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ALTA Policy Forms Revisions—Again!

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by:

Lia M. Albizo
Vice President and Senior Staff
Underwriting Counsel
Chicago Title Insurance Company
2828 Routh Street, Suite 800
Dallas, TX 75201
lia.albizo@fnf.com

Melanie E. Kido
Vice President - Massachusetts
State Counsel
CATIC
1601 Trapelo Road, Suite 270
Waltham, MA 02451
mkido@catic.com

**The 2021 ALTA Standard Policy Forms and
Commitment for Title Insurance©**

After years of discussion and revision, the ALTA has promulgated new policy forms, a revised commitment form, a revised CPL, and introduced both updated and new endorsements. Some of these forms went into effect in April, 2021 while the majority of these forms went into effect in July, 2021. While there have been revisions to the Homeowner's Policy and other Policy and Commitment forms utilized in residential transactions, the focus of these materials are on the ALTA Loan and ALTA Owner Policy and those endorsements utilized primarily in commercial transactions.

The attached consist of:

1. A redlined comparison of the changes from the existing ALTA Standard Owner Policy (6-17-06);
2. A redlined comparison of the changes from the existing ALTA Standard Loan Policy (6-17-06); and
3. The ALTA 34.1 Identified Exception & Identified Risk Coverage Endorsement

All 2021 forms are available on ALTA's website at www.alta.org.

The 2021 Standard Owner Policy

While a quick review of the redlined version of the 2021 Owner Policy (hereinafter the "Owner Policy") discloses that changes have been made to practically every part of the form, a closer review discloses that the majority of these changes do not alter the substance of the policy terms. There are, however, revisions that include adding coverage, adding exclusions, and updating the Conditions in a way that benefits both the Insured and the title insurer.

The Owner Policy Jacket

The policy adds the following introductory language: "This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature."

This language effectively incorporates the coverage provided by the existing Policy Authentication Endorsement (ALTA 39), thereby obviating the need to attach, or even refer to, that separate endorsement.

Among the changes to the Covered Risks:

Covered Risk 2, which insures against loss resulting from any defect in, or lien or encumbrance on the Title but then lists examples of some of the matters that could be considered a title defect, updates the list in Covered Risk 2(a.) by specifically reciting a defect caused by, (iii.) a document affecting the Title not properly *authorized*, created, executed, witnessed, sealed, acknowledged, notarized, (including by remote online notarization), or delivered; and (viii.) the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.

The survey coverage provided by Covered Risk 2(c.) is altered to add a boundary line overlap as one of the matters covered if it would have shown up on a survey. The language addressing encroachments is rearranged but otherwise matches the coverage in the existing form.

Covered Risk 5, addressing coverage for loss resulting from a violation or enforcement of governmental regulations, has been revised to introduce a new defined term: Enforcement Notice. The existing Owner Policy form covers loss so long as there is a notice of violation or enforcement recorded on the Land Records (and there is no exception for that in the Policy's Schedule B). The updated language covers loss to the extent of the violation or enforcement described in an Enforcement Notice. The term Enforcement Notice is a newly defined term in the Condition 1 as:

"A document recorded in the Public Records that describes any part of the Land and:

- i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;
- ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or
- iii. asserts a right to enforce a PACA PSA Trust."

It should be noted that the new policy also revises the definition of Public Records to read:

"The recording or filing system established under State statutes in effect at the Date of Policy under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term 'Public Records' does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters."

Taken together, these revisions address prior judicial decisions finding that filing notices regarding the violation of public regulations in places other than the land records creates a defect in the title, and represent a significant clarification regarding the type of notice required and where that notice needs to be recorded.

Covered Risk 6 changes the language to insure against the enforcement of government forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described in an Enforcement Notice.

Covered Risk 7 also insures against the exercise of the power of eminent domain, to the extent the exercise is described in an Enforcement Notice. The remaining coverage in Covered Risk 7 is unchanged.

There is a new Covered Risk 8, which insures against an enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice. The Perishable Agricultural Commodities Act (7 U.S.C. §§ 499a, et seq.) ("PACA") imposes a trust under 7 U.S.C. § 499e(c) for unpaid suppliers, sellers and agents of fresh fruits and fresh vegetables, The Packers and Stockyards Act (7 U.S.C. §§ 181, et seq.) ("PSA") establishes a similar trust on assets of packers to protect livestock producers. Both trusts can exist in unrecorded form and have the potential to affect the interest of a lender or purchaser of real property. This provision is new, but like Covered Risks 5, 6, and 7 this coverage is the flip side of an Exclusion – in this case a new Exclusion 5 for loss or damage by reason of any claim of a PACA-PSA Trust, but Exclusion 5 expressly states that it does not modify or limit the coverage provided under Covered Risk 8.

Covered Risk 9 has been revised to insure against loss resulting from the Title being vested other than as stated in Schedule A or being defective, or the effect of a court order providing an alternative remedy:

- a. resulting from either the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction vesting the Title because that prior transfer constituted a:
 - i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or
 - ii. voidable transfer under the Uniform Voidable Transactions Act; or

- b. because the instrument vesting the Title constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state of federal creditors' rights law by reason of the failure:
 - i. to timely record the instrument vesting the Title in the Public Records after execution and delivery of the instrument to the Insured; or
 - ii. of the recording of the instrument vesting the Title in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

This new creditors' rights provision is an improvement from the coverage in the existing 2006 policy, because it expands coverage to include loss arising from a court order providing an alternative remedy and to insure against loss if the defect or avoidance results from the prior transfer being voidable under the Uniform Voidable Transactions Act.

While the Standard Policy has always included the duty to defend, the proposed 2021 policy forms now separate the defense obligation from the Covered Risks and the obligation now appears below a separate heading entitled Defense of Covered Claims.

Exclusions

There are two new Exclusions. The remaining changes to the Exclusions consist of updating and making them consistent with the revised language in the corresponding Covered Risks.

For example, in addition to excluding loss resulting from municipal regulations, Exclusion 1a.(iv) clarifies that "environmental protection" includes environmental "remediation".

Exclusion 1 revises subsection b. to exclude loss or damage resulting from "any governmental forfeiture, police, regulatory, or national security power."

Exclusion 3 revises some of the language in subsection (e.) to exclude any defect, lien or encumbrance resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given (as opposed to if the Insured had paid value) for the Title at the Date of Policy.

Exclusion 4 (the creditor's rights exclusion) excludes loss resulting from any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:

- a. fraudulent conveyance or fraudulent transfer;
- b. voidable transfer under the Uniform Voidable Transactions Act; or
- c. preferential transfer:
 - i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
 - ii. for any other reason not stated in Covered Risk 9.b.

The reference to the Uniform Voidable Transactions Act is new. The parsing of subsection (c) is also new, but it merely clarifies this part of the exclusion rather than expanding it, since the 2006 policy already excludes loss resulting from a claim that the vesting transfer is a preferential transfer for any reason other than as stated in Covered Risk 9.

The new Exclusion 5 excludes loss for any claim of a PACA-PSA Trust, while stating that it does not modify or limit the coverage provided by the new Covered risk 8.

The former Exclusion 5 is now Exclusion 6. Exclusion 6 now excludes loss for any lien for real estate taxes or assessments, imposed or collected by a governmental authority, that become due and payable after the Date of Policy. This is a change from the language in the 2006 policy, which excluded loss for any lien created or attaching between the Date of Policy and the date of recording of the deed or other instrument vesting Title. This exclusion also adds language stating that it does not modify or limit the coverage provided under Covered Risk 2.b. (providing coverage for loss resulting from a lien for taxes or assessments that are due and payable, but unpaid).

Exclusion 7 is new and excludes loss caused by "any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land."

Conditions

There are a number of noteworthy revisions to the Conditions, beginning with the Definition of Terms in Condition 1, where the terms Affiliate, Enforcement Notice and PACA-PSA Trust are all new. Substantial revisions have been made to the terms Insured and Public Records.

An "Affiliate" is an Entity:

- i. that is wholly-owned by the Insured;
- ii. that wholly-owns the Insured; or
- iii. if that Entity and the Insured are both wholly-owned by the same person or Entity.

An Affiliate will be considered an Insured when the named Insured conveys the Title to the Affiliate by deed or other instrument of transfer.

A deed from the named insured to one of the following can also result in the grantee being an Insured under the policy:

a trustee or beneficiary of a trust created by a written instrument established for estate planning purposes by an Insured;

a spouse who receives the Title because of a dissolution of marriage;

a transferee by a transfer effective on the death of an Insured as authorized by law; or

another Insured named in Item 1 of Schedule A.

These last two categories are new, and this provision also differs from the corresponding language in the existing policy because there is no requirement that the deed or conveyance be for no consideration.

As mentioned earlier, the addition of the term "Enforcement Notice" in the new policy is an important clarification defining the type of notice that will implicate coverage in those Covered Risks dealing with governmental powers and regulations, eminent domain and a PACA-PSA Trust. We have already mentioned the new definition of PACA-PSA Trust as well as the extensive revision to the definition of Public Records.

Condition 4 regarding Proof of Loss has been revised so that the Company can now require a signed proof of loss regardless of whether it is able to determine the amount of loss or damage.

Condition 8 now entitled "Contract of Indemnity; Determination and Extent of Liability" contains some significant changes.

After the existing statement that the policy is a contract of indemnity, language similar to that found in the 2016 Commitment for Title Insurance is added to that initial paragraph, stating that:

"This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title."

Condition 8 also revises the provisions regarding the Insured's choices for establishing a date to determine fair market value for purposes of calculating the loss in the event of a claim. While Subsection a. regarding the extent of liability remains essentially the same, a revised Subsection b. and new Subsections c. and d. state the following:

- a. Except as provided in Condition 8.c. or 8.d., the fair market value of the Title in Condition 8.a.ii. is calculated using the date the Insured discovers the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.
- b. If, at the Date of Policy, the Title to all of the Land is void by reason of a matter insured against by this policy, then the Insured Claimant may, by written notice given to the Company, elect to use the Date of Policy as the date for calculating the fair market value of the Title in Condition 8.a.ii.
- c. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title, as insured:
 - i. the Amount of Insurance will be increased by 15%; and
 - ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b. or, if it applies, 8.c., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by

the Company as the date for calculating the fair market value of the Title in Condition 8.a.ii.

The ability to choose an alternate date for the determination of loss is no longer conditioned on the Company's unsuccessful attempt to cure the defect if the Title to all of the land is void at Date of Policy. When the Company does elect to cure the defect but is unsuccessful, not only will the Amount of Insurance be increased by 15% (up from the 10% increase provided in the 2006 policy), but the Insured Claimant may elect one of three dates for determining the fair market value: either 1. The date the Insured discovered the defect; 2. The date the settlement, action or proceeding is concluded; or 3. The date the notice of claim is received by the Company. If Subsection d. applies and Title was also void at Date of Policy, the Insured also has the option to use the Date of Policy.

The remaining Conditions 9 through 19 contain some revisions, and the language in Condition 18 (Class Actions) and the optional Condition 19 (Arbitration) is also new, but in effect the language is very similar to that of the 2006 policy.

Schedules

The Schedule A of the 2021 Owner Policy contains the option to incorporate specific endorsements by reference.

The Schedule B will begin with the following sentence that is similar to what is now in the Schedule B Part II of the ALTA Commitment for Title Insurance:

"This policy does not republish any covenant, condition, restriction, or limitation contained in any document referred to in this policy to the extent that the specific covenant, condition, restriction, or limitation violates local, state, or federal discrimination law, including laws based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, national origin, or other legally protected class."

The new Owner Policy also revises the lead-in sentence explaining that the policy does not insure against loss or damage resulting from the following, to say: "This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:". This addition of what is effectively a standard exception will obviate the need to include a specific exception in Schedule B for the terms and conditions of any leases or easements that comprise all or a part of the insured property.

The 2021 Standard Loan Policy

The Loan Policy Jacket

The jacket for the 2021 Loan Policy (hereinafter the "Loan Policy") contains many provisions that are similar to or the same as those in the Owner Policy Jacket, including the incorporation of the coverage from the Policy Authentication Endorsement (ALTA 39) at the very beginning of the form, as well as Covered Risks 1 through 8.

Since this a Loan Policy, however, some of the Covered Risks address matters that specifically concern lenders.

Covered Risk 9 insures against loss or damage resulting from the invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. Despite this broad coverage statement, Covered Risk 9 then lists examples of some of the matters that will be covered, including, but is not limited to:

- a. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
- b. the failure of a person or Entity to have authorized a transfer or conveyance;
- c. the Insured Mortgage not being properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
- d. a failure to perform those acts necessary to create an Insured Mortgage by electronic means authorized by law;
- e. a document having been executed under a falsified, expired, or otherwise invalid power of attorney;
- f. the Insured Mortgage not having been properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
- g. a defective judicial or administrative proceeding; or
- h. invalidity or unenforceability of the lien of the Insured Mortgage as a result of the repudiation of an electronic signature by a person that executed the Insured Mortgage because the electronic signature on the Insured Mortgage was not valid under applicable electronic transactions law.

Covered Risk 9 updates the list present in the 2006 Loan Policy by covering loss caused by the Insured Mortgage not being properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered; and also now covers loss from the invalidity or unenforceability of the lien of the Insured Mortgage as a result of the repudiation of an electronic signature by a person that executed the Insured Mortgage because the electronic signature on the Insured Mortgage was not valid under applicable electronic transactions law.

Covered Risk 10 contains extensive revisions. Rather than simply insuring against loss resulting from the lack of priority of the Insured Mortgage over any other lien or encumbrance, it now insures against loss caused by

The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:

- a. the amount of the principal disbursed as of the Date of Policy;
- b. the interest on the obligation secured by the Insured Mortgage;
- c. the reasonable expense of foreclosure;
- d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and
- e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:
 - i. real estate taxes and assessments imposed by a governmental taxing authority; and
 - ii. regular, periodic assessments by a property owners' association.

These revisions are the result of comments raised by the government sponsored institutions such as Fannie Mae and Freddie Mac, who had been seeking some coverage regarding the note secured by the Insured Mortgage. While ALTA respectfully declined to insure the note, these changes do tie the coverage regarding the priority of the Insured Mortgage to specific components of the underlying Indebtedness.

The new Loan Policy also has a separate heading for Defense of Covered Claims.

Exclusions

As with the new Owner Policy, the new Loan Policy has two new Exclusions. The remaining changes to the Exclusions consist of updating and making them consistent with the revised language in the corresponding Covered Risks.

For example, in addition to excluding loss resulting from municipal regulations, Exclusion 1 revises subsection b. to exclude loss or damage resulting from "any governmental forfeiture, police, regulatory, or national security power."

Exclusion 3 updates some of the language in subsection (e.) to exclude loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer had been given for the Insured Mortgage at the Date of Policy.

The Loan Policy, like the Owner Policy, also has a new Exclusion 7 for loss arising from any claim of a PACA-PSA Trust.

As there is in the Owner Policy, there is a new Exclusion 9 in the Loan Policy for loss resulting from any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

Conditions

The Loan Policy features many of the new defined terms that are also in the Owner Policy, such as Affiliate, Enforcement Notice and PACA-PSA Trust.

"Obligor" is defined as a person or Entity that is or becomes a maker, borrower, or guarantor as to all or part of the Indebtedness or other obligation secured by the Insured Mortgage. A Government Mortgage Agency or Instrumentality is not an Obligor.

The Loan Policy contains revisions to the term Public Records that match those in the Owner Policy, but also contains other revisions that are unique to the Loan Policy:

The definition of Indebtedness, for example, now includes, in addition to all of the other components referred to in the 2006 policy:

- (h) advances to assure compliance with law or to protect the validity, enforceability, or priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title; including, but not limited to:

- (1) real estate taxes and assessments imposed by a governmental taxing authority, and
 - (2) regular, periodic assessments by a property owners' association; and
- (i) advances to prevent deterioration of improvements before the Insured's acquisition of the Title."

The new Loan Policy also makes changes to the definition of Insured so that the term includes:

- (a) the Insured named in Item 1 of Schedule A or future owner of the Indebtedness other than an Obligor, if the named Insured or future owner of the Indebtedness owns the Indebtedness, the Title, or an estate or interest in the Land as provided in Condition 2, but only to the extent the named Insured or the future owner either:
 - (1) owns the Indebtedness for its own account or as a trustee or other fiduciary, or
 - (2) owns the Title after acquiring the Indebtedness;
- (b) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as defined by applicable electronic transactions law;
- (c) the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
- (d) the successor to the Title of an Insured resulting from its conversion to another kind of Entity;
- (e) the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is an Affiliate;
- (f) an Affiliate that acquires the Title through foreclosure or deed-in-lieu of foreclosure of the Insured Mortgage; or
- (g) any Government Mortgage Agency or Instrumentality".

Note that under (e) the Insured can be the grantee of the named Insured under deed or other transfer document, as long as the grantee is an Affiliate. This is no longer conditioned on the transfer being for no consideration.

Conditions 2 and 3 feature updated language but are otherwise similar to their counterparts in the 2006 policy form.

Condition 4 regarding Proof of Loss has been revised so that now the Company can require a signed proof of loss regardless of whether it is able to determine the amount of loss or damage.

Conditions 5, 6 and 7 also have minor revisions to language but remain essentially the same.

Condition 8 now entitled "Contract of Indemnity; Determination and Extent of Liability" contains some significant changes that are similar to those made in the corresponding provision of the Owner Policy.

After the existing statement that the policy is a contract of indemnity, language similar to that found in the 2016 Commitment for Title Insurance is added to that initial paragraph, stating that:

"This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title."

The new Loan Policy also revises Condition 8 to give the Insured options for choosing a date to determine the fair market value of the Land in the event of a claim. While Subsection a. regarding the extent of liability remains very similar to what is in the 2006 policy, a revised Subsection b. states the following:

- a. Fair market value of the Title (referred to in Condition 8.a.iii.) is calculated using either:
 - i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or
 - ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.

The new Loan Policy provides this alternative to the Insured, regardless of any actions taken on the part of the Company. In addition, a new subsection (c) provides additional options to the Insured Claimant if the Company attempts to establish the Title but is unsuccessful:

- b. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured:
 - i. the Amount of Insurance will be increased by 15%; and

- ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.iii.

Condition 10, now entitled Reduction or Termination of Insurance, improves the coverage in the Loan Policy by adding a new subsection b. that states:

c. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Amount of Insurance.

The remaining Conditions 11 through 19 contain minor revisions. The language in new Condition 18 (Class Actions) and the optional Condition 19 (Arbitration) is also new, but in effect the language is very similar to that of the 2006 policy.

Schedules

The Schedule A will contain the option to incorporate specific endorsements by reference.

The Schedule B will now begin with the following sentence that is similar to what is now in the Schedule B Part II of the ALTA Commitment for Title Insurance:

“This policy does not republish any covenant, condition, restriction, or limitation contained in any document referred to in this policy to the extent that the specific covenant, condition, restriction, or limitation violates local, state, or federal discrimination law, including laws based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, national origin, or other legally protected class.”

The new Loan Policy revises the lead-in sentence for the Schedule B Part I, to say: “This policy does not insure against loss or damage, and the Company will not pay costs, attorneys’ fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:”. This is the same language that has been added to the Schedule B of the new Owner Policy, and has the same effect.

The new Loan Policy also updates some language in the Schedule B Part II, so that it now reads: “Covered Risk 10 insures against loss or damage sustained by the Insured by reason of the lack of priority of the lien of the Insured Mortgage over the matters listed in Part II, subject to the terms and conditions of any subordination provision in a matter listed in Part II.”

The new Commitment for Title Insurance

The main purpose of the revised 2021 ALTA Commitment form is to update it for use in conjunction with the revised 2021 ALTA Policy forms, and to make the common terms consistent.

Conditions

The new Commitment revises certain defined terms, including “Knowledge”, “Land” and, most importantly, “Public Records”, to make the definitions consistent with the revisions to those terms in the new policy forms.

The Commitment makes minor changes to some of the other Conditions that are in the 2016 form, but also adds two new Conditions.

A new Condition 9 entitled “Claims Procedures” reads as follows:

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

A new Condition 10 entitled “Class Action” contains language similar to the language addressing class action appearing in the Conditions of the new policy forms:

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

Schedule A

Section 2 is revised to replace references to the 2006 ALTA Policy forms with references to the 2021 ALTA Policy forms. In addition, this section also replaces the term Proposed Policy Amount with Proposed Amount of Insurance, and there is a new reference to add information regarding the estate or interest to be insured by the proposed policy or policies.

The new Commitment revises Section 3 to read: "The estate or interest in the Land at the Commitment Date is: (Identify each estate or interest covered, i.e., fee, leasehold, etc.)."

Updated Endorsements

While the ALTA 3 series, the ALTA 6, ALTA 12, ALTA 14 series, ALTA 26, ALTA 27, ALTA 28.1 and ALTA 32 have been revised, the coverage afforded remains largely the same. The revisions are primarily clarification revisions. The Supreme Court decision in *McGirt v. Oklahoma* (2020) raised concerns of a potential interpretation of jurisdiction to include tribal governing bodies. Therefore, the Forms Committee updated the ALTA 3, 3.1, and 3.2 with a new defined term of Zoning Ordinance to clarify that the coverage is intended for State ordinances and regulations. In the ALTA 14.2, ALTA 26, ALTA 27 and ALTA 28.1, the coverage is clarified with the use of a new defined term "State" outlined in the policy, which is used in place of terms like "state" and "jurisdiction" and to clarify "law" where appropriate.

In the ALTA 6, ALTA 14 and ALTA 14.1, the endorsements use the new defined term of "Consumer Protection Laws" introduced in the loan policy.

The ALTA 12 now includes Conditions 7(a), 8, and 10 of the loan policy in its entirety rather than just those subsections which apply to the endorsement.

In the ALTA 28.1, the Forms Committee added the following instructional note: "...The Company may insert "None" if it does not intend to limit the coverage." This note confirms the coverage to be offered when "none" is inserted in Section 4 of the endorsement.

New Endorsements

It appears that the ALTA 34.1 intends to clarify and may offer coverage not available in the ALTA 34. In ALTA 34.1, the particular exception in the policy is defined as the Identified Exception. Unlike the ALTA 34, the coverage is not triggered by "a final order or decree enforcing the Identified Risk in favor of an adverse party..." In ALTA 34.1, the drafter inserts the **specific consequence** which would trigger the coverage. The endorsement includes a drafting instruction which reads as follows:

(DRAFTING INSTRUCTION: Insert the specific consequences potentially arising out of the Identified Exception (e.g., enforcement of a specific covenant in a set of covenants described in the Identified Exception or foreclosure of a lien described in the Identified Exception) against which you intend to insure)

The ALTA 47 and 47.1, which are named the operative law endorsements, are a direct result of the *McGirt* decision. The endorsements are only applicable to the ALTA 2006 policies; therefore, the endorsements will not be issued with the ALTA 2021 policy forms.

Updated CPL

In the prior version of Condition and Exclusion 3.n., the CPL stated that the Company would not be liable for any loss arising from...

wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, 131 network, email, or document production system, business email compromise, identity theft, or 132 diversion of Funds to a person or account not entitled to receive the Fund perpetrated by anyone other than the Issuing Agent or Approved Attorney.

Some industry regulators raised concern that Paragraph 3(n) could be interpreted to modify or limit the coverage under the title policy. Therefore, the CPL was revised to include the following language:

Condition and Exclusion 3.n. does not modify or limit:

- i. Your coverage in the Policy; or
- ii. indemnification in this letter for Your loss solely caused by fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

ALTA OWNER'S POLICY OF TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

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 Condition 17.

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 the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 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. the failure of a person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - iv. a 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 the failure to have performed those acts by electronic means authorized by law;
 - vii. a defective judicial or administrative proceeding; or
 - viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.
 - b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - c. the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. A violation or enforcement of a law, ordinance, permit, or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:
 - a. the occupancy, use, or enjoyment of the Land;
 - b. the character, dimensions, or location of an improvement on the Land;
 - c. the subdivision of the Land; or
 - d. environmental remediation or protection on the Land.
6. An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.

7. An exercise of the power of eminent domain, but only to the extent:
 - a. of the exercise described in an Enforcement Notice; or
 - b. the taking occurred and is binding on a purchaser for value without Knowledge.
8. An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.
9. The Title being vested other than as stated in Schedule A, the Title being defective, or the effect of a court order providing an alternative remedy:
 - a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction vesting the Title because that prior transfer constituted a:
 - i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or
 - ii. voidable transfer under the Uniform Voidable Transactions Act; or
 - b. because the instrument vesting the Title constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:
 - i. to timely record the instrument vesting the Title in the Public Records after execution and delivery of the instrument to the Insured; or
 - ii. of the recording of the instrument vesting the Title in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the deed or other instrument vesting the Title in the Public Records.

DEFENSE OF COVERED CLAIMS

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]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

By: _____
[Authorized Signatory]

EXCLUSIONS FROM COVERAGE

The following matters are 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) that restricts, regulates, prohibits, or relates to:
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement on the Land;
 - iii. the subdivision of land; or
 - iv. environmental remediation or protection.
 - b. any governmental forfeiture, police, regulatory, or national security power.
 - c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
3. Any defect, lien, encumbrance, adverse claim, or other matter:
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at the 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 the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:
 - i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
 - ii. for any other reason not stated in Covered Risk 9.b.
5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.
6. Any lien on the Title for real estate taxes or assessments, imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.
7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.d.:

Issuing Agent:

Issuing Office:

Issuing Office's ALTA® Registry ID:

Issuing Office File Number:

Property Address:]

SCHEDULE A

Name and Address of Title Insurance Company:

Policy Number:

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

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

1. The Insured is:
2. The estate or interest in the Land insured by this policy is:
3. The Title is vested in:
4. The Land is described as follows:
- [5. This policy incorporates by reference the endorsements designated below, adopted by the [American Land Title Association][] as of the Date of Policy:]

SCHEDULE B

Policy Number:

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

(Insert Schedule B exceptions here)

CONDITIONS

1. DEFINITION OF TERMS

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

- a. "Affiliate": An Entity:
 - i. that is wholly owned by the Insured;
 - ii. that wholly owns the Insured; or
 - iii. if that Entity and the Insured are both wholly owned by the same person or Entity.
- b. "Amount of Insurance": The Amount of Insurance stated in Schedule A, as may be increased by Condition 8.d. or decreased by Condition 10 or 11; or increased or decreased by endorsements to this policy.
- c. "Date of Policy": The Date of Policy stated in Schedule A.
- d. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that under applicable law illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
- e. "Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and:
 - i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;
 - ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or
 - iii. asserts a right to enforce a PACA-PSA Trust.
- f. "Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.
- g. "Insured":
 - i. (a). The Insured named in Item 1 of Schedule A;
 - (b). the successor to the Title of an Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (c). the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
 - (d). the successor to the Title of an Insured resulting from its conversion to another kind of Entity; or
 - (e). the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is:
 - (1). an Affiliate;
 - (2). a trustee or beneficiary of a trust created by a written instrument established for

estate planning purposes by an Insured;

- (3). a spouse who receives the Title because of a dissolution of marriage;
 - (4). a transferee by a transfer effective on the death of an Insured as authorized by law;
or
 - (5). another Insured named in Item 1 of Schedule A.
- ii. The Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.
- h. "Insured Claimant": An Insured claiming loss or damage arising under this policy.
 - i. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
 - j. "Land": The land described in Item 4 of Schedule A and improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
 - k. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
 - l. "PACA-PSA Trust": A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.
 - m. "Public Records": The recording or filing system established under State statutes in effect at the Date of Policy under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
 - n. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
 - o. "Title": The estate or interest in the Land identified in Item 2 of Schedule A.
 - p. "Unmarketable Title": The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or a lender on the Title 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 COVERAGE

This policy continues as of the Date of Policy in favor of an Insured, so long as the Insured:

- a. retains an estate or interest in the Land;
- b. owns an obligation secured by a purchase money mortgage given by a purchaser from the Insured;
or
- c. has liability for warranties given by the Insured in any transfer or conveyance of the Insured's Title.

Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or Entity that is not the Insured and acquires the Title or an obligation secured by a purchase money mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured must notify the Company promptly in writing if the Insured has Knowledge of:

- a. any litigation or other matter for which the Company may be liable under this policy; or
- b. any rejection of the Title 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 this policy is reduced to the extent of the prejudice.

4. PROOF OF LOSS

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, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must 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 Condition 7, the Company, at its own cost and without unreasonable delay, will 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 has 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 covered causes of action. The Company is not 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 any cause of action that alleges matters not insured against by this policy.
- b. The Company has the right, in addition to the options contained in Condition 7, 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, 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 is liable to the Insured. The Company's exercise of these rights is not an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under Condition 5.b., it must do so diligently.
- c. When 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 having jurisdiction. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to 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.

When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:

- i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and
- ii. any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter, as insured.

If the Company is prejudiced by any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter 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 the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all the records in the custody or control of a third party that reasonably pertain to the loss or damage. No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, disclosure is necessary in the administration of the claim or required by law. Any 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 Condition 6.b., unless prohibited by law, terminates 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 has the following additional options:

- a. *To Pay or Tender Payment of the Amount of Insurance*
To pay or tender payment of the Amount of Insurance under this policy. 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 or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any 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 parties other than the Insured for or in the name of the Insured Claimant. 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. 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.

Upon the exercise by the Company of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.

- a. The extent of liability of the Company for loss or damage under this policy does not exceed the lesser of:
 - i. the Amount of Insurance; or
 - ii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy.
- b. Except as provided in Condition 8.c. or 8.d., the fair market value of the Title in Condition 8.a.ii. is calculated using the date the Insured discovers the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.
- c. If, at the Date of Policy, the Title to all of the Land is void by reason of a matter insured against by this policy, then the Insured Claimant may, by written notice given to the Company, elect to use the Date of Policy as the date for calculating the fair market value of the Title in Condition 8.a.ii.
- d. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title, as insured:
 - i. the Amount of Insurance will be increased by 15%; and
 - ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b. or, if it applies, 8.c., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.ii.
- e. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.d., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

9. LIMITATION OF LIABILITY

- a. The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:
 - i. removes the alleged defect, lien, encumbrance, adverse claim, or other matter;
 - ii. cures the lack of a right of access to and from the Land; or
 - iii. cures the claim of Unmarketable Title,

all as insured. The Company may do so by any method, including litigation and the completion of any appeals.
- b. The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, until a State or federal court having jurisdiction makes a final, non-appealable determination adverse to the Title.
- c. The Company is not 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.
- d. The Company is not liable for the content of the Transaction Identification Data, if any.

10. REDUCTION OR TERMINATION OF INSURANCE

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays 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 executed by an Insured after the Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.

13. COMPANY'S RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND PAYMENT

- a. If the Company settles and pays a claim under this policy, it is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant must execute documents to transfer these rights and remedies to the Company. The Insured Claimant permits 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.
- b. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company defers the exercise of its subrogation right until after the Insured Claimant fully recovers its loss.
- c. The Company's subrogation right includes the Insured's rights to indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights.

14. POLICY ENTIRE CONTRACT

- a. This policy together with all endorsements, if any, issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.
- b. Any amendment of this policy must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. Unless the endorsement expressly states, it does not:
 - i. modify any prior endorsement,
 - ii. extend the Date of Policy,
 - iii. insure against loss or damage exceeding the Amount of Insurance, 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, this policy will be deemed not to include that provision or the part held to be invalid, but all other provisions will remain in full force and effect.

16. CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*

The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located.

The State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims against the Title and the interpretation and enforcement of the terms of this policy, without regard to 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 having jurisdiction.

17. NOTICES

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)*.

18. CLASS ACTION

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.

[19. ARBITRATION

- a. All claims and disputes arising out of or relating to this policy, including any service or other matter in connection with issuing this policy, any breach of a policy provision, or any other claim or dispute arising out of or relating to the transaction giving rise to this policy, may be resolved by arbitration. If the Amount of Insurance is \$2,000,000 or less, any claim or dispute may be submitted to binding arbitration at the election of either the Company or the Insured. If the Amount of Insurance is greater than \$2,000,000, any claim or dispute may be submitted to binding arbitration only when agreed to by both the Company and the Insured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("ALTA Rules"). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The AAA Rules are available online at www.adr.org.
- b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 19. The arbitrator does not have authority to conduct any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims under any circumstance.
- c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 19, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 19.*
- d. [The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of \$100,000 or less. Other fees][Fees] will be allocated in accordance with the applicable AAA Rules. The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the arbitrator may be entered in any State or federal court having jurisdiction.]

NOTE: Bracketed [] material optional

ALTA LOAN POLICY OF TITLE INSURANCE
issued by

BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

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 Condition 16.

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 the Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 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. the failure of a person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - iv. a 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 the failure to have performed those acts by electronic means authorized by law;
 - vii. a defective judicial or administrative proceeding; or
 - viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.
 - b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - c. the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. A violation or enforcement of a law, ordinance, permit, or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:
 - a. the occupancy, use, or enjoyment of the Land;
 - b. the character, dimensions, or location of an improvement on the Land;
 - c. the subdivision of the Land; or
 - d. environmental remediation or protection on the Land.
6. An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.

7. An exercise of the power of eminent domain, but only to the extent:
 - a. of the exercise described in an Enforcement Notice; or
 - b. the taking occurred and is binding on a purchaser for value without Knowledge.
8. An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. Covered Risk 9 includes, but is not limited to, insurance against loss caused by:
 - a. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - b. the failure of a person or Entity to have authorized a transfer or conveyance;
 - c. the Insured Mortgage not being properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - d. a failure to perform those acts necessary to create an Insured Mortgage by electronic means authorized by law;
 - e. a document having been executed under a falsified, expired, or otherwise invalid power of attorney;
 - f. the Insured Mortgage not having been properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
 - g. a defective judicial or administrative proceeding; or
 - h. invalidity or unenforceability of the lien of the Insured Mortgage as a result of the repudiation of an electronic signature by a person that executed the Insured Mortgage because the electronic signature on the Insured Mortgage was not valid under applicable electronic transactions law.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:
 - a. the amount of the principal disbursed as of the Date of Policy;
 - b. the interest on the obligation secured by the Insured Mortgage;
 - c. the reasonable expense of foreclosure;
 - d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and
 - e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:
 - i. real estate taxes and assessments imposed by a governmental taxing authority; and
 - ii. regular, periodic assessments by a property owners' association.
11. The lack of priority of the lien of the Insured Mortgage upon the Title:
 - a. as security for each advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for service, labor, material, or equipment arising from construction of an improvement or work related to the Land when the improvement or work is:
 - i. contracted for or commenced on or before the Date of Policy; or
 - ii. contracted for, commenced, or continued after the 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 the Date of Policy to advance; and
 - b. over the lien of any assessments for street improvements under construction or completed at the 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, or the effect of a court order providing an alternative remedy:
 - a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a:
 - i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or
 - ii. voidable transfer under the Uniform Voidable Transactions Act; or
 - b. because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:
 - i. to timely record the Insured Mortgage in the Public Records after execution and delivery of the Insured Mortgage to the Insured; or

- ii. of the recording of the Insured Mortgage in the Public Records 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 the Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

DEFENSE OF COVERED CLAIMS

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]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

By: _____
[Authorized Signatory]

EXCLUSIONS FROM COVERAGE

The following matters are 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) that restricts, regulates, prohibits, or relates to:
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement on the Land;
 - iii. the subdivision of land; or
 - iv. environmental remediation or protection.
 - b. any governmental forfeiture, police, regulatory, or national security power.
 - c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.
2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
3. Any defect, lien, encumbrance, adverse claim, or other matter:
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at the 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 the Date of Policy (Exclusion 3.d. 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 consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer had been given for the Insured Mortgage at the Date of Policy.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business law.
5. Invalidity or unenforceability of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury law or Consumer Protection Law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the lien of the Insured Mortgage is a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:
 - i. to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or
 - ii. for any other reason not stated in Covered Risk 13.b.
7. Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.
8. Any lien on the Title for real estate taxes or assessments, imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records. Exclusion 8 does not modify or limit the coverage provided under Covered Risk 2.b. or 11.b.
9. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.e.:

Issuing Agent:

Issuing Office:

Issuing Office's ALTA® Registry ID:

Loan ID Number:

Issuing Office File Number:

Property Address:]

SCHEDULE A

Name and Address of Title Insurance Company:

Policy Number:

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

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

1. The Insured is:
2. The estate or interest in the Land encumbered by the Insured Mortgage is:
3. The Title encumbered by the Insured Mortgage is vested in:
4. The Insured Mortgage and its assignments, if any, are described as follows:
5. The Land is described as follows:
- [6. This policy incorporates by reference the endorsements designated below, adopted by the [American Land Title Association][] as of the Date of Policy:]

SCHEDULE B

Policy Number:

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

[This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

(Insert Schedule B exceptions here)]

[This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

PART I

(Insert Schedule B exceptions here)

PART II

Covered Risk 10 insures against loss or damage sustained by the Insured by reason of the lack of priority of the lien of the Insured Mortgage over the matters listed in Part II, subject to the terms and conditions of any subordination provision in a matter listed in Part II:]

CONDITIONS

1. DEFINITION OF TERMS

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

- a. "Affiliate": An Entity:
 - i. that is wholly owned by the Insured;
 - ii. that wholly owns the Insured; or
 - iii. if that Entity and the Insured are both wholly owned by the same person or Entity.
- b. "Amount of Insurance": The Amount of Insurance stated in Schedule A, as may be increased by Condition 8.c.; decreased by Condition 10; or increased or decreased by endorsements to this policy.
- c. "Consumer Protection Law": Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan.
- d. "Date of Policy": The Date of Policy stated in Schedule A.
- e. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that under applicable law illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
- f. "Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and:
 - i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;
 - ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or
 - iii. asserts a right to enforce a PACA-PSA Trust.
- g. "Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.
- h. "Government Mortgage Agency or Instrumentality": Any government agency or instrumentality that is the owner of the Indebtedness, an insurer, or a guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness, or any part of it, whether named as an Insured or not.
- i. "Indebtedness": Any obligation secured by the Insured Mortgage, including an obligation evidenced by electronic means authorized by law. If that obligation is the payment of a debt, the Indebtedness is:

- i. the sum of:
 - (a). principal disbursed as of the Date of Policy;
 - (b). principal disbursed subsequent to the Date of Policy;
 - (c). the construction loan advances made subsequent to the 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 continues to be obligated to advance at the Date of Policy and at the date of the advance;
 - (d). interest on the loan;
 - (e). prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (f). expenses of foreclosure and any other costs of enforcement;
 - (g). advances for insurance premiums;
 - (h). advances to assure compliance with law or to protect the validity, enforceability, or priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title; including, but not limited to:
 - (1). real estate taxes and assessments imposed by a governmental taxing authority, and
 - (2). regular, periodic assessments by a property owners' association; and
 - (i). advances to prevent deterioration of improvements before the Insured's acquisition of the Title, but
 - ii. reduced by the sum of all payments and any amounts forgiven by an Insured.
- j. "Insured":
- i. (a). The Insured named in Item 1 of Schedule A or future owner of the Indebtedness other than an Obligor, if the named Insured or future owner of the Indebtedness owns the Indebtedness, the Title, or an estate or interest in the Land as provided in Condition 2, but only to the extent the named Insured or the future owner either:
 - (1). owns the Indebtedness for its own account or as a trustee or other fiduciary, or
 - (2). owns the Title after acquiring the Indebtedness;
 - (b). the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as defined by applicable electronic transactions law;
 - (c). the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
 - (d). the successor to the Title of an Insured resulting from its conversion to another kind of Entity;
 - (e). the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is an Affiliate;
 - (f). an Affiliate that acquires the Title through foreclosure or deed-in-lieu of foreclosure of the Insured Mortgage; or
 - (g). any Government Mortgage Agency or Instrumentality.
 - ii. With regard to Conditions 1.j.i.(a). and 1.j.i.(b)., the Company reserves 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, adverse claim, or other matter insured against by this policy.
 - iii. With regard to Conditions 1.j.i.(c)., 1.j.i.(d)., 1.j.i.(e)., and 1.j.i.(f)., the Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.
- k. "Insured Claimant": An Insured claiming loss or damage arising under this policy.
- l. "Insured Mortgage": The Mortgage described in Item 4 of Schedule A.
- m. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
- n. "Land": The land described in Item 5 of Schedule A and improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- o. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.

- p. "Obligor": A person or Entity that is or becomes a maker, borrower, or guarantor as to all or part of the Indebtedness or other obligation secured by the Insured Mortgage. A Government Mortgage Agency or Instrumentality is not an Obligor.
- q. "PACA-PSA Trust": A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.
- r. "Public Records": The recording or filing system established under State statutes in effect at the Date of Policy under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
- s. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
- t. "Title": The estate or interest in the Land identified in Item 2 of Schedule A.
- u. "Unmarketable Title": The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title, a 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 COVERAGE

This policy continues as of the Date of Policy in favor of an Insured:

- a. after the Insured's acquisition of the Title, so long as the Insured retains an estate or interest in the Land; and
 - b. after the Insured's conveyance of the Title, so long as the Insured:
 - i. retains an estate or interest in the Land;
 - ii. owns an obligation secured by a purchase money mortgage given by a purchaser from the Insured; or
 - iii. has liability for warranties given by the Insured in any transfer or conveyance of the Insured's Title.
- Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or Entity that is not the Insured and acquires the Title or an obligation secured by a purchase money mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured must notify the Company promptly in writing if the Insured has Knowledge of:

- a. any litigation or other matter for which the Company may be liable under this policy; or
- b. any rejection of the Title or the lien of the Insured Mortgage 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 this policy is reduced to the extent of the prejudice.

4. PROOF OF LOSS

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, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must 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 Condition 7, the Company, at its own cost and without unreasonable delay, will 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 has 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 covered causes of action. The Company is not 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 any cause of action that alleges matters not insured against by this policy.

- b. The Company has the right, in addition to the options contained in Condition 7, 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 is liable to the Insured. The Company's exercise of these rights is not an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under Condition 5.b., it must do so diligently.
- c. When 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 having jurisdiction. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to 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.

When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:

- i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and
- ii. 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 any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter 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 the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all the records in the custody or control of a third party that reasonably pertain to the loss or damage. No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, disclosure is necessary in the administration of the claim or required by law. Any 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 Condition 6.b., unless prohibited by law, terminates 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 has 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. 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 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. 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 purchase and that the Company is obligated to pay.

If the Company purchases the Indebtedness, the Insured must 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 option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any 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 parties other than the Insured for or in the name of the Insured Claimant. 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. 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.

Upon the exercise by the Company of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.

- a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:
 - i. the Amount of Insurance;
 - ii. the Indebtedness;
 - iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or
 - iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.
- b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:
 - i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or
 - ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.
- c. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured:
 - i. the Amount of Insurance will be increased by 15%; and
 - ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the **Title in Condition 8.a.iii.**
- d. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.c., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

9. LIMITATION OF LIABILITY

- a. The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:
 - i. removes the alleged defect, lien, encumbrance, adverse claim, or other matter;
 - ii. cures the lack of a right of access to and from the Land;
 - iii. cures the claim of Unmarketable Title; or
 - iv. establishes the lien of the Insured Mortgage,all as insured. The Company may do so by any method, including litigation and the completion of any appeals.
- b. The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, until a State or federal court having jurisdiction makes a final, non-appealable determination adverse to the Title or to the lien of the Insured Mortgage.
- c. The Company is not 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.
- d. An Insured Claimant must own the Indebtedness or have acquired the Title at the time that a claim under this policy is paid.
- e. The Company is not liable for the content of the Transaction Identification Data, if any.

10. REDUCTION OR TERMINATION OF INSURANCE

- a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment. However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Amount of Insurance afforded under this policy, except to the extent that the payment reduces the Indebtedness.
- b. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Amount of Insurance.
- c. The voluntary satisfaction or release of the Insured Mortgage terminates all liability of the Company, except as provided in Condition 2.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.

12. COMPANY'S RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND PAYMENT

- a. *Company's Right to Recover*
 - i. If the Company settles and pays a claim under this policy, it is subrogated and entitled to the rights and remedies 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, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant must execute documents to transfer these rights and remedies to the Company. The Insured Claimant permits 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.
 - ii. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company defers the exercise of its subrogation right until after the Insured Claimant fully recovers its loss.
- b. *Company's Subrogation Rights against Obligors*

The Company's subrogation right includes the Insured's rights against Obligors including the Insured's rights to repayment under a note, indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights. An Obligor cannot avoid the Company's subrogation right by acquiring the Indebtedness as a result of an indemnity, guaranty, warranty, insurance policy, or bond, or in any other manner. The Obligor is not an Insured under this policy. The Company may not exercise its rights under Condition 12.b. against a Government Mortgage Agency or Instrumentality.
- c. *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 the action does not affect the enforceability or priority of the lien of the Insured Mortgage.
 - ii. If the Insured exercises a right provided in Condition 12.c.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 is required to pay only that part of the loss insured against by this policy that exceeds the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's subrogation right.

13. POLICY ENTIRE CONTRACT

- a. This policy together with all endorsements, if any, issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.

- b. Any amendment of this policy must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. Unless the endorsement expressly states, it does not:
 - i. modify any prior endorsement,
 - ii. extend the Date of Policy,
 - iii. insure against loss or damage exceeding the Amount of Insurance, or
 - iv. increase the Amount of Insurance.

14. SEVERABILITY

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

15. CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*

The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located.

The State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims against the Title or the lien of the Insured Mortgage and the interpretation and enforcement of the terms of this policy, without regard to 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 having jurisdiction.

16. NOTICES

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) _____.

17. CLASS ACTION

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING.

[18. ARBITRATION

- a. All claims and disputes arising out of or relating to this policy, including any service or other matter in connection with issuing this policy, any breach of a policy provision, or any other claim or dispute arising out of or relating to the transaction giving rise to this policy, may be resolved by arbitration. If the Amount of Insurance is \$2,000,000 or less, any claim or dispute may be submitted to binding arbitration at the election of either the Company or the Insured. If the Amount of Insurance is greater than \$2,000,000, any claim or dispute may be submitted to binding arbitration only when agreed to by both the Company and the Insured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("ALTA Rules"). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The AAA Rules are available online at www.adr.org.
- b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 18. The arbitrator does not have authority to conduct any class action arbitration or arbitration involving joint or consolidated claims under any circumstance.
- c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 18, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 18.*

- d. [The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of \$100,000 or less. Other fees][Fees] will be allocated in accordance with the applicable AAA Rules. The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the arbitrator may be entered in any State or federal court having jurisdiction.]

NOTE: Bracketed [] material optional

ALTA 34.1 IDENTIFIED EXCEPTION & IDENTIFIED RISK COVERAGE ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms mean:
 - a. "Identified Exception": Exception _____ of Schedule B.
 - b. "Identified Risk": The consequences specified below that may result from the exercise or enforcement of the matter described in the Identified Exception:
 - i. _____
 - ii. _____]*(DRAFTING INSTRUCTION: Insert the specific consequences potentially arising out of the Identified Exception (e.g., enforcement of a specific covenant in a set of covenants described in the Identified Exception or foreclosure of a lien described in the Identified Exception) against which you intend to insure)*
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. the exercise or enforcement of an Identified Risk specified in Section 1.b. by an adverse party; or
 - b. the release of a prospective purchaser or lessee of the Title or a lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk arising out of the Identified Exception, 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 will insure over the Identified Risk with the same coverage as in this endorsement.
3. This endorsement does not obligate the Company to establish the Title free of the Identified Exception or to eliminate the Identified Risk. The Company does not assume any liability for loss or damage arising out of the Identified Exception other than the Identified Risk. If the Company establishes the Title free of the Identified Risk, Condition 9.a. of the policy 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.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY