

	ALTA 9.8[-06] Covenants, Conditions, and Restrictions—Land Under Development—Owner’s Policy (A 04-02-2012; TC 10-18-2012)
	ALTA 9.9[-06] Private Rights—Owner’s Policy (A 04-02-2013)
	ALTA 9.10[-06] Restrictions, Encroachments, Minerals—Current Violations—Loan Policy (A 04-02-2013; TC 08-01-2016)
ALTA 10 SERIES: Assignment	ALTA 10[-06] Assignment (R 02-03-2010)
	ALTA 10.1[-06] Assignment & Date Down (R 02-03-2010; TC 08-01-2016)
ALTA 11 SERIES: Mortgage Modification	ALTA 11[-06] Mortgage Modification (A 06-17-2006)
	ALTA 11.1[-06] Mortgage Modification with Subordination (A 10-22-2009)
	ALTA 11.2[-06] Mortgage Modification with Additional Amount of Insurance (A 12-02-2013)
ALTA 12 SERIES: Aggregation	ALTA 12[-06] Aggregation—Loan Policy (R 04-02-2013)
	ALTA 12.1[-06] Aggregation—State Limits—Loan Policy (A 04-02-2013)
ALTA 13 SERIES: Leasehold	ALTA 13[-06] Leasehold—Owner’s (R 04-02-2012)
	ALTA 13.1[-06] Leasehold—Loan (R 04-02-2012)
ALTA 14 SERIES: Future Advance	ALTA 14[-06] Future Advance—Priority (R 02-03-2011)
	ALTA 14.1[-06] Future Advance—Knowledge (R 02-03-2011)
	ALTA 14.2[-06] Future Advance—Letter of Credit (R 02-03-2011)
	ALTA 14.3[-06] Future Advance—Reverse Mortgage (R 02-03-2011; TC 10-18-2012)
ALTA 15 SERIES: Non-Imputation	ALTA 15[-06] Non-Imputation—Full Equity Transfer (A 06-17-2006)
	ALTA 15.1[-06] Non-Imputation—Additional Insured (A 06-17-2006)
	ALTA 15.2[-06] Non-Imputation—Partial Equity Transfer (A 06-17-2006; TC 08-01-2015)
ALTA 16[-06] Mezzanine Financing	ALTA 16[-06] Mezzanine Financing (A 06-17-2006)
ALTA 17 SERIES: Access	ALTA 17[-06] Access & Entry (A 06-17-2006)
	ALTA 17.1[-06] Indirect Access & Entry (A 06-17-2006)
	ALTA 17.2[-06] Utility Access (A 10-16-2008)
ALTA 18 SERIES: Tax Parcel	ALTA 18[-06] Single Tax Parcel (A 06-17-2006)
	ALTA 18.1[-06] Multiple Tax Parcel—Easements (A 06-17-2006; TC 12-01-2016)
	ALTA 18.2[-06] Multiple Tax Parcel (A 08-01-2016)
	ALTA 18.3[-06] Single Tax Parcel & ID (A 12-01-2018)
ALTA 19 SERIES: Contiguity	ALTA 19[-06] Contiguity—Multiple Parcels (A 06-17-2006)
	ALTA 19.1[-06] Contiguity—Single Parcel (A 06-17-2006)
	ALTA 19.2[-06] Contiguity—Specified Parcels (A 04-02-2015)

ALTA 20[-06] First Loss— Multiple Parcel Transactions	ALTA 20[-06] First Loss—Multiple Parcel Transactions (A 06-17-2006; TC 10-13-2011)
ALTA 22 SERIES: Location	ALTA 22[-06] Location (A 06-17-2006)
	ALTA 22.1[-06] Location and Map (A 06-17-2006)
ALTA 23 SERIES: Co-Insurance	ALTA 23[-06] Co-Insurance—Single Policy (R 10-16-2008)
	ALTA 23.1[-06] Co-Insurance—Multiple Policies (A 08-01-2016; R 08-01-2017)
ALTA 24[-06] Doing Business	ALTA 24[-06] Doing Business (A 10-16-2008)
ALTA 25 SERIES: Survey	ALTA 25[-06] Same as Survey (A 10-16-2008)
	ALTA 25.1[-06] Same as Portion of Survey (A 10-16-2008)
ALTA 26[-06] Subdivision	ALTA 26[-06] Subdivision (A 10-16-2008)
ALTA 27[-06] Usury	ALTA 27[-06] Usury (A 10-16-2008)
ALTA 28 SERIES: Easements & Encroachments	ALTA 28[-06] Easement—Damage or Enforced Removal (R 02-03-2010)
	ALTA 28.1[-06] Encroachments—Boundaries & Easements (A 04-02-2012)
	ALTA 28.2[-06] Encroachments—Boundaries & Easements—Described Improvements (A 04-02-2013)
	ALTA 28.3[-06] Encroachments—Boundaries & Easements—Described Improvements & Land Under Development (A 04-02-2015; TC 12-01-2016)
ALTA 29 SERIES: Interest Rate Swap	ALTA 29[-06] Interest Rate Swap—Direct Obligation (A 02-03-2010; TC 04-02-2014 & 08-01-2016)
	ALTA 29.1[-06] Interest Rate Swap—Additional Interest (A 02-03-2010; TC 04-02-2014 & 08-01-2016)
	ALTA 29.2[-06] Interest Rate Swap—Direct Obligation—Defined Amount (A 08-01-2011; TC 04-02-2014 & 08-01-2016)
	ALTA 29.3[-06] Interest Rate Swap—Additional Interest—Defined Amount (A 08-01-2011; TC 04-02-2014 & 08-01-2016)
ALTA 30 SERIES: Shared Appreciation & Commercial Participation	ALTA 30[-06] Shared Appreciation Mortgage (A 07-26-2010)
	ALTA 30.1[-06] Commercial Participation Interest (A 08-01-2012)
ALTA 31[-06] Severable Improvements	ALTA 31[-06] Severable Improvements (A 02-03-2011)
ALTA 32 SERIES:	ALTA 32[-06] Construction Loan (A 02-03-2011; TC 12-01-2018)
	ALTA 32.1[-06] Construction Loan—Direct Payment (R 04-02-2013; TC 12-01-2018)

Construction Loan	ALTA 32.2[-06] Construction Loan—Insured’s Direct Payment (R 04-02-2013; TC 12-01-2018)
ALTA 33[-06] Disbursement	ALTA 33[-06] Disbursement (A 02-03-2011)
ALTA 34[-06] Identified Risk Coverage	ALTA 34[-06] Identified Risk Coverage (A 08-01-2011)
ALTA 35 SERIES: Minerals & Other Subsurface Substances	ALTA 35[-06] Minerals & Other Subsurface Substances—Buildings (A 04-02-2012; TC 08-01-2016)
	ALTA 35.1[-06] Minerals & Other Subsurface Substances—Improvements (A 04-02-2012; TC 08-01-2016)
	ALTA 35.2[-06] Minerals & Other Subsurface Substances—Described Improvements (A 04-02-2012; TC 08-01-2016)
	ALTA 35.3[-06] Minerals & Other Subsurface Substances—Land Under Development (A 04-02-2012; TC 08-01-2016)
ALTA 36 SERIES: Energy Project	ALTA 36[-06] Energy Project—Leasehold/Easement—Owner’s Policy (A 04-02-2012)
	ALTA 36.1[-06] Energy Project—Leasehold/Easement—Loan Policy (A 04-02-2012)
	ALTA 36.2[-06] Energy Project—Leasehold—Owner’s Policy (A 04-02-2012)
	ALTA 36.3[-06] Energy Project—Leasehold—Loan Policy (A 04-02-2012)
	ALTA 36.4[-06] Energy Project—Covenants, Conditions, & Restrictions—Land Under Development—Owner’s Policy (A 04-02-2012)
	ALTA 36.5[-06] Energy Project—Covenants, Conditions, & Restrictions—Land Under Development—Loan Policy (A 04-02-2012)
	ALTA 36.6[-06] Energy Project—Encroachments (A 04-02-2012; TC 08-01-2016)
	ALTA 36.7[-06] Energy Project—Fee Estate—Owner’s Policy (A 12-01-2014)
	ALTA 36.8[-06] Energy Project—Fee Estate—Loan Policy (A 12-01-2014)
ALTA 37[-06] Assignment of Rents or Leases	ALTA 37[-06] Assignment of Rents or Leases (A 12-03-2012)
ALTA 38[-06] Mortgage Tax	ALTA 38[-06] Mortgage Tax (A 12-03-2012)
ALTA 39[-06] Policy Authentication	ALTA 39[-06] Policy Authentication (A 04-02-2013)
ALTA 40 SERIES: Tax Credit	ALTA 40[-06] Tax Credit—Owner’s Policy (A 04-02-2014)
	ALTA 40.1[-06] Tax Credit—Defined Amount—Owner’s Policy (A 04-02-2014)
ALTA 41 SERIES: Water	ALTA 41[-06] Water—Buildings (A 12-02-2013)
	ALTA 41.1[-06] Water—Improvements (A 12-02-2013)
	ALTA 41.2[-06] Water—Described Improvements (A 12-02-2013)
	ALTA 41.3[-06] Water—Land Under Development (A 12-02-2013)

ALTA 42[-06] Commercial Lender Group	ALTA 42[-06] Commercial Lender Group (A 12-02-2013)
ALTA 43[-06] Anti-Taint	ALTA 43[-06] Anti-Taint (A 12-02-2013)
ALTA 44[-06] Insured Mortgage Recording	ALTA 44[-06] Insured Mortgage Recording (A 12-02-2013)
ALTA 45[-06] Pari Passu Mortgage	ALTA 45[-06] Pari Passu Mortgage—Loan Policy (A 12-01-2014)
ALTA 46[-06] Option	ALTA 46[-06] Option (A 08-01-2015)
ALTA Limited Pre-Foreclosure Date-Down	ALTA Limited Pre-Foreclosure Date-Down Endorsements (12-03-2012)
ALTA JR SERIES:	ALTA JR 1 (R 08-01-2012)
	ALTA JR 2 (R 08-01-2012)

EXHIBIT B
SELECTED ALTA ENDORSEMENTS FORMS

ENDORSEMENT
Attached to Policy No. _____

Issued By

_____ *Title Insurance Company*

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only, "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation; or
 - b. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.b, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT
Attached to Policy No. _____

Issued By

_____ *Title Insurance Company*

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only,
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.c., any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ALTA Endorsement Form 9.2-06
(Covenants, Conditions and Restrictions – Improved Land -Owner's Policy (Rev. 4/1/12)
©American Land Title Association

ENDORSEMENT

Attached to Policy No. _____

Issued by

_____ Title Insurance Company

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated _____, last revised _____, designated as (*insert name of project or project number*) consisting of _____ sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ALTA Endorsement Form 9.8-06
(Covenants, Conditions and Restrictions-Land Under Development-Owners Policy) (4/2/12)
©American Land Title Association
[includes technical correction of 12-3-12]

ENDORSEMENT

Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Private Right" means (i) an option to purchase; (ii) a right of first refusal; or (iii) a right of prior approval of a future purchaser or occupant.
3. The Company insures against loss or damage sustained by the Insured under this Owner's Policy if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy causes a loss of the Insured's Title.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or
 - d. any Private Right in an instrument identified in Exception(s) in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT

Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

The Company insures against loss or damage sustained by the Insured by reason of:

- 1. The failure of the Land to be contiguous to **[describe the land that is contiguous to the Land by its legal description or by reference to a recorded instrument – e.g. “. . . that certain parcel of real property legally described in the deed recorded as Instrument No. _____, records of County, State of ___]** along the _____ boundary line[s]; or
- 2. The presence of any gaps, strips, or gores separating the contiguous boundary lines described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT

Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means an existing building, located on either the Land or adjoining land at Date of Policy and that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. An encroachment of any Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;
 - b. An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
 - c. Enforced removal of any Improvement located on the Land as a result of an encroachment by the Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement; or
 - d. Enforced removal of any Improvement located on the Land that encroaches onto adjoining land.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the encroachments listed as Exceptions _____ of Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT
Attached to Policy No. _____

Issued by
_____ *Title Insurance Company*

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only, "Improvement" means each improvement on the Land or adjoining land at Date of Policy, itemized below:
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. An encroachment of any Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;
 - b. An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
 - c. Enforced removal of any Improvement located on the Land as a result of an encroachment by the Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement; or
 - d. Enforced removal of any Improvement located on the Land that encroaches onto adjoining land.
4. Sections 3.c and 3.d. of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B: _____

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ALTA Endorsement Form 28.2-06
(Encroachments-Boundaries and Easements-Described Improvements) (4/2/13)
©American Land Title Association

ENDORSEMENT
Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - (a) "Improvement" means a building, structure, or paved area, including any road, walkway, parking area, driveway, or curb located on the surface of the Land or the surface of the adjoining land at Date of Policy that by law constitutes real property.
 - (b) "Future Improvement" means any of the following to be constructed on the Land after Date of Policy in the locations according to Plans and that by law constitutes real property:
 - (i) a building;
 - (ii) a structure; or
 - (iii) a paved area, including any road, walkway, parking area, driveway, or curb.
 - (c) "Plans" means the survey, site and elevation plans, or other depictions or drawings prepared by (*insert name of architect or engineer*) dated (*insert date prepared*), last revised (*insert date last revised*), designated as (*insert name of project or project number*) consisting of (*insert number of sheets*) sheets
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - (a) An encroachment of any Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;
 - (b) An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
 - (c) Enforced removal of any Improvement or Future Improvement located on the Land as a result of an encroachment by the Improvement or Future Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement or Future Improvement; or
 - (d) Enforced removal of any Improvement or Future Improvement located on the Land that encroaches onto adjoining land.
4. Sections 3(c) and 3 (d) of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B: _____

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements. [Witness clause optional]

[Witness clause optional]

_____TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ALTA Endorsement Form 28.3-06
(Encroachments-Boundaries and Easements-Land Under Development) (4/2/15)
©American Land Title Association

ENDORSEMENT
Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

1. As used in this endorsement "Identified Risk" means: [*insert description of the title defect, restriction encumbrance or other matter*] described in Exception _____ of Schedule B.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or
 - b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if
 - i. there is a contractual condition requiring the delivery of marketable title, and
 - ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement.
3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.
4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the Identified Risk or removes it, Section 9(a) of the Conditions applies.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT
Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of _____ whether or not imputed to the Insured by operation of law, provided _____ acquired the Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT
Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

For purposes of the coverage provided by this endorsement, _____ ("Additional Insured") is added as an Insured under the policy. By execution below, the Insured named in Schedule A acknowledges that any payment made under this endorsement shall reduce the Amount of Insurance as provided in Section 10 of the Conditions.

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of _____ whether or not imputed to the Additional Insured by operation of law, to the extent of the percentage interest in the Insured acquired by Additional Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

AGREED AND CONSENTED TO:

INSURED

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT
Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of _____ whether or not imputed to the entity identified in paragraph 3 of Schedule A or to the Insured by operation of law, but only to the extent that the Insured acquired the Insured's interest in entity as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ENDORSEMENT
Attached to Policy No. _____

Issued by

_____ *Title Insurance Company*

1. The Mezzanine Lender is: _____ and each successor in ownership of its loan ("Mezzanine Loan") reserving, however, all rights and defenses as to any successor that the Company would have had against the Mezzanine Lender, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy as affecting Title.
2. The Insured
 - a. assigns to the Mezzanine Lender the right to receive any amounts otherwise payable to the Insured under this policy, not to exceed the outstanding indebtedness under the Mezzanine Loan; and
 - b. agrees that no amendment of or endorsement to this policy can be made without the written consent of the Mezzanine Lender.
3. The Company does not waive any defenses that it may have against the Insured, except as expressly stated in this endorsement.
4. In the event of a loss under the policy, the Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b) or (e) to refuse payment to the Mezzanine Lender solely by reason of the action or inaction or Knowledge, as of Date of Policy, of the Insured, provided
 - a. the Mezzanine Lender had no actual Knowledge of the defect, lien, encumbrance or other matter creating or causing loss on Date of Policy.
 - b. this limitation on the application of Exclusions from Coverage 3(a), (b) and (e) shall
 - i. apply whether or not the Mezzanine Lender has acquired an interest (direct or indirect) in the Insured either on or after Date of Policy, and
 - ii. benefit the Mezzanine Lender only without benefiting any other individual or entity that holds an interest (direct or indirect) in the Insured or the Land.
5. In the event of a loss under the Policy, the Company also agrees that it will not deny liability to the Mezzanine Lender on the ground that any or all of the ownership interests (direct or indirect) in the Insured have been transferred to or acquired by the Mezzanine Lender, either on or after the Date of Policy.
6. The Mezzanine Lender acknowledges
 - a. 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; and

- b. that the Company shall have the right to insure mortgages or other conveyances of an interest in the Land, without the consent of the Mezzanine Lender.

- 7. If the Insured, the Mezzanine Lender or others have conflicting claims to all or part of the loss payable under the Policy, the Company may interplead the amount of the loss into Court. The Insured and the Mezzanine Lender shall be jointly and severally liable for the Company's cost for the interpleader and subsequent proceedings, including attorneys' fees. The Company shall be entitled to payment of the sums for which the Insured and Mezzanine Lender are liable under the preceding sentence from the funds deposited into Court, and it may apply to the Court for their payment.

- 8. Whenever the Company has settled a claim and paid the Mezzanine Lender pursuant to this endorsement, the Company shall be subrogated and entitled to all rights and remedies that the Mezzanine Lender may have against any person or property arising from the Mezzanine Loan. However, the Company agrees with the Mezzanine Lender that it shall only exercise these rights, or any right of the Company to indemnification, against the Insured, the Mezzanine Loan borrower, or any guarantors of the Mezzanine Loan after the Mezzanine Lender has recovered its principal, interest, and costs of collection.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

AGREED AND CONSENTED TO:

(Name of Insured)

(Name of Mezzanine Lender)

By: _____ By: _____

[Witness clause optional]

_____TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

ALTA Endorsement Form 16-06
(Mezzanine Financing) (6/17/06)
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